#### **RESEARCH PAPER**

## WOMEN WORKING WORLDWIDE: A SITUATIONAL ANALYSIS OF WOMEN MIGRANT WORKERS



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# LIST OF ABBREVIATIONS

ASEAN	Association of South East Asian Nations
BLA or BLLA	Bilateral Labour Agreement
CEDAW	United Nations International Convention on the Elimination of All Forms of Discrimination against Women
COWA	Committee on Overseas Workers Affairs (Philippines)
CSO	Civil Society Organization
DIOC	Database on Immigrants in OECD Countries
DIOC-E	Database on Immigrants in OECD and non-OECD Countries
DOLE	Department of Labour and Employment
EFTA	European Free Trade Association
EOI	Export Oriented Industrialization
EU	European Union
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FWRC	Filipino Workers Resource Center
GCC	Global Care Chain
GFMD	The Global Forum on Migration and Development
GPB	Governmental Placement Branch (Philippines)
GR26	CEDAW's General Recommendation No. 26
HRW	Human Rights Watch
HTA	Hometown Association
ICRMW	United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICT	Information Communications Technology
ILO	International Labour Organization
IMRC	International Migration Research Centre
IMSS	Instituto Mexicano del Seguro Social
IMUMI	Instituto para las Mujeres en la Migración, A.C. (Mexico)
INM	Instituto Nacional de Migración (Mexico)

IOM	International Organization for Migration
ISCO-88	International Standard Classification of Occupations
LFT	Ley Federal del Trabajo (Federal Labour Law-Mexico)
MTO	Money Transfer Operator
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
ODA	Official Development Assistance
ODIMM	Organization for Small and Medium Enterprises Sector Development (Moldova)
OECD	Organisation for Economic Co-operation and Development
OFW	Overseas Filipino Worker
OSCE	Organization for Security and Co-operation in Europe
PDOS	Pre-departure Orientation Seminar
POEA	Philippine Overseas Employment Administration
PWC	Philippine Women Centre
RSP	Remittance Service Provider
SAPs	Structural Adjustment Programmes
UN	United Nations
UN DESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEP	United Nations Environment Programme
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UN-INSTRAW	United Nations International Research and Training Institute for the Advancement of Women
UNODC	United Nations Office on Drugs and Crime
OHCHR	United Nations Office of the High Commissioner for Human Rights
UN Women	The United Nations Entity for Gender Equality and the Empowerment of Women
WB	World Bank
WIEGO	Women in Informal Employment: Globalizing and Organizing
WHO	World Health Organization
WMWs	Women Migrant Workers

## ABSTRACT

This report is a contribution toward UN Women's project, "Promoting and Protecting Women Migrant Workers' Labour and Human Rights." This report is the first of three designed to build on the growing body of scholarship pertaining to gender and migration and provide a resource for the creation of gender-sensitive policies and practices aimed at empowering women migrant workers. This report draws from the cases of Moldova, Philippines and Mexico to provide a comprehensive analysis that accounts for differences and similarities between migration systems. Specifically, through the use of legal reviews and legislative comparison, the report provides an analysis of existing mechanisms, frameworks, legislation and policies vis-à-vis women migrant workers, with particular attention paid to the alignment of national legislation with international framework, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Finally, the report concludes by providing a set of recommendations aimed at global and regional actors, including the ratification of international treaties, enforcement of CEDAW and the creation of a new international instrument to promote and protect the rights of women migrant workers.

# INTRODUCTION

## 1. INTRODUCTION

Women constitute almost half of the 244 million people who live and work outside their countries of birth. In recent years, there has been an increase in the autonomous migration of women for work, particularly in feminized labour sectors. While feminization of migration generally refers to increased international migration of women, female labour migration tends to be heavily concentrated in occupations that are traditionally associated with specific gender roles. Although many women migrants are highly skilled and well educated, employment restrictions for migrants, coupled with the deskilling prevalent in gendered labour markets, as well as stereotypes around migrant women in destination countries, can impact their job prospects. Indeed, many migrant women participate in low-skilled and precarious jobs in manufacturing, agricultural, small-scale entrepreneurial, service, as well as in the care sector including nursing, elderly and childcare, cleaning and other related work in households and in public and private institutions.

The increase of women migrants in labour markets has further drawn the attention of governments, international and civil society organizations to the potential for women migrant workers to contribute to the economic development of home and host countries. Currently, migrant women are responsible for half of the World Bank's estimated \$582 billion in global remittances (Western Union, 2015). Indeed, women migrants are more likely to send home a higher proportion of their wages on a more regular basis and their remittances are more likely to be spent on health, education, family and community development. In countries such as Nepal, women migrant workers - mostly domestic workers - contribute about 50 per cent of migrant workers' remittances, or around 30 per cent to Gross Domestic Product (UN Women, 2013).

However, the opportunities that migration represents for women's empowerment, family well-being and social and economic development hinge on the alignment of policies and institutional and public responses to women migrant workers with international human rights. These rights are embodied in international human rights treaties, including International Labour Organization instruments.<sup>1</sup> Many women migrant workers face discrimination, violence, health risks and exploitation at all stages of migration, deriving in large part from gender in addition to social class, ethnicity, and immigration status. In some cases, their vulnerabilities to these risks stem from the very governance strategies employed to regulate mobility and work, often invoking the language of protection and security.

This report provides a global overview of women migrant workers (WMWs). The title and subject of this report is expressed in terms of "women migrant workers". In using this term, the authors recognize that the many complexities of women moving for work are not

In particular, the UN International Convention on the Elimination of All Forms of Discrimination against Women, 1979 and its General Recommendation 26; UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 1990; ILO Conventions include: Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201, Migration for Employment Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and accompanying recommendations, Private Employment Agencies Convention, 1997 (No. 181).

completely reflected. As such, it must be noted that the term is used to describe women at all stages of migration, including pre-departure, transit and postreturn. This category encompasses women that have been unsuccessful in obtaining employment, have been employed in their non-preferred sector, or have migrated for the purpose of work but have been trafficked. It also recognizes that even where women are not migrating with the primary purpose of working, there will be an element of work involved in their move, be it temporary work that is used to facilitate their move, or unpaid care duties that are undertaken to support their family and/or facilitate the abilities of others to work.

The report begins with an analysis of global trends and systems pertaining to migrant labour. This is followed by a discussion of key international frameworks where issues within them are highlighted. In addition, key structures that WMWs interact with everyday are detailed and analyzed from a critical gender perspective. The purpose of this report is to provide the reader with a broad conception of who WMWs are and the structures that they interact and navigate through every day. By doing so, this report will detail the challenges they face, the issues they contend with and gaps that exist in current frameworks that are supposed to ensure their labour and human rights.

This report aims to highlight the sites, methods and strategies women use at every stage of their journey. The goal of this work: to contribute to women's empowerment by correcting misconceptions around women's motivations and degrees of agency; to inform advocates and policy-makers; and to foster dialogue that can challenge exploitation, violence and inequalities that WMWs face. Adhering to a human rights framework, the report aims to challenge commonly held assumptions or stereotypes regarding gender, Women from the Philippines typically fulfil labour market roles such as domestic workers, nurses, marriage migrants, au pairs and entertainers (Encinas-Franco, 2015: 13-22); in part, these flows are structured by labour demand and policy channels in migrant receiving countries (e.g. Canada's Caregiver Program), and in part by the efforts of the Philippine government to capitalize on such outflows of labour in order to advance development goals.

women and labour migration. While a gender analysis of labour migration would involve a nuanced examination of the experiences, realities and structural factors pertaining to both men and women migrants, this report focuses on women migrants specifically, recognizing that there are knowledge gaps in understanding their unique experiences, vulnerabilities and agency. Additionally, there are specific governance gaps that affect this group of migrant workers in particular. These gaps consistently perpetuate and exacerbate gender inequality among migrant workers. Data and evidence are drawn from a wide range of contexts, with primary examples and illustrations from three case studies of migration systems involving Moldova, Mexico and the Philippines. In particular, the report focuses on existing mechanisms, frameworks, legislation and policy as it pertains to women migrant workers, and includes an analysis of existing policies to gauge their compatibility with international human rights frameworks through the use of CEDAW, legal review and legislative comparisons. The report also provides some recommendations aimed at the global levels and fora, and highlights positive reforms and regulatory changes underway in some countries regarding WMWs, though not all contexts or best practices will be discussed.

#### 1.1

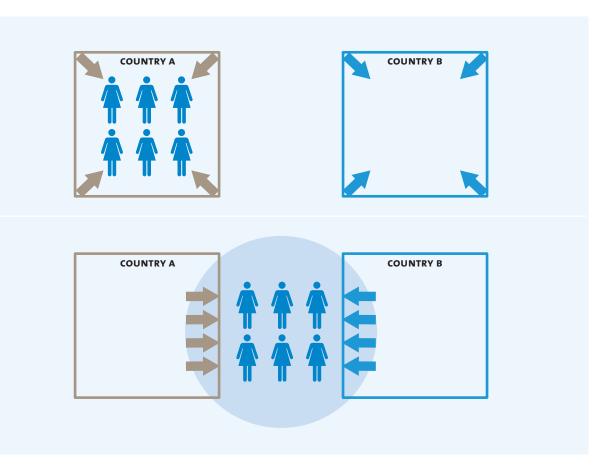
#### **Complexity, Precarity and Empowerment**

Labour migration is a complex and fluid process that intersects with governance structures, transnational identities and communities, and socio-cultural norms and practices – all of which are highly gendered and influenced by gendered power relations. Such processes interact with other social, cultural and economic forces at all levels, from the local to the global. Women must navigate not only physical borders and spaces, but also discursive, legal and social bordering practices, which constrain and structure their mobility and work relationships. WMWs must cope with gaps in laws based on their gender and occupation; genderbased violence; multiple roles and expectations affected by gender norms; and potential vulnerabilities and rights violations that are heightened by precarious workplaces and non-permanent immigration statuses. Despite all these challenging realities, women maintain considerable agency and empowerment, often through creative navigation of policies, legal frameworks, or social or cultural expectations, and in some cases, through collective action. Yet as women independently and collectively engage in migration and work within these complex systems, popular perceptions, as well as many governance frameworks, tend to oversimplify their roles and capacities - missing the complexities of their everyday lives.

#### **Transnational Lives**

Figure 1 illustrates a dominant view regarding women who migrate for work and the forces that affect them. In the top half of the image, women move from Country B to A and are affected only by the roles, relationships and regulations of Country A. The bottom half depicts reality much more accurately. Women may physically find themselves in Country A, navigating those forces, but they also must contend with expectations and relationships in Country B – effectively leaving women migrants to negotiate their lives somewhere in the middle. This picture is further complicated when you consider how roles, relationships and regulations are determined and influenced by countries of transit.

### FIGURE 1 Positioning Women Migrant Workers



It is within this transnational space (Faist, 2008) that WMWs negotiate gender roles and encounter regulatory frameworks and migration processes that influence their rights. Indeed, migration implies movement across a space, and many of the factors affecting WMWs happen during their journeys and within the transnational spaces that they occupy such as borders, airports, international waters, or government institutions. WMWs' ability to enter and work in a country, or obtain legal status, is determined at sites such as these; their ability to maintain cultural, social and familial ties in their country of origin in turn depends on legality within these spaces. Indeed, as women work in the country of destination or transit, their family relationships are ordered according to their ability to send remittances, maintain contact through information and communication technologies (ICTs), and exist in non-precarious employment. There are thus overlapping levels of complexity between women's relationships, their roles and the regulations they are exposed to, all of which must be better understood in order to address the challenges facing their migration.

In the case of irregular migration, for example, border policies produce an 'unauthorized' migrant category immediately as a migrant crosses an international border. These 'unauthorized' people live with this boundary at all times. It is a constant state of fear caused by the physical and social space of "non-existence" and state of "deportability" (De Genova, 2002). As a result of state-imposed immobility, those categorized as 'unauthorized', 'irregular', 'undocumented', 'alien', 'non-status' are made invisible and "must negotiate in order to survive" (Angulo-Pasel, 2015: 11). The 'unauthorized' person experiences the border in their everyday world because "the borderline is not just at physical entry points at ports, airports, and land crossings" it is a process that has the potential to be materialized anywhere (Nyers, 2008: 166–67).

#### Gender

Gender is the social and cultural elaboration of sexual difference, in that there are socially constructed roles, characteristics, values and beliefs that are assigned through societal norms based on patriarchal and According to Sassen (1988), export-oriented industrialization (EOI) and its requisites of women labour in light manufacturing industries have shaped the feminization of migration (Rodriguez 2010: 11). Because EOI generated employment, and valued the cheap labour of young 'docile' Filipino women and their 'nimble fingers' a space in international labour migration was created.

hierarchical societal organization (McDowell, 1999: 23-25). Gender is a social construction, and as such can be negotiated, changed and represented differently depending on the situational context, the space in which it is observed, and the individuals. Gender roles are thus constructed and re-constructed through daily interactions in the workplace, social settings, families and education systems. Further, gender is a fluid concept and open to interpretation through the experiences and trajectories of individuals; this is even more apparent when we look at women as geographically distinct from one another - that is, living in very different contexts around the world. In the cases of individuals who migrate - for work, crisis, or leisure – traditional gender roles and norms are both entrenched and often challenged, with differing outcomes for the women migrants involved, depending on the context.

WMWs occupy complex gendered roles throughout their migration experience. Thus, the pathways along which WMWs travel open some opportunities while closing them to others. This process is also evident over time; women migrants may begin life overseas as care workers and gradually move to a position of some authority in the destination country or elsewhere. The very experience of autonomous migration, contributing to family income, learning skills and being exposed to different socio-political environments, can have empowering effects for women migrants. This in turn can have broader empowering effects in countries of origin and may impact upon gender equality norms – in the case of increased power over resources, or decision-making. Others counter such positive examples; many women have experiences that open them up to increasing vulnerability and precarity in the migration experience. The different experiences, as lived or perceived, can explain the different policy approaches that states take to female migration, with some countries (Bangladesh for example), encouraging male migration but not necessarily female migration (Oishi, 2005); and others (including the Philippines) accepting social norms around women's mobility, and encouraging their emigration (Encinas-Franco, 2015).

# PROJECT DESCRIPTION

# 2. PROJECT DESCRIPTION

The UN Women project, "Promoting and Protecting Women Migrant Workers' Labour and Human Rights" funded by the European Union strives to promote women migrant workers' rights in all countries and with particular focus on the Philippines, Moldova and Mexico, and protect them against exclusion and exploitation at all stages of migration.

The protection of WMWs' rights is critical for a number of reasons: it advances the human rights agenda; protection of rights has a positive bearing on irregular migration and exploitation; it improves the management of labour migration and migration governance; and finally, it supports WMWs' economic and social empowerment and is critical for economic growth and development.

Drawing evidence from the global context, as well as across the three case study country contexts (Philippines, Moldova and Mexico), the objective is to draw on empirical evidence to lay bare the structural factors which heighten vulnerability and precarity for WMWs, and to make visible the experiences of a range of women migrant workers.

This is the first report of three to be produced from a global perspective.

- The goals of the first report are to:
  - a. Highlight the current state of global migration from a gender perspective, including the flows, occupations and experiences of WMWs.
  - b. Examine and critique the dominant structures and frameworks that WMWs are affected by, and interact with, throughout their migration experience.
  - c. Describe the various vulnerabilities and opportunities that WMWs face as a result of the aforementioned structures and relationships.

- The second report, "Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking", specifically details WMWs participation in the labour market, both regular and irregular, with a focus on precarity, exploitation and empowerment.
- The third report, "At What Cost? Women Migrant Workers, Remittances and Development", critically examines the role that WMWs have in development, including remittance sending and receiving.

The project employs a multi-methodological transnational comparative approach to understanding the structural realities, representations and experiences of women migrant workers. It involves the use of both secondary and primary qualitative and quantitative data sources across multiple sites and time periods, married with evidence from scholarly and official sources.

The project is anchored in three pilot countries that are situated in varied labour migration systems: Mexico (Latin America), Moldova (Eastern Europe) and the Philippines (South East Asia). Each of these countries is part of a feminized migration system within global labour migration patterns. Each one highlights different characteristics with varying levels of governance and formality (e.g. from managed care worker programs to undocumented flows of women workers into sex industries and informal sectors). As noted, while there are some similarities across these countries with respect to female out migration (e.g. heightened risks to exploitation), there is significant variability in governance mechanisms (e.g. bilateral agreements), economic realities (e.g. labour market contexts, occupation categorizations, sector, etc.), and immigration status (e.g. undocumented, managed temporary labour program, work permit system, etc.). The different migration systems that each of these countries represents underscores the high degree of variability and complexity of women's labour migration worldwide, but is in no way intended to provide a representative sample or definitive set of cases from which predictions or universal claims can be articulated.

*Secondary Data:* Sources of secondary research employed in this report include:

- Academic and other research, technical reports
- Policy and legal documentation
- Government and international governmental organisations (IGOs) datasets (EU, UNDP, Frontex, etc.)
- Other secondary datasets (e.g. remittance surveys)
- Media outputs

# CONCEPTUALIZING WOMEN MIGRANT WORKERS

# CONCEPTUALIZING WOMEN MIGRANT WORKERS

This report draws heavily from feminist methodologies, specifically the intersectionality of multiple relationships and social inequalities (i.e. gender, race, class, immigration status, etc.). These arguments maintain that identity is complex and women migrant workers' roles are dynamic and reproduced over the course of lifetimes. Affecting and interacting with these identities are shifting labour migration governance regimes that have gendered mechanisms and consequences. Feminist critical security provides an analytic lens to examine how such security practices and processes affect marginalized persons and to what extent state bordering practices interact with the personal body. Borders and related controls are grafted onto everyday decision-making processes; how these impact the particular choices of migrant women is critical. From all these processes, multiple power relationships are produced as WMWs interact with multiple actors (not just states) including negotiators, facilitators, mediators and gatekeepers of migration processes. This report also draws from sociological conceptions of gendered divisions of labour; transnational studies; governance and governmentality scholarship pertaining to migration.

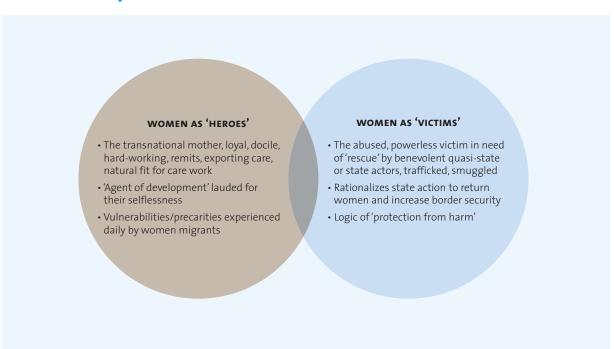
It is important to recognize that gender is both actively constructing and constructed throughout migration and bordering processes, which has consequences for both men and women. However, these gendering practices and outcomes are uneven. This uneven landscape demands that the multiple realities of WMWs require greater scholarly interrogation. It is important that research and policy analysis recognize that migrant women's everyday lives are affected by multiple structural factors, and influenced by numerous actors and institutions throughout their lives. By adopting an analytical perspective that examines the **roles/ representations, relationships** and **regulations** that affect women migrant workers, such complex realities can become clearer, and strengthen the evidence base for advocacy efforts. Indeed, women migrants are, in part, defined according to their **roles and representations**; engage in **relationships** with organizations and actors at work, with state institutions and within their family and across communities; and are regulated according to national and intergovernmental policies, enforcement mechanisms, management strategies and **regulations** at the national and global levels. While at a structural level, global political and economic factors combine to produce global management 'regimes' (which are discussed in detail in a preceding section), the roles, relationships and regulations which migrants encounter in the everyday produce both positive and negative consequences and constitute the terrain in which WMWs assert their agency.

#### 3.1 Roles and Representations

The roles and representations of WMWs are products of complex and dynamic processes that are in no way static, but changing over time. Yet, they have considerable longevity and pervasiveness as they are entrenched and structured through societal norms and expectations of gender. Women migrants' occupations are highly gendered, in that women tend to occupy jobs that replicate their traditional caring and reproductive roles in the private sphere. Just as in the private sphere, their labour is consistently valued less than male labour (as discussed later in this report).

In recent decades, the proliferation of WMWs worldwide has led to the increase in specific and conflicting representations of women migrants: such as the 'hero' of development, the 'victim' of the global labour market, the 'transnational mother', or the 'docile worker'.

#### FIGURE 2 The Limits of Binary Narratives



Women's roles as mothers, family members, labourers, caregivers and those with undocumented status underpin these representations and help fuel the simplistic assumptions that people have of women migrants. WMWs are frequently misrepresented in global and national discourse. Governance, migration realities and discourses have served to further entrench the binary between 'heroes' and 'victims' – which obscures the lived experience of most women migrant workers, fosters a patchwork of protection and creates conditions for harm.

#### Perceptions and Discourses of Women Migrant Workers

Dominant representations emerge over time through discursive practices at individual and societal levels, through policies, media representations and everyday social communication (Hall, 2007). Perceptions of WMWs are shaped by discourses pertaining to gender, race, nationality and immigration status; and women migrants are represented by a staggering array of terms, categorizations, and ideas: care worker; mother; sister; supporter; criminal; prostitute; victim; hero; refugee, etc. In most cases, the migrant worker is subject to 'othering' discourses, which identify migrant workers as outsiders. Such discourses play a pivotal role in the ideological justification, legitimization and sustainability of the coercive and exploitative practices which migrant workers are subjected (Bauder and Di Biase, 2005). Further, the process of 'othering', can be institutionalized through language and discourse which can substantially affect legal-political rights, as notions of who 'belongs' and who does not are reinforced through governance frameworks (see Sharma, 2001; Jiwani, 2006; Hennebry and McLaughlin, 2013). These perceptions are created, informed, contested and/or perpetuated across various domains via media, authorities, communities, academics, NGOs, in social relations, and among women migrants themselves. These perceptions can influence migration processes and experiences. For example, machismo culture in some Latin American countries feeds a perception that women are 'less than' men and even some coyotes (people smugglers who charge a fee to bring migrants across the border) in Mexico have stated they prefer *hombres de ranchos* (rural, 'rustic' men) because of their perceived toughness (Angulo-Pasel 2015: 4; Spener, 2009: 227). Latina women are often closely or inextricably linked in media to domestic care work, where terms like "cleaning gals" or "baby sitter" are used (Hondagneu-Sotelo, 2001: 29). Associations with such roles can solidify over time. In the Philippines, the influences and structures that emerged from decades of intentional governmental processes have contributed to a

national identity that strongly incorporates overseas work; a sentiment reinforced in movies and dominant media outlets (Tyner, 2009). Whether in home, transit or destination countries, WMWs face negative and positive assumptions over their behaviours based on their ethnicity or origin. In the case of Moldovan women in Italy, for example, families still tend to prefer Eastern European women as care workers rather than Filipina workers due to racialization (see Miles, 1982; Silverstein, 2005), while simultaneously some media outlets espouse a narrative criticizing them for taking jobs from Italian workers<sup>2</sup>. This process of idealizing workers through gender and racialized perceptions is not unique to care workers; indeed agricultural workers in Canada have faced similar representations (see McLaughlin, 2010; Preibisch and Binford, 2007; Hennebry, 2006).

"Victim of trafficking" is another dominant role ascribed to WMWs that has been actively constructed through state policies and practices that serve to rationalize enhanced security arrangements at borders and on the fringes of society, such as in brothels and in the informal sector. The discourse surrounding human trafficking highlights the harmful effects that can stem from uninformed or narrowly framed representations. It also illustrates how certain discourses and resultant policies benefit certain ends. In the case of trafficking, states benefit by being able to justify increasingly restrictive and discriminatory securitization strategies. Such framing is problematic because women are rendered invisible through this categorization; the agency of women is ignored and the focus is pulled away from approaches that empower women to assert their rights. In this narrative, women are the object in need of protection from harm, rather than individuals whose rights need to be protected (Anderson, 2012).

2 See http://www.lastampa.it/2012/10/31/societa/ arrivano-le-badanti-della-porta-accanto-yQBLBCh-1vrLOBfCQ6VOEMJ/pagina.html.

#### 3.2 Relationships

The relationships that WMWs form in their daily lives are shaped both by their own decision-making as well as by the structures at the global level which govern the interactions between states, the migration industry, employers and migrants. Power is entrenched in every aspect of interaction between migrant workers and their relations with employers, and further interwoven with issues of class, race and most importantly to our analysis, gender. Power structures in relationships are certainly gendered (see Smith, 1990); women's roles in the global labour market (e.g. in care-related work, factories, agriculture, informal work, higher-skilled positions) are predominantly valued less than men's, creating an uneven distribution of power (Stasiulus and Bakan, 2003; Hondagneu-Sotelo, 2001; Rodriguez, 2010). These relationships also manifest themselves between states and individuals. Women migrants have complex

#### 3.3 Regulations

Women migrants are heavily affected by policies, regulations and barriers aimed at influencing their passage from, through and to particular national contexts. Retaining the right to remain in a country – through legal permanent or temporary status – is often the most important variable determining women migrants' options in the country of destination. Status regulates the workforce and divides foreign labour into those who retain it and those who do not, the latter of which are open to increased precarity, violence and persecution. State action to regulate women migrants' bodies and lives is reflected and bolstered by efforts at the global level to regulate states' behaviours. Legal frameworks and conventions at the global level have varying efficacy regarding improving state responses to vulnerable groups; yet, rather unsurprisingly, security regulations have had considerable uptake at the national levels. Thus, while many global institutions and actors, such as UN Women and the ILO, aim to empower women migrants, the realities of state intervention primarily ensures the security and integrity of the state and the protections of citizens over the rights of 'others', leaving women migrants stuck between two discursive and practical realities.

relations with the state - based on unequal power relations - wherein state interests always dominate over the interests of individual migrants. In turn, poorer states are subservient to larger, more influential states and the latter are usually the ones receiving migrants and setting the agenda for labour exchange. These relationships exist within and across destination, transit and sending countries, and WMWs have to navigate processes that have ingrained power imbalances, both from gender and labour perspectives. These include, for example: securing immigration status or entry into labour markets; securing safe work; asserting their labour and/or human rights; and accessing health services. At the same time, sending country governments are anxious to take advantage of the development dividends that women migrant worker's involvement in remittance economies represents.

Further, governments have played important roles in creating gendered labour migration flows. This is borne out in the case of the Philippines, where the government has been implicated as creating conditions through gendered practices that shaped demand for Filipino WMWs (Encinas-Franco, 2011; Rodriguez, 2010; Guevarra, 2010; Tyner, 2009; Choy, 2000; Encinas-Franco, 2015: 6-7). In particular, predeparture orientation seminars (PDOS) reproduce the notion of migrant women as both breadwinners and mothers, and at the same time, women's femininity and nurturing nature is propagated as a reason for foreign employers demand (Guevarra, 2010: 84). At a macro-level, education for Filipino nurses was affected by the gendered ideologies of the US colonial regime and the Philippine government (Choy, 2000).

The policies and regulations of destination countries also determine the gendered nature of migration. For instance, as further discussed in this report, policies that limit access to publicly funded child and elderly care can result in an increased reliance on migrant care workers.

# TAKING STOCK: WOMEN MIGRANT WORKERS WORLDWIDE

# TAKING STOCK: WOMEN MIGRANT WORKERS WORLDWIDE

Estimating the number of WMWs globally is crucial to determining the unique challenges and needs of migrants and their families and building appropriate responses. However, myriad factors impede the collection of data on WMWs, making it difficult to gain an accurate understanding of feminized flows of migration.

#### 4.1 Challenges to Taking Stock

Data collection and measurement of migration occurs within and through all levels of the migration process, and has important consequences. Methods of data collection and measurement serve to categorize migrant flows, and are often used to determine migrants' access to services, or which rights and protections they may be granted by which governing bodies. The categories of measurement (and how migrants are slotted into these categories), regardless of their accuracy, are used to shape policies and practices of governing which can directly affect migrant rights. As a tool, data are simultaneously creating protection gaps in some spaces, while closing them in others. This varied application of data is indicative of its utility; the kind of information one has and how it is used or shared, has wide ranging consequences, both positive and negative. Where important exceptions to trends exist, common methodological challenges associated with migration data persist, limiting the ability to describe the current situation of women migrants worldwide. For example, despite the increasing number and availability of statistics on international migration, key variables (such as sex and/or gender) remain noticeably absent from many data sources.

#### TABLE 1 Data Sources on Women Migrants

Data Subject	Coverage	Primary Data Sources	Description of Coverage
Total Migration	Total	UN DESA'	Globally complete for 1990, 2000, 2010, and 2013
Labour Migration	Partial	OECD"; ILO"	OECD: complete for 92 countries in 2000 ILO: partially available for 140 countries from 1987-2008
Refugees	Total	UNHCR <sup>IV</sup>	Global complete for 2000-2013
International Students	Partial	UNESCO <sup>v</sup>	Complete for 68 countries in 2012
Irregular Migration	Little	IOM	Estimates available from case studies
Trafficking and Smuggling	Little	US Department of State <sup>vi</sup>	Criminal data available for 187 countries in 2013
Migration Enforcement	Little	-	Only available for some regions (e.g. Europe)
Policy Instruments	Partial	ILO <sup>v</sup> I/IOM <sup>vIII</sup> (International); Various sources <sup>IX</sup> (bilateral)	International: complete from 1919-2015 Bilateral: mostly complete from 1960-2014

While there are considerable sources of data pertaining to migration, there are notable data gaps and measurement issues with respect to WMWs specifically. Some of the primary challenges in taking stock of WMWs worldwide are the following:

• Data availability – many sources of data on international migration do not take sex into account in collection or reporting. Sources that do include sex as a variable are often missing large portions of the data. For example, UNESCO and the ILO have significantly reduced estimates of female migrants compared to estimates of both sexes. Further, national level data collection (e.g. census or statefunded surveys) tend not to include temporary resident and worker populations in detailed labour market, health or other surveys.

- **Definitional problems** the definitions and measurements of important variables of women migrants highly vary from country to country. These render direct comparisons of numbers difficult. Some types of migrants (e.g. irregular) may be omitted altogether or some categories (i.e. asylum seekers and refugees) may be conflated or otherwise miscategorised.
- Inconsistencies in types and frequencies of measurement – different organizations make use of different data sources, whose means and timing of measurement highly vary. Sources that make use of household surveys, for instance, will typically have different variables available and report different estimates of women migrants than those using census registers. Migration statistics can be variably based on the number of migrants in a

I UN DESA, 2015

II OECD, 2016

III ILO, 2015a

IV UNHCR, 2015

V UNESCO, 2015

VI Department of State, 2015

VII ILO, 2015b

VIII IOM, 2015

IX Including OECD, ILO, IOM, OSCE, World Bank, OAS and the Government of the Philippines. Please see references for full citation.

country (migrant stock) and the number travelling in and out of a country (flow); difficulties in comparisons arise where data is presented as a mix of these sources.

- Limitations in sample or geographic aggregation because of the previous problems, the validity and reliability of aggregating many smaller data sets into worldwide estimates becomes highly problematic. Sources attempting to put together sources with extremely different definitions, measurements, or frequencies are likely to generate biased results or be altogether infeasible, statistically.
- The politics of migrant data construction the creation and use of data related to women migrants are often used to direct policy, which influences their behaviour. What counts, how, and why can be purposely constructed to affect decision-making regarding women migrants. For example, selective measurement and release of enforcement data have supported tougher border control to achieve humanitarian aims in Western countries.

#### Data (Un)availability and (In)consistency

The primary methodological challenge to assessing the situation of women migrants worldwide at a macro-level is the absence or insufficiency of data. Of the few truly global estimates of international migration, only the United Nations Division of Economic and Social Affairs (UN DESA) incorporates sex (UN DESA, 2015). Comparable but important data sources, like the World Bank, do not include sex in their estimates (World Bank, 2013). Similarly, there are no worldwide figures on migration for work. The largest complete source comes from the Organisation for Economic Co-Operation and Development (OECD), which provides comparable numbers of labour migrants by sex and occupation in 2000 for only 92 countries (Table 1) in its Database on Immigrants in OECD Countries (DIOC) (OECD, 2016). DIOC is a database that provides the only relatively complete estimate of WMWs on a global scale. It includes stocks of WMWs in 100 countries for the year 2000 from all countries in the world. It also includes the

occupation of these workers, using the ISCO-88 classification system, their education level and their age. DIOC offers a unique insight into the distribution, occupations and origins of women migrant workers. Although accounting for data collected up until 2000, it forms the only available empirical basis for further research. The DIOC, for instance, has more detailed versions available solely for OECD countries in 2000 and 2006 on female labour migration (OECD, 2016). Further data on migrant origins, integration, and economic outcomes are also available for the OECD in its StatExtracts (OECD, 2016). The European Union, through Eurostat and the European Migration Network, produce a diversity of figures on international migration in the European Free Trade Area incorporating sex (Eurostat, 2015a-b). The ILO records global labour migration by sex and economic sector during 1987-2008, but estimates are only available for 140 countries, which, in turn, are missing the vast majority of their observations (ILO, 2015a). It is only currently feasible to assess the situation of WMWs in a large portion – but not the entirety – of the world.

Like total estimates of women migrants, DIOC suffers from data gaps due to inconsistencies between census registers and the presence of irregular migrants. In their report on methodological issues in estimation of labour migration, Hoffman and Lawrence (1996: 30) note that the typical administrative sources used by DIOC (e.g. labour force surveys) cannot be expected to reliably capture sufficient information on migrationrelated variables. Assignment of occupational data is commonly tied to visa/entry documents that may not reflect the true employment of the woman migrant worker after entry (Hoffman and Lawrence, 1996: 32). Additionally, the infrequency of census data relative to household surveys may render comparison between the two sources statistically infeasible (Hoffman and Lawrence, 1996: 36).

Although it is difficult to estimate the numbers of irregular migrants, particularly on a global scale, the United Nations High Commissioner for Refugees (UNHCR) has developed a comprehensive database on the counts of female asylum-seekers and refugees worldwide (UNHCR, 2015). Somewhat complete female

international student data at the tertiary level also exists from the United Nations Educational, Scientific and Cultural Organization's (UNESCO) *Institute for Statistics* back to 1999 (UNESCO, 2015). With respect to trafficking and smuggling of women migrants, the United States Department of State publishes the authoritative and annual *Trafficking in Persons* report, which lacks comprehensive global figures for these phenomena and is not disaggregated by sex (Department of State, 2015).

UN DESA's estimates were imputed by compiling census registers from over 214 countries and comparing definitions of 'foreign born' (UN DESA, 2015). This method of collection typically omits the inclusion of irregular migrants, estimated to compose between 10-15 per cent of the stock, and has reduced reliability due to inconsistencies in recording between countries (IOM, 2010: 29; Hoffman and Lawrence, 1996; Massey and Capoferro, 2007). Inconsistencies occur because different countries use different definitions for measuring migration (Bijak, 2011: 15; Ellis and Wright, 1998: 129-131; Rogers, 2008: 276-283). This is a common problem in international migration data, and the use of aggregation to achieve a larger sample size or wider geographic scale can become biased where definitions and measurements cannot easily be mapped to equivalent concepts (Massey and Capoferro, 2007: 259-265; Greene, 1993: 279; Cramer, 1964). Available evidence suggests that women are more often affected by these gaps, since they are more likely to fall into irregular status (Goldring, 2010; Goldring, Berinstein, and Bernhard, 2009).

According to UNHCR, there were over 14.7 million female refugees (or 50 per cent of the total) in their populations of concern in 2014 (UNHCR, 2016). The highest proportions of these women were concentrated in Africa (37.6 per cent), Asia (31.3 per cent), and Latin America and the Caribbean (25 per cent). These data are likely underestimates because a sizeable group of refugees, each year, seeking protection in Europe, North America, or Australia will not be recorded due to higher incidences of application rejection or receipt of a humanitarian but non-refugee status (Hatton, 2009; Fekete, 2005). The refugee process in these countries is reflective of changing power relations that are altering the definition, collection, storage, and selected publication of migrant data (Burawoy, 1998: 23).

There are no data sources on migration enforcement worldwide, including refusals of entries, detections of undocumented presence, orders to leave, or expulsions. The numbers of WMWs are likely misreported due to the inability to count irregular (or undocumented) migrants, who tend to not self-report their status, and by counting other classes of migrants, like refugees, as migrant workers in some cases (Heckmann, 2009: 286; Massey and Zenteno, 1999; Andersson and Nilsson, 2009: 169-170).

There are a number of regional sources for data on women migrants that can supplement or begin to form global estimates. These sources are particularly useful because they provide some of the only regional numbers for migration enforcement, including by sex. Despite their paucity of information, there are additional regional sources for estimates of human trafficking, smuggling, and irregular migration as well (IOM, 2005; IOM, 2010; Jandl, 2004).

On the bi- and multi-lateral levels, there is no source for complete data on migrant-related agreements (Stephenson and Hufbauer, 2011). Listings of international policy instruments relevant to women migrants exist in two main databases. NORMLEX is an information system on international labour standards that includes instruments specifically for migrants as well as those affecting the occupations that women migrants commonly occupy (ILO, 2015b). Additionally, the International Organization for Migration (IOM) stores records of nearly all international law related to migrants in its Migration Law Database and has 'Women' as a searchable category (IOM, 2015). In a previous project, however, the International Migration Research Centre (IMRC) pieced together a variety of sources to form the first comprehensive database of bilateral labour agreements (BLLAs) worldwide since the 1960's (Hennebry et al., Forthcoming). It is often not possible to determine which BLLAs specifically affect women migrants since the texts of these agreements are kept secret, and

some scholars argue that such agreements tend to be gender-blind (Petrozziello, 2013).

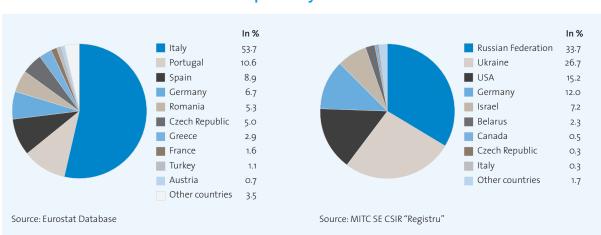
The IOM's Migration Law Database has 112 international policy instruments relevant to migrants and 16 specific to female migrants (IOM, 2015). The ILO's database adds 20 further instruments, 12 of which relate to migrant workers in general, six to the social security of migrant workers, and two to domestic workers (ILO, 2015b). Three examples of important instruments are the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families, signed by 38 countries (see Figure 10), the Domestic Workers Conven*tion*, 2011, with 17 signatories (see Figure 11), and CEDAW General Recommendation 26 (CEDAW has been ratified by 189 states, and the United States is one of the notable countries that has yet to ratify). These conventions prescribe international legal norms regarding the protection and rights of migrant workers and their families. In addition to international instruments, there

are 318 bilateral labour agreements, which modulate the flow of women migrants between specific pairs of countries (Hennebry et al., Forthcoming).

### Why Data Matters – An Example from Moldova

Figure 3 indicates issues around data collection and analysis when it comes to Moldovan labour migration. Countries in the European Union are reporting different statistics on Moldovan labour migration than Moldovan sources. Such a stark difference between the data is due in part to the various methods of data collection. For instance, Figure 3 is based upon those Moldovans officially registering their emigration from Moldova, not the number of Moldovans emigrating (Vremiş et al, 2012: 71). Such reporting techniques distort the real international distribution of Moldovans, a reality that can significantly affect policies and measures attempting to support them.

#### FIGURE 3



#### **Distribution of Moldovans Abroad as Reported by Different Sources**

#### Source: Vremis et al., 2012

Moldova's data collection activities strongly mirror that of the Russian Federation; they focus on short term, seasonal work related statistics, rather than the long term trend data the EU favours (Interview with Moldovan Government, November 2014). Interviews in Moldova revealed that the Government has no census that includes migrants abroad (Interview with Moldovan Government, November 2014). The data that exists are often missing key indicators, such as country of destination, age or sex (Interview with Moldovan Government, November 2014). At a regional level, Moldova does not have access to certain data from countries like Romania; there are no statistics on how many Moldovans hold dual citizenship with Romania (Interview with Moldovan government, November 2014). It is only estimated that there are about 250,000 Moldovans with dual citizenship (Interview with Moldovan Government, November 2014). In Moldova, there is a lag time in being up to date on migration statistics (Interview with Moldovan government, November 2014). Some measurements are not representative of overall trends: the migrant stock estimate only counts migrants actually documenting their emigration, not all who have left Moldova (Vremis et al., 2012: 71). Data concerns were echoed by another ministry, which deals with migration policies. This ministry does not produce or collect its own data; information is sent by Border Police, the Bureau for Migration and Asylum and others (Interview with Moldovan NGO, November 2014).

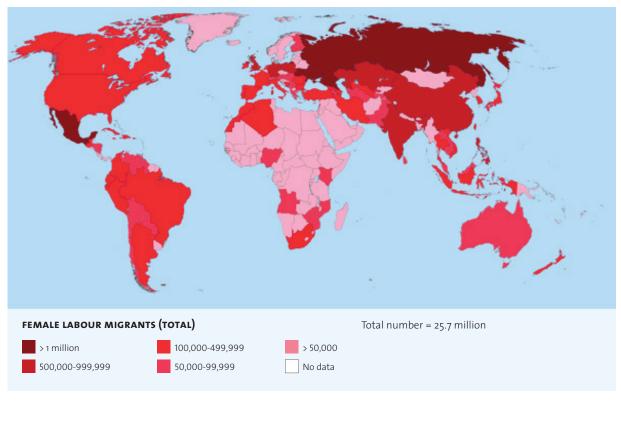
#### 4.2 Geographical Distribution and Characteristics

In 2013, UN DESA's Population Division estimated the world's total female migrant stock to be 111.2 million people (or 48 per cent of the total stock) (UN DESA, 2015). This represented a 47.6 per cent (or 35.9 million

person) increase in the total female migrant stock since 1990. Geographically, the vast majority (or 84.8 per cent) of female migrant stock was located in Europe, Asia, or North America<sup>3</sup> in 2013 (see Figure 4).

#### FIGURE 4

#### Number of Female Labour Migrants in DIOC by Country of Birth



Source: OECD, 2016

3 North America excludes all Latin American and Caribbean countries, including Mexico.

#### FIGURE 5 Destination Countries Included in the OECD's DIOC Data Set, 2000



Source: OECD, 2016

In 2000, the OECD estimated that about 42.3 per cent (or 25.7 million) of all labour migrants were female in the 100 countries it considered (OECD, 2016). Of these female labour migrants, 79 per cent (or 20.3 million people) originated from Asia, Europe, or South America, Central America, or the Caribbean; the origin of 11 per cent of the migrants was unknown. Only each of the top ten countries of origin had more than 500,000 female labour migrants abroad, including Mexico (1.44 million), Russia (1.26 million), Ukraine (1.16 million), China (0.91 million), the Philippines (0.89 million), Kazakhstan (0.86 million), Germany (0.83 million), Great Britain (0.8 million), India (0.56 million) and Poland (0.5 million) (see Figure 4). The top ten countries of destination for female labour migrants were the USA (7.45 million), Germany (2.94 million), Russia (2.85 million), Canada (1.39 million), Great Britain (1.07 million), Ukraine (1.02 million), Australia (0.93 million), France (0.6 million), Hong Kong, SAR (0.57 million) and Switzerland (0.45 million). Table 2 provides the top twenty destination countries for women migrant workers based on data collected from a range of sources. In 1975, male contract workers comprised 70 per cent of deployment. This number declined to 53 per cent by 1987 and female migrant workers made up nearly half deployed (Gonzalez, 1998: 40-41). Recently, new female hires constitute 61 per cent of deployment (DOLE, 2011: 12).

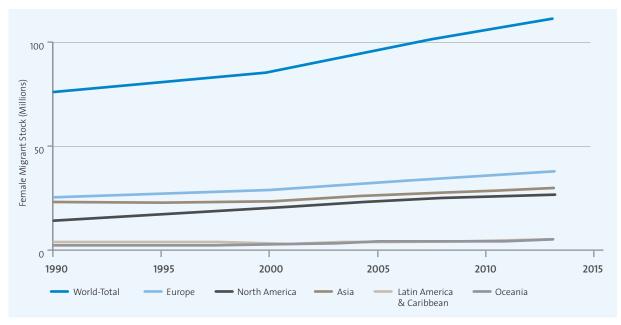
### TABLE 2Top 20 Destination Countries for Women Migrant Workers in DIOC-E\*, 2000\*\* (n = 86)

Rank	Country	Women Migrant Workers (Total, Thousands)	Proportion of Total Labour Force (%)
1	United States of America	7,454	5.7
2	Russia	2,816	4.4
3	Germany	1,824	5.0
4	Canada	1,387	9.4
5	Saudi Arabia	1,080	18.9
6	United Kingdom	1,071	4
7	Ukraine	1,014	5.9
8	Australia	865	10.4
9	France	596	2.6
10	Hong Kong, SAR	574	17.6
11	United Arab Emirates	429	17.3
12	Italy	414	2
13	Spain	408	2.7
14	Switzerland	406	10.7
15	Israel	396	17.7
16	Malaysia	342	4.2
17	Netherlands	332	4.3
18	Japan	288	0.5
19	Argentina	225	2.1
20	Venezuela	224	3
-	Total	25,988	3

\* Includes all countries in the DIOC-E in addition to Bahrain, Kuwait, Philippines, Qatar, Saudi Arabia, South Korea and United Arab Emirates.

\*\* Estimates for the following countries are not from the year 2000: Bahrain (2003), Kuwait (2001), Philippines (2006) and Qatar (2006).

Sources: OECD, 2016; ILO, 2015

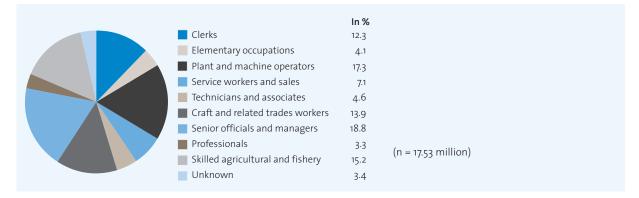


#### FIGURE 6 Female Migrant Stock by World Region, 1999-2013

Source: UN DESA, 2015

#### **FIGURE 7**

### Female Labour Migrant Employment by International Standard Classification of Occupations (ISCO-88) Grouping, 2000



Source: ILO, 2004

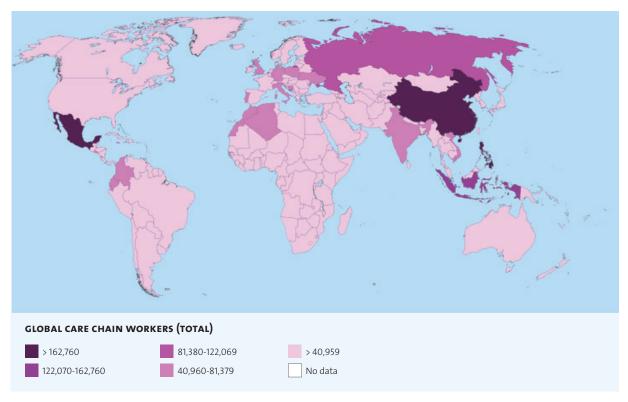
#### Occupation

Excluding Argentina, Japan, Turkey, and the USA, which had unique occupation classification systems, the employment of female labour migrants was most highly concentrated in service workers and shop and market sales workers (18.8 per cent), elementary occupations (17.3 per cent), professionals (13.9 per cent) and clerks (12.3 per cent) (see Figure 7). With respect to domestic workers, the ISCO-88 records personal care workers (code 513) and domestic and related helpers (code 913) (ILO, 2004). A rough estimate of these groups using DIOC puts their numbers at least 2.43

million female labour migrants, comprising 13.9 per cent of all reported occupations. While an imperfect proxy, domestic workers are represented in the service workers and sales category. 69.5 per cent of these domestic workers originated from Europe or Asia, with the top five countries of origin being the Philippines (203.5 thousand), China (176.2 thousand), India (127.8 thousand), Russia (99.4 thousand) and Morocco (75.9 thousand). Some occupations are represented by more than one category in the chart above. For instance, agricultural workers can be classified under the skilled agricultural and fishery category as well as elementary occupations.

#### FIGURE 8





#### Source: ILO, 2004

Figure 8 demonstrates the number of domestic workers around the world. This map involves an estimate of the number of domestic workers by country of birth working in another country. The estimate uses the ISCO-88 codes listed in the paragraph above. It is a likely underestimate for two reasons: occupational codes which have domestic workers but also other workers were removed and only legally-registered workers are accounted for, thereby missing the large number of undocumented workers.

#### Education

According to the OECD (2016), 26.7 per cent (or 6.87 million) of female labour migrants have less than secondary school completion, and 40.1 per cent (or 10.3 million) have completed secondary school. 30.9 per cent (or 7.93 million) of female migrants had completed at least some tertiary-level education. Completion rates of tertiary-level education were highest for migrants from North America (54.7 per cent), Asia (36.5 per cent) and Oceania (35.7 per cent). For the 68 countries where data were available,

UNESCO recorded a flow just over 1.2 million female international students pursuing tertiary education in 2012 (UNESCO, 2015). A majority (or 54.8 per cent) of these students pursued studies in the United Kingdom, France, Australia, Germany, or Japan. Notably absent in the data was the largest receiving country of international students in the world: the United States (UNESCO, 2015). Female Filipino migrant workers are relatively well educated. Based on the 2013 Survey on Overseas Filipinos, 65.8 per cent have education beyond high school, and 39 per cent are college graduates (Encinas-Franco, 2015: 13).

# TRENDS IN MIGRATION GOVERNANCE

## 5. <u>TRENDS IN MIGRATION</u> <u>GOVERNANCE</u>

#### 5.1

#### The Global Political Economy of Labour Migration

Over the last 50 years, the processes that led to the globalization of the world economy, including the liberalization of trade, the financialization of markets, the dampening of the welfare state and the rise in a neoliberal discourse by influential global actors, also drove a dramatic increase in migrants over the same period (Grieco and Boyd, 1998; Castles and Miller, 2009; Pessar, 2005; Piper, 2009). In contrast to trade and finance, however, no unified global architecture exists to govern international migration; it is rather up to states to decide whom to let in and on what terms they are allowed to seek rights and entitlements (Kalm, 2008; Castles and Miller, 2009). State borders, to one extent or another, have been eroded by the forces of globalization: states have liberalized their markets at the behest of international organizations; financialization ties all members of the global economy together such that shocks are felt by all; and ICTs have increased rapidly in recent decades. More people move around the world for economic and other reasons than ever before, and women make up a growing share of this population. Nevertheless, international 'normative constraints' on the rights of migrants have largely failed to create a unified rights regime around migration (Guiraudon and Lahav, 2000; Kalm, 2008; Koslowski, 2011). Instead, states remain the primary actors that govern migration, passing control downward to private, for-profit actors comprising the migration industry. Even as more women migrate for economic reasons around the world, little consensus exists among states on the best way to protect the rights of these individuals.

In the 1960's and through the 1980's, many countries in the Global South began to liberalize their economies by adopting a focus on export-oriented industrialization, informed by neoliberal and market-based logic (Oishi, 2005; Overbeek, 2002). The previous regimes of import-substitution based on theories of dependency and neo-colonial relationships gave way to Structural Adjustment Programmes (SAPs), intended to shock economies by increasing competition, lowering wages and submitting to financial oversight by major international financial institutions. SAPs hit middle and low-income families the worst and particularly many women who had little education and relied heavily on male heads of household (Sadasivam, 1997). These policies contributed to what Herrera (2006) identified as a 'crisis of social reproduction', where the guarantee of providing basic needs is no longer present. Unemployment rose and many women were forced to accept newly-created positions in 'hyper-growth' labour markets, such as export processing zones (Ong, 2000). Rising unemployment and lack of available jobs at home forced many women into migrating, either as spousal dependents or increasingly as independent migrants and heads of household (Oishi, 2005; Pessar, 2005).

At the same time, many developed economies scaled back their welfare regimes in the 1970's and 1980's in favour of market-based solutions in the areas of pension, employment benefits, child care and elderly care (Overbeek, 2002; Rudra, 2002). Resultant care gaps, also partially created by the increase in female labour force participation in developed economies, were increasingly filled by women in developing countries who migrated long distances in order to work (Cangiano, 2014). Developed economies also began seeing a substantial ageing of their populations in the 1980's and 1990's, creating greater demand for care and domestic work from abroad. National governments largely responded to this demand by creating pathways for domestic work recruitment, such as temporary guest-worker streams for care/ domestic workers. These programs were genderstratified and also informally divided along race lines, with the majority of women coming from particular geographic contexts (Piper, 2009).

The tune of the international community toward migration changed around the 1990's, when international development agencies and governments began to turn their attentions to the development benefits of migration (De Haas, 2012). Remittances represented the major flagship indicator of 'migration for development' that could offset the brain drain in migrant sending countries. Sending country governments, for their part, attached national development aspirations to their migrant workforces, calling them 'heroes of development' and 'peons of development' (Semyonov and Gorodzeisky, 2005; Petroziello, 2013). Receiving country policies opened up and expanded gendered labour market streams, demanding women in evergreater numbers to fill temporary gaps in their labour markets (Piper, 2009).

Whereas most authors ignored gender for the most part in their analysis of shifting global migration patterns (Massey et al., 1999; Martin et al., 2007; Betts, 2011), women began migrating in far greater numbers as independent economic actors in the 1970's and up to the 1990's (Donato et al., 2006). Women filled a variety of openings in the domestic sphere, or 'cleaning, cooking and caring' occupations (Anderson, 2000), but also in other sectors including agriculture and manufacturing (Hellio, 2014; Ong, 2000; Piper, 2009). Based on field studies, many authors argued that women became in demand by employers because they are thought to be more obedient, more easily controlled, more 'nimble', suited to monotonous factory work, and uneducated and thus less likely to unionize or make demands (Oishi, 2005; Hondagneu-Sotelo, 1992). Women are also thought to have more

at stake, particularly when they are the primary economic wage earner in the family (Hellio, 2014). As Oishi argues, the migration experience slowly became 'legitimized' or normalized in sending countries, and the practice of sending young women to major urban centres and by extension, other countries, became increasingly common. Sending states demonstrated a willingness to attach female migration with the development of the state (Tyner, 2009).

Temporary migration programs have grown around women's migration and today represent one of the more efficient ways in which states can recruit labour for short periods without granting citizenship rights to workers once they arrive. In this way, states 'instrumentalize' women migrants' economic potential while leaving them outside the formal arrangements of citizen-government (Valiani, 2013). Semi-regulated domestic care worker programs, such as Canada's live-in caregiver program, are a good example and represent an overall movement toward temporary migration programs in the world (Valiani, 2013; Bourgeault et al., 2010). The rise in temporary worker programs is being accompanied and complemented by a proliferation of private actors that have increasingly taken the economic reigns of labour force participation and dominated the mechanisms by which migrants are controlled (Geiger and Pecoud, 2010; Gammeltoft-Hansen and Sorensen, 2013).

The global political economy of migration is highly gendered. While the processes of globalization in the areas of trade, finance and development have had profound effects on men as well as women only in recent years did gender stratified labor receive attention, when a proliferation of actors began noticing the development benefits of migration and specifically women's migration. Instead of scaling authority up to these actors through conventions and protocols, however, states have looked increasingly to private, for-profit actors, inter-governmental service provision organizations and charitable organizations as the new managers of migration. New forms of migration management are clearly manifested, for example, in the Global Care Chain (GCC).

#### 5.2 Global Care Chains

As we move into the twenty-first century three significant and interlinked demographic shifts are occurring that are reshaping the nature of care and social reproduction. The first is toward a period of unprecedented population aging, where by 2050 the percentage of people over 60 is predicated to range between 20 and 35 per cent of the total population across all nations (UN, 2002). The second is the reduction in fertility to the point where many developed nations, in the absence of immigration, will face population decline in the coming years. The third is the increasing role of women in the paid labour market, for example in developing countries between a third and a fifth of the manufacturing workforce is female. This all leads to a fundamental transformation in gender relations (UNFPA, 2000).

These demographic shifts are interdependent and interlinked. Women's entry into the labour market and fertility decline reinforce each other. The reduction in fertility creates a larger aged component in the population. As societies transform in order to meet the demands of these demographic shifts the issue of elder and childcare becomes an increasingly problematic social issue. Women have traditionally provided unpaid care in the private family setting and in paid public commercial settings. In this context care is a complex term that may refer to unpaid work that provides for the emotional and physical needs of adults and children. It also refers to paid care, provided by wage earners to individuals in both the public sector (such as hospitals) and the private sector (Razavi and Staab, 2010). Understandings of care work on the part of major organizations, governments and private employers continue to be gendered, wherein care work is defined as uniquely suited to women (Rodriguez, 2008). According to this narrative, women are thought to possess the skills required for such work by many employers, reflected by the fact that 80 per cent of care workers are women (ILO, 2013: 3).

As women have moved into the paid labour market these roles in the private sphere are increasingly

#### WHY GLOBAL CARE CHAINS MATTER An Example from the Philippines

Overseas Filipina workers, many of whom are already expected to be mothers, dutiful wives and daughters, occupy a second role as wage earner for their families in their home countries, often resulting from male unemployment and lack of economic opportunities for men. The Philippines is unique in that it pushes women to occupy this role on a nation-wide scale and as part of the nation-wide migration-for-development project. In turn, women are lauded for their selfless efforts and as national 'heroes', thereby tying women's roles to the concepts of nationalism. The number of deployed domestic and household workers was 164,405 in 2013, representing 36 per cent of the total newly hired overseas workers that year (POEA, 2013).

'outsourced' and serviced using the labour of migrant women. Increasingly, immigration is used to fill the demand for care, further privatizing the necessity of caring for the young and old and exploiting global economic inequalities to provide cheap labour. Misra and Merz (2007) examine this "international division of care" within the context of neoliberal policy changes that reinforce the role of women as carers, intensify the structural barriers that keep some countries in economic debt, and create immigration systems that exploit and marginalize those who are compelled to work in the international division of care. Such workers are placed in a global capitalist system that has devalued their labour, even as it is increasingly in demand. Ehrenreich and Hochschild (2002) call this a 'care drain', and argue that it presents a modern day version of imperialism based on the extraction of emotional resources (27). They argue that "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" (27). In this broader area of care work, institutionalized analysis of migratory labour circulation lacks a politicized feminist

reading of the broader intersections between the sphere of production and reproduction. The global care chain approach provides an explicit feminist reading of the structural conditions creating the context for this kind of labour circulation.

The Global Care Chain (GCC), a term first coined by Hochschild (2000), describes the various linkages that exist between people who are engaged in paid or unpaid care work across inter-regional contexts. This involves the transnational exchange of care labour, where migrant women (often mothers) are paid to transfer their emotional surpluses to host families, often in developed countries (Yeates, 2009: 40). In the absence of the role of mother and the role of head and manager of household, the family will enlist the help of either another care worker, or a family member to assume her previous roles. As one moves down the care chain, the value attributed to this type of labour diminishes, as some individuals (i.e. family members) perform these tasks without remuneration.

Whatever the scope of the 'chain', migrant women are often the ones providing services that are not filled by the state. These global care chains can involve self-reproducing networks of global households, transnational families and individuals (Safri and Graham, 2010). Once established, transnational family networks can continue to reproduce these systems of care, introducing newer members of the family into a care situation. In this way, global care chains encompass various forms of paid and unpaid labour, entrepreneurship, finance (remittances), skills and social remittances. The family left behind (often in developing country contexts) experiences an absence in the traditional mother role previously occupied by the migrant; motherhood then exists in a transnational space, connected through ICTs, such as phone calls and Skype (Hondagneu-Sotelo and Avila, 1997). Global labour migration in these contexts presents a glaring example of how "social reproduction gets unhinged from production" (Katz, 2001: 710). In these contexts ICTs become an enabler, in the most pejorative sense, of labour mobility for millions to work away from their families. Rather than just a convenience, such technology permits and supports

the development of migration regimes that rest upon severing the migrant from their social embeddedness. This offers just one example of the "myriad ways in which capitalist production and its entailments have pushed people to drastic limits of their own resilience, and how willing capitalists have been to draw on that resilience for their own ends" (Katz, 2001: 718). Labour regulatory processes create disjuncture between labour migration circuits and social reproduction.

The care chain is created from the demographic conditions mentioned above, but also within a political system where welfare systems have been restructured, and care, whether for the young or old, continues to be devalued. There has also been a commodification of care in the devaluation process. Folbre (2005) argues care work is particularly susceptible to over-commodification because a) recipients of care are not 'consumers' in the usual sense, b) care cannot be easily measured in terms of inputs and outputs and, c) quality care work entails empathy, but the negative consequences of cuts to the quality of care are not felt at the upper levels of management (352). Yeates (2009b) has argued that outsourcing care is also a status issue, and not just about the inclusion of women in the formal labour market. This is clearly evident in the case of the Middle East and other contexts where social standing is linked to the use of servants and domestic workers who are often supplied through processes of regional and international migration and via traditional practices of caste-based serfdom. In the current context then, the issue of care has become a globally significant, heavily gendered element of the economy that is deeply culturally embedded and reflective of specific social relations that are intersecting with transnational regimes of labour circulation. Several criticisms of the concept have recently come to light however, and these will be explored below.

Though useful in mapping the general pattern of the international reproduction of care work, the GCC concept has been criticized for not including intersectional analyses on race and class (Parrenas, 2012). The term reifies the traditional place of women as primary caregivers, and takes the productive capacities of women as caregivers for granted within the global capitalist economy (Raghuram, 2012). The GCC also only applies to one type of migrant labour - that of the domestic/care worker in the private home. Yeates (2009) has argued for an expansion of the GCC to also include commercial forms of recruitment. Finally, the GCC directs attention to domestic workers who are recruited to work in primarily developed economies; however, the largest numbers of domestic workers are found in developing countries (Asia, Latin America and Africa are the three largest regions hosting domestic workers, respectively) and arrive from poorer contexts (ILO, 2013). The GCC does not address many of the different kinds of care that are provided by foreign labour in a society, in the public and private spheres, and from the informal to the formal. Some authors have preferred instead to speak of a 'care diamond' (Razavi, 2007) that encompasses household care, paid care work in the private sector, public care provision and other types of care.

The nature of care chains must also be understood in light of regional circuits of migration and systems of social organization and gender relations. The intersections of care chains globally need to be understood in light of formal policy frameworks as well as informal networks of recruitment. Care chains can be manifested locally when well-off women in urban centres often turn to those in poorer settings from nearby to fill a gap they have left by entering the labour force. Global care chains may be international or interregional in scope. For example, in the case of Canada, the inclusion of Filipina care workers who participate in the Live-in Caregiver Program is the product of a highly formalized policy process that incorporates sending and receiving policy frameworks. In other contexts, such as with Guatemalan migrant women in the USA, an implicit policy that tolerates undocumented

migration might be the major contributory factor that shapes the available care workforce. In both cases, the global care chain concept provides explanatory framing, but the policy context at both ends of the chain are different and produce great variability in terms of the rights, protections and working experiences of these women.

Research also needs to understand the degree to which there has been a proliferation of actors privately recruiting paid carers, either through informal methods in private homes, or through formal commercial recruitment operators (Razavi and Staab, 2010). Indeed, this has always been a major feature of the global movement of women for the purposes of providing care (Hondagneu-Sotelo, 1992; Anderson, 2000; Abrantes, 2014). Informal recruiting mechanisms exist especially around domestic and care work in general, as these forms of labour, which happen in the private household, are not subjected to government regulation (ILO, 2013). These employers can be individuals, households or third parties that broker agreements on domestic recruitment between households and migrants.

Despite its limitations, the GCC is a useful concept because of the transnational spaces increasingly occupied by women in the global labour market. The GCC illustrates the intersection of paid and unpaid labour in the global economy, along with the commodification and instrumentalization of care labour, which is still primarily seen through a gendered lens. The GCC also sheds light on the expectations placed on women to become agents of national development. Many sending state governments represent WMWs as altruistic, positive agents of development.

#### 5.3 Management Regimes

Migration management regimes refer to the power relationships that directly and indirectly control migrants in the country of destination, at the border and before they have left their country of origin. The state exercises power over its migrant population using a variety of direct and indirect means comprised of policies, practices and actions that are rationalized through a discursive depoliticized management logic (Dean, 1999: 16-20; Kalm, 2010: 22-25). Direct actions include control of individual migrants through seizures, police intervention, border security and targeting of individual migrants perceived as criminals; whereas indirect actions refer to the policies, programs and broader actions taken on the population as a whole that impact migrants (Kalm, 2010: 29). Women migrants are almost always overlooked in state practices of migration control, and are rather seen through very narrow lenses: either the heroic development agent remitting selflessly for her family (UNDP, 2011) or the helpless victims of nefarious criminal groups who seek to harm them. This latter categorization has been around since the turn of the last century at least (Doezema, 2002). In general, states' methods of managing migration securitize female migration, in that they police 'bad' migrants (traffickers) and protect 'good' migrants (women as victims) from harm; they also commoditize female labour by implementing temporary worker programs and preventing women from enjoying equal access to rights in the country of destination. Both of these actions speak to the practices of securitization and growing neoliberalism of migration management regimes at the global and national levels. Through this logic, states externalize particular actions of migration control by using private, semi-private and public actors, often in spaces far from state borders. These practices present a state that is beholden to neoliberalism – and the functioning of global market capitalism - on the one hand, and the security of the population, under the guise of

#### 5.4 Securitization of Migration

Migration 'management' is often presented as a compromise between security apparatuses policing borders and the more liberal view that borders should be relaxed (Ghosh, 2000; Geiger and Pecoud, 2010; Kalm, 2008). Although management regimes are carried out by state-level actions, they are driven in large part by popular conceptions of migration at the global level, including the best practices of managing migration (Geiger and Pecoud, 2010). Organizations such as the ILO, the IOM, the UNHCR, the OSCE, the OECD, Frontex, UN Women, UNDP and the UNODC all have significant stakes in the policy directions of states toward managing migration.

#### WHY GLOBAL CARE CHAINS MATTER An Example from the Philippines

In 2006, the Philippine government initiated a Household Service Worker (HSW) reform package that mandated a minimum monthly wage of \$400; attendance to a comprehensive predeparture education program; and a waiver of placement fees (Encinas-Franco, 2015: 8). Although a reform intended to strengthen the protections of emigrants, it had unintended consequences. The HSW regulation resulted in a drop in the deployment of women household workers from 89,819 in 2006 to 44,904 in 2007 (Ibid). The steep decline was in part due to the refusal of employers and recruitment agents from destination countries to recognize the new wave of regulations imposed on them (Battistella and Asis, 2011: 10-11).

'protection from harm' on the other (Kalm, 2010: 22; Anderson, 2012). Thus, actions taken by states toward WMWs can almost always be identified to hold this juxtaposition – between the apparent 'free' market mentality of contemporary globalization (for some) and the securing of borders with ever-greater technologies on the other (against others).

The Global Forum on Migration and Developent (GFMD), for example, operates as a forum for states to share best practices with other states to learn new methods of migration management. The IOM is an intergovernmental organization guiding practices on trafficking, border control systems, sustainable reintegration and voluntary assisted return programs, all of which they do with knowledge as "the" migration organization (Geiger and Pécoud, 2010; Ashutosh and Mountz, 2011; Andrijasevic and Walters, 2010). Frontex operates more or less, as a privately-run organization, in so far that it is independently operated, but ultimately accountable to the European Union.

#### WHY GLOBAL CARE CHAINS MATTER Examples from Europe and North America

The governance trends surrounding border security are flawed for several reasons. First, the intersection between governmental departments and increases in intelligence may produce new forms of 'official knowledge', which may seem more effective; however, the practical implementation of this knowledge differs depending on locations. Mathew Coleman's (2012) research on federal-local partnerships with respect to border security initiatives highlighted how programs such as Secure Communities are unevenly implemented at each locality regardless of the same federal policy objectives (Angulo-Pasel, 2015: 5). Second, managing and controlling uncertainty is problematic. Management through risk and trying to achieve this vision of 'zero-risk' is essentially impossible given the existence of 'unknowns' and all possible future scenarios. Still, this governing logic

Frontex is often deployed as a private organization to cover "gaps" in border enforcement, typically in policing the Mediterranean for boats that are in violation of multiple states' migration policies (Reid-Henry, 2013). The UNDP, IOM and ILO present migration as a potential triple-win scenario benefitting receiving states through labour, sending countries through remittances, and the migrants themselves with income. Thus, political rationality to enact measures to accommodate these benefits and reduce the negative aspects – such as undocumented immigration, trafficking and terrorism – is constructed at the global level and filtered down to the state level.

The gendered stratification of the labour market is heavily dominated by migration management regime logic, for example through the proliferation of temporary migration programs, increased border security in the name of protection of women from 'harm' and the privatization of migration through employer control and recruitment practices. Major global organizations rests upon the authority of risk consultants that actively promote a representation of a world without risk and uncertainty (Amoore, 2006). Such an unattainable 'zero-risk' approach promotes a culture of fear where pre-emptive security is seen as necessary and the politics of exception are normalized. (Angulo-Pasel, 2015: 5). Similarly, the authority bestowed on expert knowledge is based mainly on claims of neutrality and 'objective' knowledge (Haas, 1992). Such claims fail to recognize there may be political motivations for states to approach certain preferred epistemic communities depending on the agenda item to be pursued or that these experts have private interests of their own. These processes can quickly become politicized and thus it becomes "difficult to prevent experts from becoming a special interest group of their own" (Hurrell, 2007: 89; Angulo-Pasel, 2015: 6).

have focused on women migrants as potential agents of development, belying the complexity and precarity in the migration trajectories of many women.

State management regimes are dominated by neoliberal governmentality – state operations that adhere to norms of the global capitalist system – and guided by the overall market logic of creating an efficient system of labour exportation by the developing Global South and the developed North (Geiger and Pecoud, 2010: 14). State policies reflect the global discourse on migration management and are geared toward achieving the greatest possible economic outcomes from migrant populations while reducing perceived security risks that are posed by migrants.

State policies and power relationships between states and migrants are also heavily contingent on the security logic which protects the citizen population of the state from the harmful 'other', usually represented by nefarious criminal groups seeking to harm women and children (Anderson, 2012; Kalm, 2010). For example, despite the inherent complexity and differential nature of the term, 'trafficking' is used by states to justify practices of control of the non-resident population (Sharma, 2005; Gould, 2010), and the pursuit of its eradication is completely and unequivocally a noble pursuit best accomplished through security forces. The state is thus justified in using direct power to prevent trafficking, protect victims and prosecute perpetrators in the interests of restoring order and achieving social cohesion. Because the issue is heavily 'securitized', the human rights of the victims are put to one side while the security crisis is rectified (Jackson, 2006). In this discourse, women are placed within a depoliticized space of necessary intervention whereby their victimhood acts as justification for any practices levied by the state against them and their perpetrators. This political rationality of securitization is thus a method of commoditizing women's lives by placing them under a certain category of abuse, scandal, or social ill, while ignoring their agency and capacity to make decisions, and the socioeconomic contexts that produce these motivations in the first place.

The commodification of migrant women and political rationale for migration management are also apparent in many sending state contexts. For sending states, promoting the positive aspects of labour export can be crucial to the ability of the state to harness the development potential of migrant labour, namely monetary and social remittances (Solomon, 2009; Battistella and Asis, 2011). The goal for these states is to facilitate migration along gender-stratified trajectories such that migrants are controlled and guided through the migration process. This idea is most apparent in the Philippines, where the state presents itself as the 'protector' of its foreign labour force (Solomon, 2009: 276;

#### CASE STUDY Irregular Migration in Europe

Even cautious estimates of irregular migration give unacceptably high numbers of women in precarious and potentially dangerous situations. For example, at least 538,455 women were found to be present without documentation and ordered to leave the European Free Trade Association (EFTA) countries from 2008-2013 (Eurostat, 2015). Women as a proportion of the total number of people apprehended this way increased from 9 per cent to 21 per cent during that time (Eurostat, 2015). These women were reported to have originated from at least 152 different countries. Top countries of origin in 2013 included Russia, Syria, Nigeria, Ukraine and Afghanistan. Such numbers allow states and other entities to justify increased securitization activities and processes, without noting the fact that such figures are created in part by state securitization strategies.

Tyner, 2009; Gibson et al., 2001). The protection from harm discourse is present whether the state is the receiver of migrants or the sender of migrant workers; domestic workers are frequently identified as heroes of development while victims of trafficking are identified as victims. In many contexts, regulations begin in the origin country with pre-departure orientations, safety protocols and protecting them from harm, preventing their vulnerability to being trafficked or otherwise exploited and in returning them safely to their home countries. However, the practices of many states actually help reproduce the harm experienced by WMWs in transit and upon arrival (Anderson, 2012).

#### 5.5 Privatization of Migration

The migration management regime is problematic because of its inherent nature to prioritize state control over lives of women migrants in a way not justified over ordinary citizens. In many cases, practices on the part of state actors are justified through 'crisis' management, where extra security policies are justified because of a wave of irregular arrivals, for example. The intersection of global capitalist hegemony (neoliberalism) with increased 'crisis' and security penetrations by the state have caused the rise in private and semi-private actors who provide services in the interests of managing migration. In terms of the global care economy, for example, private recruitment organizations have proliferated in a variety of contexts (Abrantes, 2014; Yeates, 2004: 364). Many of these are minimally regulated, if at all. Indeed, private recruitment has become such a major issue in the international care economy that the ILO Convention 189 on Domestic Workers signed in 2011 largely prioritizes state regulation of recruitment practices. Other private actors include smugglers and mediators who sometimes operate with the tacit approval of state institutions but also often outside of them (Gammeltoft-Hansen and Sorenson, 2013).

The securitization of migration intersects with the private sphere as well. Anderson (2012) documents how the UK's migration crackdown in the decade following 9/11 enlisted ordinary citizens to do their 'civic duty' by reporting "illegal" migrants – and even fined and publicized information on businesses that harboured "illegal" immigrants (1244). In other contexts, the rise of the private border guard has meant an increase in the capacity – and profits – afforded to private actors in managing the flow of migrants across borders (Gammeltoft-Hansen and Sorenson, 2013.). These are all examples of the way in which states re-allocate sovereign functions to private actors who technocratically manage their respected field of expertise. This is part of national governance strategies to steer competitive actors toward particular goals, and in turn shift accountability away from institutions and toward depoliticized entrepreneurs who will operate the specific task at hand with the intention of achieving a desired aim without normative burdens. It is no surprise that, given the multiplicity of roles occupied by women migrants throughout their spatial and temporal journeys across borders, they should occupy different levels of agency throughout their journey. Women migrants find ways to exercise agency over their surrounding environments.

The inherent ideologies and rationality of the migration management regime is rooted in both neoliberal

#### WHEN PROTECTION CREATES PRECARITY The Case of the Palermo Protocol

Between 1997-2014, the years directly following the Palermo Protocol, the numbers of seaborne migrants intercepted by the Italian government and Frontex grew dramatically (Frontex, 2014ac; Ministry of the Interior, 2014; Frontex, 2012; Frontex, 2008). Whereas 22,016 migrants were apprehended in 2006, this number had grown to 169,264 in 2014 (ibid). It is important to note in relation to the previous discussion of data collection and access that these numbers don't correspond with Italian reports of orders to leave and expulsions.

governmentality which presupposes notions of free market dominance, and in securitizing logic that prioritizes the intervention of state and non-state actors into the lives of migrant workers. In both cases, the human rights of WMWs are rendered invisible, and instead states routinely turn to the 'crisis' scenarios to immediately, and temporarily, fill labour market stop-gaps (Hennebry, 2012) and to 'save' victims of trafficking from an ugly yet otherwise temporary enslavement by nefarious groups (Gould, 2010). Management regimes, both at the sending state and receiving state, have profound effects on women migrant workers, both through state interventions and controls. Women migrants exist within uneven power relationships between the state and themselves, and are always necessarily subjugated by the political rationality of migration management direct and indirect practices.

While the issue of irregular migration is complicated, the challenge of grave exploitation, particularly in the sex industry, is even more fraught with complexities, which are further explored in "Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking."

#### 5.6 The Labour Migration Industry

The migration industry refers to the networks of migration actors who process or participate, formally or informally, in some way in migrants' lives. Commonly referred to as 'brokers', 'private recruitment agents', 'private migration actors' or not-for-profit actors, these actors have a personal stake in the facilitation, prevention or careful management of migrants' pathways (Martin, 2005; Hennebry, 2008; Gammeltoft-Hansen, 2013; Hennebry and Preibisch, 2012). Salt and Stein (2002) first defined the industry as "networks, agents, and individuals that 'stand to make a commercial gain' from migration" (468). The motivations of actors can, however, also be 'benevolent' (i.e. church groups, NGOs). With the emergence of the labour migration

industry came the rise of commercialization of migration (Gammeltoft-Hansen, 2013) in particular in relation to recruitment and training. Even before departure from their country of origin, WMWs experience a mix of interactions with the labour migration industry. For example, both formal and informal recruitment agencies play a key role in pairing potential female domestic workers with households in richer countries. Agency fees are either paid by the employer or by the workers themselves (either up front or as wage deductions). Recruitment efforts can also be done through former or current migrants, who network with family and friends back home to set them up with a job in the destination country.

#### FIGURE 9 The Levels of Actors in the Migration Industry



# (RE)PRODUCING AND CHALLENGING VULNERABILITIES

## 6. (RE)PRODUCING AND CHALLENGING VULNERABILITIES

The global forces and trends (e.g. global labour markets, etc.), policies and governance frameworks at international, national and local levels (e.g. border control, visa regimes, immigration categories of entry, access to services and social protections based on residency, etc.), structure the everyday lives of women migrants. Women navigate through these systems and structures – across borders as they migrate for work. While there are a wide range of experiences among these women, there are some common tendencies, which are highlighted below.

#### 6.1 Precarity and Exploitation

WMWs experience varying degrees of precarity and empowerment across contexts and relationships over time (i.e. throughout the migration journey, within the workplace or in personal relationships). The term 'precarious' has been used by many authors to describe uncertain legal status (Goldring et al., 2009) and workplace settings for migrant workers (Vosko, 2006). Precarity is the lived experience of working or living in an environment where vulnerabilities and risks associated with the workplace are compounded by the lack of legal status, threats, discrimination, inability to negotiate pay or leave, or wider inaccessibility to wider social security (Goldring et al., 2009; Bélanger and Giang, 2013).

Migrant workers experience precarity, discrimination, isolation, dependency and exploitation in the work sphere and possess a liminal or "in between" state of existence in the country of destination, particularly for those who work with temporary or no migration status (Goldring, 2010). For women, precarity is further entrenched through patriarchal norms and gender discrimination on the part of employers and others in the work environment. WMWs are employed in a variety of sectors worldwide, but the majority are subject to a gendered division of labour where particular roles, expectations and responsibilities exist for women and not men. In the case of WMWs to Mexico, the gender bias is present in the division of labour and valuation of skills in agricultural settings: men perform the 'heavy' tasks and women carry out the 'care' tasks (Rojas, 2013). These 'care' tasks correspond to quality control of agricultural products. With this work, women contribute to better prices of the products, but not to a better salary.

The more these occupations are constructed and represented as "feminine", the more these have the major gaps in protection from the law, such as sex work and domestic work (IMUMI, 2015: 48). Care and domestic workers often live in the most precarious circumstances, in private homes where access to basic necessities including health, social security and legal status are highly contingent on the relationship they develop with their employer. This is often in an occupation that is below their skill level (a reality known as 'deskilling'). Women migrants are often 'deskilled' when they accept work in another country, and work well below their qualifications and certifications. The deskilling of many women migrants in the care industry is a reality; many are working low-skilled jobs that are not reflective of their education (cf. Mercurio, 2005). The Live-in Caregiver Program in Canada, for example, has been the focus of many authors who have identified the deskilled nature of the work (ibid. Bourgeault et al., 2010). In Canada, Filipina workers fill occupations in private homes that typically are well-below their qualifications. Yet, since the Philippines Overseas Employment Authority (POEA) collects job orders based on contracts processed and not the educational background or profession of those who emigrate, the trend is not recognized (Encinas-Franco, 2015: 14). Similarly, professional degradation has occurred through the emigration of skilled Moldovan women and men; the most qualified individuals often leave the country for better conditions elsewhere (Interview with Moldovan Government, November 2014).

Today, 80 per cent of care and domestic workers are women (ILO, 2013). Numerous policies and programs on the part of destination countries facilitate the recruitment and entrance of women from far afield to deal with the evolving 'care crisis' in destination countries. Since it is not remunerated or quantified in the same way, care work is valued less than 'men's work', yet remains one of the most difficult job environments (Ehrenreich and Hochschild, 2002). Work contracts for care workers are typically structured such that women are ever-present, living in the employer's home, ready always to deliver emotional and physical care for members of the household. Thus, care work is unique in that women's lives are fundamentally tied to the workplace. The patriarchal rules and expectations that still widely persist compound the expectations of the care worker to adopt these perceived norms as subservient to the male-dominated household. There is thus little ability to negotiate working conditions, chiefly because one bad review from an employer could ruin the woman's chances of finding future employment (Hondagneu-Sotelo, 2003). Women are paid much less per hour for care work than men are for male-dominated occupations, Institutionalized and racialized discrimination of Filipino nurses abroad have also been documented (Ball, 2004), including more recent media reports on trafficking and contract substitution.

because the assumption remains that women provide the 'supplementary labour force' to men's. Several authors have noted the particular racial hierarchies that are embedded in temporary live-in care programs (Bourgeault et al., 2010: 88). Indeed, these embedded hierarchies within care can foster and reinforce the overrepresentation of racialized women and women from certain backgrounds within this sector.

The recruitment of WMWs is also underpinned with precarity as many women experience discriminatory or informal recruitment practices such as fee arrangements between employers and recruiters, coercion or control of a worker through an offer of employment, etc. While more research is required to understand the true extent of discriminatory recruitment practices, Hondagneu-Sotelo (2003) looked at Latina migrant home care workers in Los Angeles and found that the possibility of future employment was highly tied with previous experience and references from previous employers. Often, recruiters would charge high fees for their services and not be able (or be unwilling) to place migrant women in employment because they lacked the necessary connections. Recruitment is often based on word of mouth, racialized and classbased. Further, finding future employment through the recruitment agency may serve as an incentive not to report unsafe working conditions, abuse or infringement of labour rights (e.g. withholding pay or breach of contract). The Philippines has signed numerous Memoranda of Understanding with various migrant-receiving countries in large part to regulate the practices of recruiters in those countries.

Domestic/care work is typically governed and controlled closely by an employer in their own home, who may require domestic workers to do extra work outside of their job description or require them to work overtime. In virtually all of these cases, employers have the right to dismiss a worker even if there is no 'good' reason. The relationship between employer and domestic/care worker is therefore unequal and has been identified as a major problem in domestic worker schemes. Yet, instead of regulating the industry practices of many employers, governments operate as though this particular industry were self-regulatory, an increasingly common theme among destination countries. Indeed, even when there has been active state involvement aimed at protecting these workers, the sector has proven difficult to reach. For example, despite the active role of the Philippines to protect its workers abroad through bilateral agreements, there have been numerous documented cases of exploitation and abuse, such as the recent instances of violence and abuse of overseas domestic workers in countries such as Saudi Arabia (Varia, 2014).

Despite the reality that care workers are a fundamental necessity to address the lack of care provisions in destination countries, facilitating this increase in migration is not necessarily accompanied with the legal protections afforded to citizens. Further, in many cases, the institutional response of the state with regards to the rights and needs of WMWs actually reproduce inequality among men and women rather than contributing to resolve it. Therefore, when implementing policies pertaining to the access of justice for WMWs, rather than protecting the victim, they revictimize them and promote corruption (Andión, 2011; Sánchez y Nobara, 2011; IMUMI, 2015).

Work in the sex industry is similarly not well regulated or protected. Despite the fact that people working in this sector have fundamental human rights, including non-discrimination, freedom of employment and social security law, labour law tends not to apply to this sector. For example, Mexico's Ley Federal del Trabajo (LFT) (Federal Labour Law) does not regulate this sector. In the case of Chiapas, while the law does not criminalize work in the sex industry, this in and of itself has not generated regulatory improvements to occupational safety and health legislation designed to protect the health of workers, as recommended by the ILO (ILO, 1998; IMUMI, 2015: 48). Furthermore, the invisibility of the sector is also a factor, as in some The loss of a residence permit can lead to worse living conditions. Isolation is a very big issue: migrants have difficulty accessing services; they worry about losing their documents and job. The difficulty in obtaining a work permit can push women into the black market for labour, where the defence of human rights and prosecution of criminals are extremely hard to do. Some migrants pay their own salary in order to have a job contract and be allowed to stay in Italy. (Interview with representative of Moldovan NGO, 2014)

cases sex work is happening within the private sphere, inside apartments or informal brothels, not on the street or inside entertainment businesses or clubs. In addition, while care/domestic work operates along a continuum between informal to fully regulated, and is generally sanctioned by the state, trafficking for forced labour and sexual labour are always done informally and therefore have serious consequences for employer-employee relationships.

The precarity of migrant women can result from gaps in regulation, but it can also result from regulation itself. For example, migrant workers in Italy can lose their residency easily if employment is lost; only one year is granted by the government to find other work, and then the individual faces deportation (Interview with Italian Lawyer, November 2014). Undocumented migrant workers' rights are hard to uphold and hard for migrants to claim. For example, Italian law allows undocumented migrants to access free legal advocacy in criminal proceedings, but not under civil law. Compensation after a successful lawsuit is difficult too; culprits usually declare themselves to be without property or assets.

It is undeniable that migrant women face a precarious work-life existence because their work is highly gendered and racialized; they are likely working in occupations poorly regulated by destination country governments; employers often have significant power over both the conditions of employment and the immigration status of the worker (either direct or indirectly depending); and the system enables

#### Women Migrant Workers in Agricultural Settings in Mexico

Although the majority of temporary WMWs in Mexico are employed in domestic work (70 per cent), 12.4 per cent work in agriculture (IMUMI, 2015). Many migrants looking for temporary employment in agriculture usually migrate as a family to Mexico (IMUMI, 2015: 12-13). However, many families cannot finance the cost of obtaining documentation for all members of the family. Much of their situation is characterized by precarity, as many women are not individually recognized or registered as migrant workers under the law (IMUMI, 2015: 26, 30). WMWs' opportunities to negotiate in this field are limited by the traditional practice of the employer or recruiter negotiating directly with the male members of the family.

This discrimination persists when the employer does not include women in the employment offer that is submitted to the Instituto Nacional de Migracion (INM), as a means to lower cost regarding employment benefits and social security contributions. In consequence, the migration authorities register migrant women as 'accompanying', even though they know migrant women are going to work alongside men in agricultural fields (IMUMI, 2015: 30).

The legislation leaves WMWs in a disadvantageous and unequal position vis-à-vis their male counterparts, but also excludes them from labour rights and social security, and denies them social protections. Essentially, the high cost of documentation coupled with the complexity of processes discriminates indirectly against these women. WMWs are excluded from contract negotiations, due to their classification as 'accompanying' instead of 'workers' by migration authorities, employers, contractors and their partner. Not only do WMWs earn less than men for the same work, they also engage in unpaid work that allows for the reproduction of the labour force, and undertake some cleaning tasks at the employers' homes, which may also be unpaid. In many cases, even if all the family works, only the husband is the collector of the salary, leaving women dependent on this income and their spouses.

The Federal Labour Law (LFT) regulates domestic and agricultural work and classifies this occupation as a 'special job', based on the recognition that work in agriculture requires specific regulation of working days, salary and days off. However, the LFT does not consider inspections of the working conditions of domestic workers and agricultural workers a necessary component of this regulation.

Agricultural work requires consistent inspection from a regulatory body, especially when there is substantial participation of migrant women with irregular status, who face abuse and vulnerability due to inconsistent legal frameworks and gaps in protection. The position of the LFT is contradictory; it identifies agricultural work and domestic work as special occupations but does not recognize the complexities faced by many WMWs in agriculture.

To move forward, solutions can include policy shifts that better reflect reality, and assure the substantive equality of migrant men and women. For example, documents can be provided to all migrant women who arrive in Mexico with their families to work in agriculture, without any additional cost to the women or their families. This change will allow for the beginning of a cultural change in the families of border workers, contractors, employers and migration authorities in the region. recruiters to profit from women migrants who may also take advantage of these workers employment and migration precarity to further exploit this group.

Within the legal caregiver labour market, there are variations on contracts differentiated by an hourly wage, or a monthly salary. Monthly contracts stipulate 24-hour live in care work, which includes room and board (Interview with Italian NGO, December 2014). While not inherently a precarious situation, 24-hour in-residence work can restrict the movement of workers and remove their presence from the public sphere; this creates a dynamic where reporting of disputes or abuses could be more difficult. For instance, monthly contracts dictate the number of hours to be worked weekly (54), the amount of time off per 10 hours (two hours) and that workers get half of Saturday and all of Sunday off (Interview with Italian NGO, December 2014). In reality, these conditions can be hard to uphold; families do not want to be responsible for providing support during contractual time off, or source another caregiver as a "relief service" for their initial employee (Interview with Italian NGO, December 2014). Similar to stipulated hours, taking sick days is also perceived by WMWs as a risk; families can terminate contracts with only 15 days' notice for no reason (Interview with Italian NGO, December 2014).

Another systemic problem that manifests itself in many ways is communication. There are instances when families looking to employ a domestic worker know little about their responsibilities, or the rights of workers (Interviews with Italian NGOs, November 2014; Interview with NGO Volunteers, November 2014). Free labour market matching services do not coordinate with other services, effectively supplying information about care work and the rights of care workers (Interview with Italian NGO, December 2014). Lack of communication due to language barriers can also create problems. Sometimes simple misunderstandings over payments can cause deep animosity between the worker and the employer (Interview with Italian NGO, December 2014). Alternatively, confusion around the number of hours worked, or expected to be worked can cause conflict. While again not a cause of vulnerability, precarity or abuse, communication barriers can enhance conditions that make such

occurrences more likely, or worse. Finally, while there have been some attempts to curtail the incidence of informality in the care sector, the social conceptualizations around care work as an undervalued female profession persist (Tomei, 2011). This coupled with the failure of many states to put forth appropriate incentive structures, like tax credits, can compound the informality around care work, and can further lead to precarious conditions.

### Trafficking, Forced Labour and Grave Exploitation

The situation of vulnerable migrants can be considered on a spectrum of precarity. Without rights based information and protection, workers can face exploitative conditions. Further along this spectrum, however, are cases of forced labour, trafficking and grave exploitation. Trafficking typically includes recruitment under false pretences, movement or transportation (either domestically to an unfamiliar city or region, or internationally), the presence of coercion or control involving the use of or threat of force, and exploitation. Trafficking often results in forced labour, which encompasses the use of violence, coercion, and debt to subjugate individuals and exploit them for their labour.

According to ILO, globally, almost 21 million people are victims of forced labour, and 14.2 million are victims of forced labour exploitation in economic activities such as agriculture, construction, domestic work and manufacturing. About 11.4 million are women and girls and 29 per cent of all victims of forced labour are migrants (ILO, 2012b: 14, 16). While forced labour is a risk for many migrants using irregular channels, women are more susceptible to being trafficked for sexual exploitation, constituting 98 per cent of all such victims (ILO, 2012b: 14).

Italy provides an example of efforts to address a governance gap with respect to victims of sexual violence or grave exploitation (which includes trafficking). Despite the challenges associated with legal systems, the Italian government is attempting innovative approaches to meet them. In Turin, a Special Protocol between prosecutors, police, NGOs and trade unions is encouraging collaboration between different sectors to collect and disseminate information regarding "grave exploitation" (Interview with Italian Lawyer, November 2014). Specifically avoiding the terminology of trafficking, in this process, migrants can report instances of grave exploitation without identifying themselves. There have been several examples of this happening in Southern Italy around agricultural work (Interview with Italian Lawyer, November 2014). Clause 18 of Italian Migration Law ("TestoUnicosull' Immigrazione", D. lgs 286/98) provides victims of grave exploitation a social residence permit. In Southern Italy, the role of organized crime in illicit labour activities further complicates prosecution efforts in cases of grave exploitation. In response, Italy introduced a type of crime – "caporalato" – which will allow prosecutors to target individuals who mediate between workers and employers; this kind of person is generally thought to be involved in human trafficking and illicit migrant worker markets (Interview with Italian Lawyer, November 2014).

These examples help illustrate the widespread systemic and personal violence experienced by women migrant workers, and the complexity of responding to such governance challenges, and complements global reports by major organizations calling attention to these serious issues (ILO, 2012; HRW 2008, 2012). Our work in forthcoming reports of this series will expand upon these abuses in greater detail, and demonstrate how women migrants in particular occupations (sex work and domestic/care work, in particular), are subject to further and greater abuses at the hands of their employers and as a result of the structural conditions under which they are employed. In addition, the role of migration status (and the particular issues surrounding smuggling and trafficking) in heightening precarity and exposure to extreme or grave exploitation will be critically examined.

#### **Violence and Personal Security**

Violence against WMWs includes not only the direct physical threats to well-being and personal safety, but also the structural violence in the form of discrimination, structured gendered and racial stereotypes that perpetuate everyday exclusion, exploitation and marginalization. Tickner (1992) identifies structural violence as the "condition whereby those on the margins of the international system were condemned to a shorter life expectancy through the uneven allocation of the resources of global capitalism" (13). Similarly, Galtung (1990) states that the centrepiece of structural violence is exploitation in which the marginalized are left so disadvantaged that either they die or are left in a permanent unwanted state of misery. Being free from these human rights violations, including emotional abuse on the part of an employer or official, is often difficult to achieve and harder to quantify because many women remain silent about it. This is particularly true in the case of migrants with irregular status who will not have access to justice or will be afraid of deportation.

Some WMWs may face pressure to enter into sexual or romantic relationships with male co-workers or employers in positions of power or who live in close proximity (particularly in the case of agricultural workers or live-in care workers), while others may endure sexual harassment from both co-workers and employers. Since refusing such advances, filing a complaint or a criminal charge could have negative consequences for their precarious employment, and possibly for their immigration status (particularly when a work permit names the employer). WMWs are potentially at risk of sexual harassment, sexual assault and genderbased violence. Gender and racialized stereotypes and discourses may encourage or justify such harms. Also, many women migrants, particularly those who have migrated without documentation, may be leaving violence or abusive relationships in countries of origin - further limiting their options to return.

For example, violence towards women in Moldova is reported from many different sources. An NGO in Moldova reports that about 80 per cent of migrants leaving Moldova are trying to escape violence and almost the same percentage were under or unemployed (Interview with Moldovan NGO, November 2014). More broadly, labour market discrimination and domestic violence are serious issues within Moldova; labour migration is an activity inextricably linked (Interview with Moldovan Legal Consultant, November 2014).

The perpetuation of precarity and vulnerability of domestic workers through policy and other governing mechanisms can be understood through the lens of structural violence. For example, the Kafala system of immigration sponsorship in the Gulf States deems the employer in charge of all the domestic workers' affairs including their repatriation. This system prevents the domestic worker from ever changing jobs and locks them in to a set employer. The employer is able to deem the worker incompetent under the various laws and provisions governing the recruitment of domestic labour and sends them home with no further recourse. In Saudi Arabia, there have been numerous examples in the media of domestic workers from the Philippines and other contexts being abused. Including the case in October 2014, where 22 year old Pahima Alagai Palacasi was burned severely and hospitalized by her employer's mother over a misunderstanding involving coffee. A 2011 report published by the Committee on Overseas Workers Affairs (COWA, 2011) detailed that many female domestic workers availed of the Filipino Workers Resource Centre (FWRC) and about 15 per cent of those workers were there because of maltreatment or abuse. A further 14 per cent were overworked, while 4 per cent were subject to rape and humiliation (COWA, 2011). These numbers are put into context when considering that there were over 1.1

#### 6.2 Empowerment

The migration process can have mixed and complex outcomes for women's empowerment. Women demonstrate agency and can empower themselves throughout all stages of migration, in their work and social lives. Despite the constraints of legislation, regulation and enforcement, migrant women exercise autonomy and choice as they navigate migration trajectories and develop new roles and relationships. Although the sections above dealt primarily with the potential dangers, vulnerabilities, violence and abuses that WMWs potentially (and actually) face in their daily working lives, women employed transnationally have time and again demonstrated the capacity to empower themselves through entrepreneurship, working for formal wages or indeed working in the informal sector or unpaid care labour sector (Gibson et al., 2001).

Migrant women demonstrate the power to set limits on their own work and ask for additional time off

"Women who leave Moldova for work often feel empowered by their decision and experience greater agency and choice."

Interview with Moldovan Legal Consultant, 19 November 2014.

million Filipinos in the country as of 2011 (COWA, 2011). A 2008 Human Rights Watch report declared "the Saudi government and the foreign missions of laboursending countries receive thousands of complaints from domestic workers each year" (HRW, 2008: 6).

Similarly, across Mexico's Southern border many Central American women cross without documentation, and without many options, find employment in the sex and entertainment industries. These women either work voluntarily or are forced to work in bars and brothels along the border regions in Chiapas (IMUMI, 2015: 15) A large proportion of these women are minors and frequently suffer extortion by the authorities; they also suffer sexual abuse and are regularly victims of grave exploitation and violence (Bronfman et al., 2001; Fernández, 2009; Leyva and Quintino, 2011; Leyva et al., 2011; IMUMI, 2014).

from their employers to find extra work (Gibson et al., 2001: 377). In other instances, migrant women may be more aware of their legal rights than their employers, and may willingly point out any breaches to protect themselves (Interview with Italian NGO, November 2014). Such illustrations are indicative of the capacity for women to understand and control their work environments and migration contexts. Many women recruitment agents working in countries of destination were once migrants themselves, for example (Hondagneu-Sotelo, 2003, 1997). Just as women choose to migrate, some also choose to interact with smugglers and guides, or coyotes, knowing the dangers associated with their decision, though for many it is the only option available to them (Spener, 2009: 227). Indeed, while for many exercising autonomy over the migration process would constitute the choice not to migrate, for others it is the freedom to be able to migrate unhindered by structures or other individuals

and do so in a way of their choosing. While it is acknowledged that at some point in their migration trajectory, women in these circumstances may have been subject to grave exploitation, rights abuses, confinement or violence, it is crucial for government actors and other stakeholders to recognize that women retain agency and remain rights-bearing individuals.

As WMWs take on the role of economic provider for their families in their country of origin, they take on transnational responsibilities that have been shown to increase their self-esteem, sense of worth and independence (Ghosh, 2009). Highly patriarchal societies have been proven to discourage female migration and result in fewer women migrating independently (Massey et al., 2006). Migration can also have a positive impact on the status of women in communities of origin by shifting norms away from patriarchal rules and developing more financially inclusive households (Paiewonsky, 2007: 5). In some communities, migrant women have gained increased respect and enhanced social status, in turn improving their family's economic position. This has provided many migrant women with an increased say in how funds are managed and where family money is spent. As a result of this, women have further been able to empower themselves through new investments, like purchasing land, or have invested in the social capital of their dependents through undertaking such initiatives like sending them to school (Guerrero and Sobritchea, 2010: 33). Moreover, many migrant women entrust other female dependents to manage their remittance funds. This allows migrant workers to empower other women in their communities by integrating them into important decision-making processes at home.

Migrant women can also create social change in their community through the transfer of social remittances. Social remittances may refer to norms, practices, ideas, skills or identities (Levitt and Lamba-Nieves, 2010). It is important to note that not all social remittances result in empowering women, and in some contexts can further embed 'transnational precarity' for women (Hennebry, 2014). However, new knowledge obtained throughout the migration process can positively alter practices around health, change long-standing notions around gender norms, shape beliefs around political processes, while challenging hierarchical social structures. In addition, some suggest that social remittances can transform gender and generational dynamics in a manner that benefits women (Levitt and Lamba-Nieves, 2010; Hughes, 2014).

Although migrant women can demonstrate their agency while empowering themselves and their communities, it is difficult for individual actors to challenge existing norms and facilitate meaningful change globally. In this regard, transnational community organizations and national governments have an important role to play in empowering migrant women and their communities to act collectively. NGOs, IGOs, not-for-profit organizations, local associations or global networks can create spaces for mobilization, shape understandings around important issues and spur collective action.

Some of these transnational organizations, such as the Hometown Associations (HTAs), primarily have the mandate of promoting health, education and fundraising for cultural activities and emergency relief (Orozco and Rouse, 2007). Many HTAs also have programs that are designed to aid immigrants within their network, such as providing legal and social services (ibid.). These associations can work to empower migrant women on an individual basis by linking them with members of the community and by providing them access to information and social programs. Furthermore, many HTAs partner with other transnational migrant organizations to address prevalent issues impacting migrants.

NGOs and other non-profit organizations can have an integral role in raising public awareness around issues that migrant women face and can shape the public policy responses of states. In Canada, the community based non-profit Philippine Women Centre (PWC), has worked closely with many women domestic workers in an effort to deepen understandings around and find solutions for various issues impacting these women. The Centre has collaborated with many other transnational organizations, people in the Filipino community and academics to conduct research and bring policy concerns to light (e.g. Pratt, 2008).

# MECHANISMS AND FRAMEWORKS FOR RIGHTS AND PROTECTIONS

## <sup>7.</sup> MECHANISMS AND FRAMEWORKS FOR RIGHTS AND PROTECTIONS

#### 7.1 International Palermo Protocol

Throughout the 1990's, global efforts aimed at addressing international migration were fairly weak and tended to centre around UN branches aimed at population, chiefly through visible (yet largely ignored) publications such as the UN Development Programme's (UNDP) 1994 Human Development Report, which for one of the first times mentioned migration as a major issue with global consequences. Other organizations began publishing reports on international migration, including the World Bank, the International Organization for Migration (IOM), and the Organization for Economic Cooperation and Development (OECD). Yet migration remained a side event of the ILO despite its history of protecting migrant workers; the IOM remained in a service provision role rather than a normative one; and the World Bank and OECD did not address migration directly until later. However, with the increasing feminization of migration – the increasing participation of women in the global labour market - the UN and other actors started to focus their attentions on creating a framework for reducing the vulnerabilities faced by trafficked or smuggled individuals, along with those subjected to forced labour.

The result was that in 2000, the General Assembly passed the United Nations Convention against

Transnational Organized Crime, which included several associated protocols, including the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol.

In the Palermo Protocol trafficking is defined as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

#### (Palermo Protocol, 2000)

The last portion of the definition demonstrates what kinds of exploitation are the most relevant for trafficking, namely in the areas of prostitution, forced labour, slavery, servitude and organ removal. These categories represent some of the 'worst forms' of exploitation, are crucial to the definition's global weight, and inarguably encompass serious violations of the rights of individuals. So central is exploitation to trafficking, in fact, that a person recruited, transferred or otherwise moved under deceptive or fraudulent circumstances is not trafficked unless it is for the purpose of exploitation (O'Connell-Davidson, 2010). If they are recruited or transferred across a border of their own free will, for example, it is labelled as smuggling, or illegal immigration and the person smuggled is often seen as the perpetrator. The Palermo Protocol does little to clarify when exactly exploitation occurs or does not occur, but still infers a binary between exploitation/non-exploitation.

In practice, exploitation and trafficking are exceedingly difficult to identify and measure, and the line between exploitation/non-exploitation is hazy at best (Van Liempt and Doomernik, 2006). This is historically a common practice for liberal-democratic societies, where slavery/freedom, civilized/barbaric, modern/traditional are fundamental dualisms to help distinguish between good and bad (Davidson, 2010: 255-256). Indeed, this murky binary opposition of exploitation/non-exploitation employed in relation to trafficking obfuscates the complexity of these issues at institutional, societal and individual levels, and the Palermo Protocol shifts the responsibility of actually distinguishing between exploitation/nonexploitation to the national level. The Palermo Protocol's stance on trafficking in women and children posits that those engaged in sex work or in forced labour under deceitful circumstances are open to violation of human security and must therefore be prevented from doing so, or rescued from these situations once they find themselves in them. The Palermo Protocol was made purposefully vague, and laid out in such a way that state legislatures would be able to flexibly work it into existing law enforcement scenarios, including border security and prosecution of traffickers. This is in opposition to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which states shied away from because it was so specific on human rights. Instead, the Palermo Protocol espouses a *protection from harm* norm where it is up to states to protect women and children from the harm created by outside forces. This is perplexing, given that behaviours of states toward migrant populations are themselves harmful (i.e. securitized practices at the border). The Palermo Protocol, to a considerable degree, legitimizes state practices that not only control but also find and expel vulnerable migrant populations. It was ratified and entered into force in 2003, before the ICRMW had been ratified, despite the latter having been approved by the UN General Assembly 10 years prior to the approval of the former. The juxtaposition between these two Conventions signals friction at the global level between the neoliberal, economistic perspective and the human rights, social development perspective.

#### TABLE 3 Levels of Convention Signing and Ratification

	UN Trafficking Convention and Palermo Protocol (2000 – in force 2003)	International Convention on the Protec- tion of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
Signatories/Ratifications	186 parties (ratified) 147 signatories	48 parties 38 signatories
Relevant countries that have signed	Mexico, Moldova, the Philippines, Canada	Mexico, the Philippines, Argentina
Relevant countries yet to sign	Japan, Republic of Korea	Moldova, Canada, most EU states, most receiving states

The signatories to Trafficking Protocols far exceed those pertaining to human rights of migrant workers. In particular, the ICRMW and ILO Conventions (Nos. 97, 143 and 189) have had little to no attraction for states.

They require changes in state's practices regarding migrants; such an activity runs counter to the interest of states' security and economic goals. Conversely, the Palermo Protocol and associated conventions can be easily interpreted by states to imply the heightening of state control/security aimed at organized crime and trafficking. Increasing labour migration within the context of the Palermo Protocol enhances bilateral involvement and the inclusion of non-state actors (employers, IOM) in the migration process. Meanwhile, there are less social protections for migrants, and none for irregular migrants.

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

In the early 1980's, discussions began around the creation of an international legal instrument protecting migrant workers worldwide. In December of 1990, the United Nations (UN) passed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), providing a new human rights instrument that would protect the lives of migrant workers regardless of status by placing responsibility on State Parties to the Convention to provide them with equal treatment to citizens (Hune, 1991: 807-810). The ICRMW was groundbreaking in that it provided protection for irregular migrants; something largely omitted by previous ILO conventions, such as ILO Migration for Employment Convention (Revised), 1949 (No. 97) and ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Here was a Convention that cemented the view among the international community that migrants were more than economic units or labourers but were eligible for all the human rights protections enshrined by previous UN conventions. WMWs were given some visibility in the ICRMW. where Article 1 stated that there should be

#### **ILO Conventions on Migrant Workers**

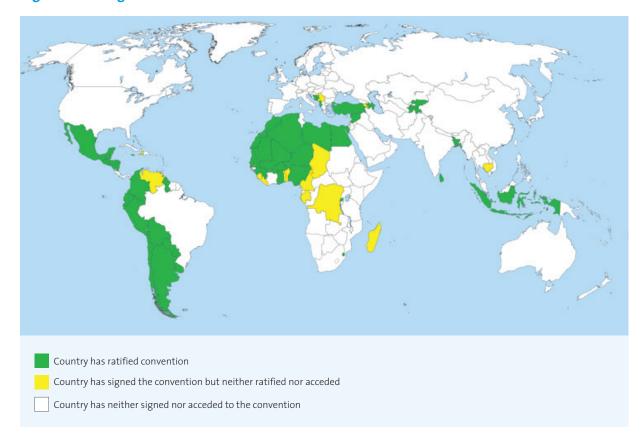
There are some ILO conventions that are specifically focused on migrant workers. For instance, ILO Convention 97 was put in place to address labour migration in postwar Europe after World War 2; this convention has been ratified by 49 countries to date. Similarly, ratified by 23 countries, Convention 143 was adopted to alleviate the issues and abuses faced by irregular labour migrants in the 1970s. Finally, Convention 189 concerning decent work for domestic workers entered into force in 2013. This convention highlights decent work standards for domestic workers through outlining the need for rest hours, entitlement to minimum wage and ability to choose where they live.

no distinction or discrimination based on sex. However, even the phrase that defines migrant workers as "he or she" was controversial, as some states insisted that translations of the text in other languages would be difficult with reference to both he and she; however, in the end, the reference remained to both sexes, something groundbreaking in itself (Hune, 1991: 809). The ICRMW, despite its good intentions, was not ratified until 2003, when it finally received the necessary signatures (20) by State Parties. This made it one of the longest human rights instruments to be passed into force, and almost no receiving states signed the convention.

To date, there has been little effectiveness among international organizations, particularly those concerned with human rights of women migrants, in creating the mechanisms necessary to ensure that states comply with principles of rights and protections, primarily because the conventions have largely been ignored by receiving state governments due to the sensitive nature of immigration in most countries, and that migrants who are maltreated exist in virtually every context.

#### **FIGURE 10**

Signatories and Direct Accessions to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families



Source: OHCHR, nd

Nevertheless, the global governance of international migration has been taken up as a topic of serious interest by UN bodies, IGOs and many governments. Since the ratification of the ICRMW in 2003, the numbers of actors, institutions, practices and discourse around international migration has exploded (Newland, 2010; Betts, 2011). The UN has held two formal High Level Dialogues on Migration and Development in 2006 and 2013; the ILO Convention on Domestic Workers was signed in 2011; the Global Forum on Migration and Development (GFMD) meets annually to discuss migration; the ILO has made migrant workers a major focus, along with the implementation of migration management policies between countries of origin and destination; the IOM has, since 2000, retained an important role in migration management. Although the mechanisms to control states' policies toward WMWs is severely lacking, significant advocacy by civil society and women migrant organizations has sought to highlight this and hold policy makers accountable.

#### Convention 189 – Domestic Workers Convention

The development of Convention 189 demonstrates an important example of how migrant women organizations collaborated with civil society and unions in advocating for decent work conditions for domestic workers. Through collective action, clearly demonstrated at the first conference on domestic worker organizations in Amsterdam in 2006, various key organizations like the Women in Informal Employment: Globalizing and Organizing (WIEGO) and RESPECT-Europe, along with federations in Ireland and Italy, were able to push for the establishment of an international network of domestic worker organizations and formulate a call to the ILO to bring forth a convention on the rights of domestic workers (Gammage and Hennebry, Forthcoming).

Currently, the ILO Convention 189 (C189) sets out guidelines for State Parties with the aim of providing a framework for private employment recruitment. When the Convention was proposed in 2011, it was met with overwhelming support, with 396 state delegates voting in favour and only 16 voting against. However, currently there are only 17 ratifications of C189 (see Figure 11). Though the Convention addresses important sector-specific vulnerabilities and issues faced by migrant domestic workers, its sparse international recognition poses a problem to the protection of rights of migrants, and specifically WMWs, who comprise a large portion of the domestic work sector. For instance, whilst ICRMW was ratified by Mexico in 1999, they have yet to ratify C189. One of the key challenges facing states in the acceptance and the implementation of C189 is the need to regulate private spheres (i.e. homes of private individuals) as work places.

#### FIGURE 11 Signatories of the Domestic Workers Convention, 2011 (No. 189)



#### Source: ILO, 2015b

Efforts at the international level expanded through global reports, consultative processes, meetings

and commissions formed at the highest levels. The Division on the Advancement of Women aimed to

ensure the rights and protections of WMWs during the fourth World Conference on Women and Development in Beijing in 1995. The Berne Initiative in 2001 brought (mostly European) states together to formulate guidelines on international migration management. The IOM began paying particular attention to migrants around 2000 through global reports and meetings. In 1999, the UN Commission on Human Rights appointed a special rapporteur on the human rights of migrants. The Global Commission on Migration and Development brought together State Parties to discuss international migration in a formal way between 2003 and 2005, and the World Bank and OECD began looking at remittances as a viable method of promoting economic development in developing countries. The Global Migration Working Group on Migration, Human Rights and Gender was established in 2012, focusing on the promotion and protection of the human rights of migrants and their families. In 2007, the Global Forum on Migration and Development was formed and continues to provide both open and private forums for state cooperation on migration issues. The UN has held two high-level dialogues on migration and development with the general assembly. As Newland (2010) put it, "suddenly, migration was everywhere" (332).

#### The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a crucial normative framework for the protection and empowerment of women globally – particularly those exposed to violence, abuse and discrimination - and is especially applicable for women in vulnerable situations. CEDAW was adopted in 1979 through the efforts of the longstanding Commission on the Status of Women (hereafter the Commission), which was mandated to prepare recommendations on problems relating to women's rights and ensure that these recommendations advanced the principle that women and men should have equal rights. The Commission was responsible for the creation of several conventions that served as the precursors to CEDAW but which only addressed particular areas of exploitation

or vulnerability of women, such as consent to marry, political rights and rights and nationality of married women.<sup>4</sup> Thus, the Commission on the Status of Women was invited by the Economic and Social Council to begin the formulation of a wider convention addressing the rights of all women that went above and beyond the aforementioned narrow conventions. After a lengthy process of adoption, including drafting, reviewing, preparing, and consulting with working groups, CEDAW was adopted by the UN General Assembly with 130 votes for and zero against with ten abstentions. It came into force the next year and was the fastest UN human rights convention to enter into force to date.

Since 1986, CEDAW has developed 34 general recommendations that address particular aspects of women's rights and their vulnerabilities in specific areas. General Recommendation No. 26 (GR26) addresses WMWs in vulnerable situations. It was signed on 5 December 2008 and is considered a landmark document, as the previous recommendations did not address migrant women to any effective degree. GR26, in contrast to many previous instruments on migrant workers and migrants in general, seeks to protect women migrants in all situations, including those who migrate for work, those who migrate as spousal dependents, and those who find themselves in undocumented situations. This includes the millions of female care, domestic, agricultural and other types of workers who are non-citizens in or transiting through another country. GR26 steers clear of many controversial areas for State Parties, such as allowing greater access to labour markets, and trafficking in human beings. In fact, the recommendation considers trafficking to be separate from 'work' and hence states that it will not address trafficking. This means that Article 6 of the original CEDAW text is the only

<sup>4</sup> These include: Convention on the Political Rights of Women, adopted by the General Assembly on 20 December 1952, the Convention on the Nationality of Married Women, adopted by the Assembly on 29 January 1957, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 7 November 1962, and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 1 November 1965.

such article to deal explicitly with the trafficking in human beings. The UN Convention against Transnational Organized Crime and its associated Protocols (discussed below) stand alone as the instruments that deal explicitly with trafficking in human beings.

CEDAW and its processes of enforcement and mechanisms to encourage compliance with its tenets have been criticized for a lack of state buy-in and lack of authority on the part of the the committee of experts that monitors the conventions's implementation, the Committee on the Elimination of Discrimination against Women (hereafter the Committee). In particular, the Committee has the least authority of all treaty committees and is unable to force State Parties to comply with CEDAW in national legislation. Further, states may provide 'reservations' on a particular aspect of CEDAW or its recommendations, which according to CEDAW Article 28 are allowed. However, State Parties define their recommendations broadly and hence use them as a way of not complying. Mexico, the Philippines and Moldova have not made any reservations to any CEDAW articles. Mexico has been one of the most active states to object to other countries' reservations made under CEDAW. Although there is a mechanism in CEDAW to allow one state to bring another noncompliant state to the International Court of Justice if they are seen as violating principles of CEDAW, such a mechanism has not yet been enacted on any grounds.

In 1999 the UN General Assembly adopted the Optional Protocol to CEDAW, which sought to improve the coordination among State Parties and the respect of State Parties to the Committee. One hundred and five parties ratified the Protocol, which is far less than the CEDAW. The Optional Protocol provides a procedure by which individuals or groups of individuals can submit complaints to the Committee about a state's non-compliance with CEDAW. The state must be a party to the Optional Protocol and the individual (or group) must demonstrate that all available domestic remedies have been exhausted. The Committee's power under the Optional Protocol is limited to investigations and recommendations. They do not have power of enforcement per se.

### How Gender-Responsive is the International Framework on Migration?

A systematic review of legislation at the national level can reveal whether a state is compliant with the articles set forth in CEDAW based on a set of indicators. However, few measures or indicators have been identified that assess the levels of compliance between CEDAW and existing conventions dealing with women's rights, migrants, trafficking and labour rights. This task is challenging, as most conventions do not explicitly deal with women's rights and even those that do, do not explicitly require State Parties to adopt gender-sensitive legislation or actions. It is useful to identify the main conventions relating to these areas and pose questions (indicators) of them in order to understand their effectiveness/ ineffectiveness. Although all the articles in CEDAW are crucial, attention in the present analysis is on several articles and recommendations that directly or indirectly relate to the rights of women migrants more clearly. This section will very briefly: 1. Identify CEDAW articles and general recommendations that relate to women migrant workers, 2. Identify measures needed to protect women migrant workers, 3. Determine CEDAW legal indicators and 4. Test whether relevant conventions comply with these legal indicators.

#### TABLE4

#### **CEDAW** Articles and Recommendations that Relate to Women Migrant Workers' Vulnerabilities

CEDAW Article or General Recommendation	Text	Indicators <sup>•</sup> (in the form of questions) Does the present convention
Article 6 (Trafficking)	States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.	<ul> <li>Seek to decriminalize sex work to protect WMWs?</li> <li>Request that State Parties criminalize traffick- ing in women?</li> <li>Seek to ensure that the labour rights of sex workers are protected and their work recognized?</li> </ul>
Article 9 (Nationality)	States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.	<ul> <li>Request that State Parties ensure that both spouses have equal rights to residency, citizenship and employment when married to a non-national?</li> <li>Seek to ensure that women who are non-nationals of a country may pursue residency and participate in the workforce?</li> </ul>
Article 11 (Work)	States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.	<ul> <li>Ensure that State Parties do not discriminate on the basis of gender or residency in employ- ment?</li> <li>Ensure that migrant women receive same pay as citizens for equal work?</li> <li>Ensure that State Parties have legislation to provide childcare and proper leave from work for non-citizens?</li> </ul>
Article 12 (Health)	States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, includ- ing those related to family planning.	<ul> <li>Ensure that there are special provisions for women to access health and maternal health, such as pregnancy, even if they are non-nationals?</li> <li>Ensure that non-nationals (women migrants) receive social protection in the same fashion as do citizens?</li> </ul>
Article 15.4 (Freedom of movement and domicile)	States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.	<ul> <li>Ensure that women do not have to enter into a contract with a male relative in order to migrate for work?</li> <li>Ensure that women can live in the country of destination without restrictions?</li> </ul>

\*UNDP (2007) provided the background information on indicators needed to populate this field.

Using the indicators identified in Table 8, the below table illustrates that the international framework on migration (other than the provisions of GR26) is largely gender neutral and does little to respond to the specific realities of migrant women. Indeed, while some conventions use 'gender-neutral' language, none of them have adopted 'gender-sensitive' language. Whilst ILO Co97, C189 and ICRMW seek to eliminate gender discrimination, none of the conventions address the rights of women migrant workers as a separate group from men. The ICRMW and C189 are the most in line with CEDAW principles according to the chosen indicators, being compliant or partially compliant with 10 out of 18 indicators, while the Palermo Protocol is partially/fully compliant with 6, C097 with 6 and C143 with 2. C143, despite being signed after C097, is the least compliant with CEDAW, largely because it focuses on the elimination of illegal recruitment methods and the reduction of illegal immigration.

#### TABLE 5

Applicable CEDAW Article	Does the convention ensure that State Parties will:	ILO Co97	ILO C143	ILO C189	UN ICRMW	Palermo Protocol
Article 1 (General)	Not discriminate against or exclude women from labour market on the basis of gender?	Yes (Art. 6.1; 6.1(a))	No	Yes (Art. 11)	Yes (Art. 1; 7)	No
	Adopt legislation that ensures equal treatment of male and female migrants?	Partial (Art. 6.1)	No	Partial (Art. 11)	Yes (Art. 1; 7)	No
	Adopt special measures for the par- ticular vulnerabilities faced by women migrant workers?	No	No	No	No	Yes (Sec. 111. 4; 111. 5)
Article 6 (Trafficking)	Decriminalize solicitation of sex work (to protect sex workers)?	No	No	No	No	No
	Prosecute traffickers?	No	Yes (Art. 3)	No	No	Yes (Sec. III; Art. 5)
	Adopt legislation to prevent labour trafficking?	Partial (Ann. I Art. 9; Ann II Art. 13)	Yes (Art. 4; 5)	No	Yes (Art. 11)	Yes (Sec. III)
Article 9 (Nationality)	Ensure that non-nationals have right to residency if married to citizen spouse regardless of sex?	No	No	No	Partial (Art. 50)	No
	Ensure that women migrants may pursue residency and participate in the workforce equally with men (destination)?	No	No	Partial (Art. 11; 15)	Yes (Art. 1; 7)	No

#### Consistency with CEDAW Article Indicators: "No" means no mention of the indicator

Applicable CEDAW Article	Does the convention ensure that State Parties will:	ILO Co97	ILO C143	ILO C189	UN ICRMW	Palermo Protocol
Article 11 (Work)	Ensure that State Parties do not discriminate on the basis of gender or residency in employment?	Yes (Art. 6)	No	Yes (Art. 11)	Yes (Art. 1; 7)	No
	Explicitly ensure that migrant women receive same pay as citizens for equal work?	No	No	Partial (Art. 11)	No	No
	Ensure that State Parties have legisla- tion to provide childcare and proper leave from work for non-citizens?	Yes (Art. 6)	No	Yes (Art. 14)	Partial (Art. 27)	No
	Ensure that domestic work (carried out in private homes) is regulated by government?	No	No	Yes (Art. 15)	No	No
Article 12 (Health)	Ensure that there are special provisions for women to access health and maternal health, even if they are non-nationals?	No	No	No	No	No
Article 15.4 (Freedom of movement and domicile)	Ensure that women do not have to enter into a contract with a male rela- tive in order to migrate for work?	No	No	No	No	No
	Ensure that women can live in the coun- try of destination without restrictions?	No	No	No	No	No
Miscellaneous	Request adoption of legislation that seeks to provide safe living conditions for women migrants?	No	No	Yes (Art. 11; 13; 14; 15)	Partial (Art. 25; 70)	Partial (tempo- rary: Art. 6.3)
	Request the adoption of legislation regulating private recruitment agencies?	Yes (Ann. I)	No	Yes (Art. 15)	Partial (Art. 25.2)	No
	Use gender-neutral language?	No	No	Yes	Yes	Yes

#### How does the International Framework Respond to Women Migrant Workers?

While GR26 may not carry the same weight and influence as a ratified convention, it is important to recognize that it is the most comprehensive international instrument within the normative framework relating to women migrant workers specifically. Indeed, when its provisions are used as indicators against which to assess the responsiveness of other instruments to women migrant workers, it becomes evident how crucial GR26 is in the framework. The conventions under review are C189 and the ICRMW. These two instruments interact with migrant women differently; the ICRMW seeks to respond to the situation of migrant workers, albeit in a gender neutral way. C189 seeks to increase labour protection for domestic workers, yet falls short given that it is not specific to women or migrant workers despite the fact that women migrants make up a significant number of domestic workers.

### TABLE 6Compliance with General Recommendation No. 26 Indicators

"Yes" means full compliance. "Partial" means partial compliance. "No" means no mention. "COO" means country of origin. "COD" means country of destination.

Recommendation from GR26	Indicators Does the present convention ensure that State Parties will:	UN ICRMW (1990)	ILO C189 (2011)
A. Lifting of discriminatory bans or restrictions on	Repeal discriminatory restrictions on women's migration?	No	No
migration	Lift restrictions requiring women to seek permission/receive travel documents from spouse to migrate?	No	No
B. Education, awareness- raising and training with standardized content	Develop an appropriate awareness-raising campaign for future women migrants?	No	No
standardized content	Facilitate affordable/free pre-departure information to women prior to migrating?	No	No
	Provide a list of legitimate recruitment agencies and unified information system on available jobs?	No	No
	Promote awareness-raising through the media or informa- tion and communication?	No	No
	Advocate for recognition of educational credentials in COD?	No	No
	Ensure WMWs have access to the same education as nation- als while in COD?	Partial (Art. 43)	No
C. Regulations and monitoring systems	Require recruitment agencies to be regulated and to sensitize them on the rights of WMWs?	Partial (Art. 66)	Partial (Art. 15)
	Implement sanctions for illegal recruiters?	Yes (Art. 68)	Yes (Art. 15)
	Implement recruitment accreditation programs?	No	No
D. Health services	Standardize health certificates for women migrants' pre- departure?	No	No
	Require employers to purchase medical insurance for WMWs in country of destination?	No	No
	Offer voluntary pre-departure health examinations?	No	No
	Provide affordable health services in COD?	Partial (Art. 43)	No
	Advocate for the portability of social security benefits?	No	No
E. Travel documents	Provide women access to their travel documents at all times in COD and COO?	Yes (Art. 21)	Yes (Art. 9)

Recommendation from GR26	Indicators Does the present convention ensure that State Parties will:	UN ICRMW (1990)	ILO C189 (2011)
F. Legal and administrative assistance	Provide legal assistance for women migrants in COD?	Partial (Art. 16.7)	No
G. Safeguarding remittances of income	Provide safe and secure remittance channels for WMWs and ensure they are voluntary?	Partial (Art. 47.1)	No
	Provide banking assistance to WMWs both formally and informally remitting money?	Partial (Art. 47.2)	No
H. Facilitating the right to return	Facilitate the return of women and ensure they are able to do so free of abuse/coercion?	Yes (Art. 67)	No
I. Services to women upon return	Design or implement services charged with providing socio- economic, psychological and legal services upon return?	No	No
J. Diplomatic and consular protection	Provide training and supervision of consular staff to protect women migrants in COD?	No	No
	Ensure their consulates provide adequate legal protection, medical care, counselling and shelter when needed?	Partial (Art. 16.7; 42.2; 65.2)	No
K. Miscellaneous	Commit to UN and ILO human rights conventions and particularly those relating to women migrant workers?	Partial (Art. 84)	Partial (Art. 22)

In using gender-neutral language, both of these conventions overlook the gendered divisions of labour in the global economy of migrant labour and domestic work. In the case of C189, the Convention makes explicit mention in the preamble to the fact that most domestic workers are women and girls, yet it does not follow up on this with an article ensuring State Parties adopt gender-sensitive legislation. Neither convention explicitly mentions women as a separate group from men, an important distinction to make given the range of occupational and other hazards faced uniquely by women. Therefore, the consistency of the conventions to most categories in GR26 including access to health, education and social security are considered to be 'Partial'. Neither convention recognizes informal or non-remunerated

care work or other occupational activities undertaken predominantly by women, which excludes those working in the informal sectors of the economy, and in the household. In the case of C189, the definition of domestic worker is someone who is always employed as a domestic worker, and does not include those working 'sporadically' or 'occasionally', meaning that it will not respond to the situation of the many domestic workers that are not considered as employed and do not have permanent work. This review illustrates that, whilst ICRMW and C189 strengthen the international normative framework in relation to the protection of the rights of women migrant workers, they do so in support of GR26, which continues to provide the most comprehensive guidance in this regard.

#### 7.2 National Legislation and Policy

#### **Rights Frameworks**

The relationships between national and regional and global frameworks are largely reciprocal. National legislation and policy will be guided by normative frameworks, and normative frameworks/intergovernmental initiatives should be informed by state practices. This is evident in the ILO's Best Practices on Migration literature, which conducts brief assessments of initiatives in different countries attempting to isolate the best ones. The IOM also acts as an intermediary between states, the international human rights regime, and migrants – by legitimizing state practices such as voluntary return, counter-trafficking and other such security measures aimed at deselecting migrants for entrance and presence in a country. As a result, it follows that national efforts often adhere to the same principles when governing migration.

TABLE 7

#### **Ratification of Key Labour/Migration Conventions in Pilot Countries**

	Mexico	Moldova	Philippines
CEDAW	R (1981)	R (1994)	R (1981)
CEDAW Optional Potocol	R (2002)	R (2006)	R (2003)
ICRMW	R (1999)	R (2005)	R (1995)
Palermo Protocol*	R (2003)	-	R (2002)
Co29: Forced Labour	R (1934)	R (2000)	R (2005)
Co97: Migration for Employment	-	R (2005)	R (2009)
C100: Equal Remuneration	R (1952)	R (2000)	R (1953)
C105: Abolition of Forced Labour	R (1959)	R (1993)	R (1960)
C111: Discrimination	R (1961)	R (1996)	R (1960)
C143: Migrant Workers	-	-	R (2006)
C189: Domestic Workers	-	-	R (2012)

\*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Convention against Transnational Organized Crime.

Many of the key UN and ILO Conventions have been ratified although, notably, only the Philippines has ratified ILO's Conventions 143 and 189 on the protection of migrant workers and domestic workers respectively.

Each of the pilot countries has a varied set of domestic laws addressing labour migration management, protection of migrant workers and criminalising trafficking. A full analysis of the extent to which each country's legislative framework complies with CEDAW (specifically the provisions of GR26) is available through empowerwomen.org and are listed in the references. Below is a short from each:

#### **Mexico**

In its policy reform process over the last decade, the Mexican government drew on international conventions on labour rights and integrated them into a broader framework of human, civil, political, social, economic and cultural policies (Yau, 2005; Redpath, 2006). While substantive efforts have been made to address protection gaps, more remains to be done to secure the protection of women migrant workers' rights in Mexico.

A recent study of migrant workers in Mexico outlines a methodological framework to analyse the de jure recognition in Mexican legislation of GR26<sup>5</sup>. This analysis finds that because of the scale and breadth of violations and barriers faced by women migrant workers, several changes to a number of legal frameworks are needed to improve the protection of their rights. For example, Mexico's Ley de Migración (Migration Act) recognizes the right to freedom of transit, health, education, justice, identity, unity, family and the requirements for residence permits and work authorization. However, the law is not fully consistent with the provisions of GR26 as it does not propose the creation of structures that will mitigate the vulnerability of migrant women; neither does the law propose affirmative action to ensure the substantive equality of migrant men and women.

The Migration Act is arguably implicitly discriminatory against women migrants due to the complexity of its requirements and the cost of immigration documents. In particular, the law discriminates against domestic workers due to the difficulties they face in obtaining legal status without going through costly and lengthy work authorization processes. The law also discriminates against women migrants in agricultural settings; classified in their immigration documents as 'dependents', women in this sector work without a work permit and, as such, work illegally for lower pay. This treatment leaves women in a disadvantageous position vis-à-vis men, in that they are excluded from accessing labour rights and are not protected against abusive or exploitative employers.

Additionally, the legislation limits the ability of WMWs to end their employment when they are experiencing exploitation, as immigration documents and work permits are linked to specific employers and employment. The Ley Federal del Trabajo (LFT) (Federal Labour Law) is Mexico's primary labour law. It addresses labour market based gender discrimination, labour and gender-based violence, as well as the terms and conditions of work. It is not, however, fully consistent with provisions of CEDAW GR26 for the following reasons:

- There are no structures that enforce good working conditions for domestic workers. The right to a decent job (Art. 2) is not consistent throughout the law.
- Occupations considered primarily 'feminine' such as domestic work and sex work do not benefit from the complete set of labour rights in the law. For example, domestic work is considered 'special' under the LFT and provides that a 12-hour workday is standard and access to social security is optional. In the case of sex workers, the LFT does not regulate the sex industry and, as such, does not contemplate access to social security or occupational health for sex workers.
- The LFT does not have measures in place to address the situation of workers who lose their job as a consequence of sexual harassment.

Both the Migration Act and the LFT are particularly important to the rights to equality and non-discrimination for migrant workers. However, to effectively comply with recommendation 23 (a) of GR26, the Migration Act should include specific temporary permits (positive actions) to ensure substantive equality between migrant men and women in access to immigration documents (IMUMI, 2015: 23).

The Ley General de Trata (General Law on Trafficking) punishes slavery, servitude, labour exploitation and forced labour from a human rights perspective (Art. 10). The law protects the right to a humanitarian visa

<sup>5</sup> See IMUMI (2015) Legislación Mexicana y Derechos de las Trabajadoras Migrantes.

and nonrefoulement, as well as the right to protection and social and medical assistance. The law also has mechanisms to compensate for damages. The Law is not fully consistent with GR26 CEDAW in the following instances:

- The law does not address the need for systems of oversight so that labour conditions can be monitored and situations of labour exploitation and forced work can be identified.
- The law does not provide for affirmative action that addresses the different needs of men and women in terms of their access to the judiciary system, and the enforceability, restitution and enjoyment of their rights.
- The enforcement of this law is limited, as laws have not been harmonized at a sub-national level.

#### Moldova

The Moldovan national framework on labour migration is constituted by the following instruments:

- National Strategy on Migration and Asylum (2011-2020), approved by Government Decision no. 655 of 8 September 2011;
- Action Plan for implementing the National Strategy on Migration and Asylum (2011-2015), approved by Government Decision no. 1009 of 26 December 2011;
- Law on labour migration no. 180 of 7 October 2008;
- Law on foreigners' regime in the Republic of Moldova no. 200 of 16 April 2010;
- Law no. 274 of 27 December 2011 on the integration of foreigners in the Republic of Moldova;
- The Presidential decree on support measures for Moldovan migrants, Governmental Decision on Measures to Support Moldovan Migrants, and Parliament decision on Moldovan Migration Policy.

Law no. 180 on Labour Migration of 10 July 2008 regulates the temporary activities of migrant workers, conditions of issuance, extension and revocation of the work permit and the permit for temporary stay for work, as well as the conditions for temporary employment of the citizens of the Republic Moldova abroad. According to this law, the State shall ensure, as required by law, protection of migrant workers without distinction of race, nationality, ethnic origin, language, religion, gender, political affiliation, wealth or social origin (Art. 4(2)). A CEDAW based legal review of Moldovan law highlights some areas where the law could be strengthened to better align with GR26:

- Expressly ensure that contracts are in the language of the migrant worker, in line with GR26 paragraph 24 (i) and (iii);
- Include an article prohibiting the employment of migrant workers under 18, in line with GR26 paragraph 24 (i) and (iii);
- Make provision for migrant worker access to information on protection of legal rights in the country of destination as per GR26 paragraph 24 (b);
- Stipulate that companies engaged in the employment of Moldovan workers overseas, shall treat workers without discrimination, in accordance with GR26 paragraph 24 (b) and (c);
- Include provision for the mandate of the diplomatic missions of Moldova in the destination country to include the receipt of complaints from migrant workers, in accordance with GR26 paragraph 24 (j);
- Provide that recruitment agencies cover the cost of repatriation in the event of employment in breach of the law, in accordance with GR26 paragraph 24 (c);

The analysis also identified further amendments that could strengthen access to social insurance and limit vulnerability to illegal or unscrupulous recruitment agents.

Many provisions of CEDAW and GR26 are not integrated into the acts regulating labour migration in Moldova, including the rights of migrant women workers. Among them:

- Law no. 269 of 09 November 1994 on exit and entrance in the Republic of Moldova is outdated and requires either repeal or essential improvement;
- Law on labour migration no. 180 of 10 July 2008, has provisions on the rights of migrant women that are more declaratory;
- Family Code, no. 1316 of 26 October 2000, regarding the establishment of maternity or childcare provisions of children whose parents are working abroad,

- or the provisions of goods and wealth sharing after divorce of spouses who work abroad;
- Civil Code of the Republic of Moldova, no. 1107 of 06 June 2002 and Law no. 845 of 03 January 1992 on entrepreneurship and enterprise;
- The Penal Code of the Republic of Moldova, no. 985 of 18 April 2002, as regards to the provisions on forced labour; etc.

In addition, the Action Plan to stimulate the return of migrants and the National Strategy for Migration and Asylum (2011-2020) are both largely gender blind. These issues have been identified by the government in Moldova who is working towards addressing women's needs through legislative revision.

Indeed, the ascension process to the EU has led to recent amendments in migration and trafficking law to bring it in line with EU standards (Tatiana Cantana, 2014). For example, an amendment to the trafficking laws now provides that foreign victims of trafficking may be permitted to stay in Moldova under a special temporary status. However, this stay is contingent on the individual adhering to the following (Tatiana Cantana, 2014: 9):

- The individual is willing to cooperate with the authorities to identify and prosecute criminal parties of appropriate offenses;
- The individual ends all relations with suspects;
- The individual's stay in the country is required for the criminal proceedings;
- The individual is not a threat to national security and/or public order.

Such conditions arguably place an individual in a position of vulnerability; if they do not comply with authorities, they can lose their right to stay. Such issues are explored later in this report.

In Moldova, labour market information centres, call centres and online resources provided by the National Agency assist citizens to access information about employment opportunities and employment protection measures in case of unemployment. In order to facilitate access to information and services, Moldova opened a number of Joint Information and Services Bureaus near district municipalities (Government Decision no. 661 of 30 August 2013). Bureaus provide services for urban and rural populations, with specific attention paid to women and vulnerable groups. Under the Joint Information and Services Bureaus there are several service providers including Territorial Employment Agency, Land Relations and Cadaster, the Labour Inspectorate, Territorial Social Insurance House, Department of Social Assistance and Family Protection of District Council, the District Council economy directorate. These services are primarily designed to address the needs of resident populations.

#### **Philippines**

In 2003, the Anti-trafficking in Persons Act (RA 9208) was legislated and has been significant in strengthening efforts to reduce illegal recruitment of women and children for the purposes of cheap forced labour, sexual slavery and other forms of sexual exploitation.<sup>6</sup> The increase in both the number of violations of RA 9208 reported, as well as the Department of Justice's apprehensions and convictions of traffickers, have been attributed to this law. With regard to migration, the Philippine Congress has passed Republic Act no. 8042 or Migrant Workers and Overseas Filipinos Act of 1995, which was further amended by Republic Act no. 9422 and Republic Act no. 10022.

In 2009, the Philippines approved the *Magna Carta* of *Women* as part of its commitment to localize the provisions of CEDAW and mandate a legal definition of discrimination against women through the recognition and protection of the rights of Filipino women, especially those in marginalized sectors. In the definition of terms found in Section 4.d.6, these marginalized sectors include "migrant workers" which refers to Filipinos who are to be engaged, are engaged, or have been engaged in a remunerated activity in a State of which they are not legal residents, whether documented or undocumented. Section 22 of the RA 9710 stipulates "the State shall ensure the protection and promotion of the rights and welfare of migrant

<sup>6</sup> This law was further amended by the "Expanded Anti-Trafficking in Persons Act of 2012" (Republic Act no. 10364).

women regardless of their work status, and protect them against discrimination in wages, conditions of work, and employment opportunities in host countries."<sup>7</sup> RA 9710 also takes particular consideration of "Women in Especially Difficult Circumstances" (WEDC),<sup>8</sup> among whom number victims of trafficking, illegal recruitment, victims and survivors of physical and sexual abuse, prostitutes, those in detention and other such circumstances. In addition, Section 37 of the landmark law mandates the presence of gender focal points in Philippine embassies and consulates so as to strengthen the delivery of services to WMWs especially those in distress (Encinas-Franco, 2015: 3).

The Constitution recognizes the role of women in nation-building and ensures the "fundamental equality before the law of women and men."9 Consistent with the Constitution, the avowed State policy in the Migrant Workers Act, as amended, is to afford full protection to labour and promote full employment and equality of employment opportunities.<sup>10</sup> In Sec. 2(d), the State affirms the fundamental equality before the law of women and men and endeavours to apply gender-sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers. These policies are reiterated in IRR Sec. 1(b) and (d). There is thus full compliance with CEDAW, given that the law recognizes fundamental equality of women and men and compels the State to apply gender-sensitive criteria. These provisions support the prohibition on the imposition of any sex-specific bans and discriminatory restrictions on employment opportunities. However, there are contradictions between CEDAW GR26 and national Philippine law (Encinas-Franco, 2015: 25-31).

The responsibility of the country of origin to deliver free or affordable gender- and rights-based pre-departure information and training programs is found in GR26, paragraph 24 (b)(i). The analysis of Filipino laws has found that they are broadly in compliance with this. Indeed, RA 9710 Implementing Rules and Regulations (IRR) Rule VI, Sec. 23, b.1, second paragraph, mandates the Philippine Overseas Employment Administration (POEA), together with other law enforcement agencies, provide a comprehensive pre-employment orientation seminar (PEOS) that will discuss topics such as prevention of illegal recruitment and gendersensitivity. To achieve this goal, however, the provision on the PEOS must be more specific and provide for mandatory topics to be discussed, among them the rights of WMWs, labour laws and CEDAW principles.

In GR26, paragraph 24 (f) the country of origin has the responsibility of ensuring availability of legal and administrative assistance in connection with migration for work. Though several provisions on legal and administrative assistance are found in RA 8042, there is no provision for free legal services in order to avert a breach of duty or violation of a right.

RA 8042 is largely successful in complying with CEDAW GR26, provided the State only allow the deployment of overseas Filipino workers in countries where their rights are protected. More can be done to comply with GR26, par. 24 (f) in discharging the duty to safeguard workers' remittances including access to financial education and provision of formal assistance by banking or financial institutions.

GR26 asks states to provide information on methods and procedures for women who wish to migrate independently of recruitment agencies. RA 8042 provides no mechanism for protection or monitoring of WMWs who found jobs independently of recruitment agencies or via informal channels, especially the PEOS and consular assistance, available under the law for workers hired through an agency or the Government Placement Branch (GPB) and should likewise be available to those who sought employment through informal channels.

GR26, par. 24 (b)(iv) requires recruitment agencies to participate in awareness-raising and training programs with emphasis on specific needs and problems of women. To guarantee compliance with the CEDAW obligation, the law should impose an additional

<sup>7</sup> See http://www.congress.gov.ph/press/details. php?pressid=9120.

<sup>8</sup> See https://psa.gov.ph/

content/q-magna-carta-women-republic-act-no-9710. 9 See http://www.pcw.gov.ph/law/republic-act-7192.

<sup>10</sup> See http://www.poea.gov.ph/rules/ra8042.html.

requirement, which is for placement agencies to undergo gender-sensitive training, aside from attending a PEOS as earlier mentioned, as a condition for accreditation or licensing.

GR26, par. 24 (h) requires State Parties to CEDAW to ensure that women who wish to return to their countries of origin are able to do so free of coercion. Repatriation and the expenses attendant thereto are meticulously catalogued in RA 8042. Despite these provisions, repatriation appears to be limited to termination of employment. The law should include repatriation procedures in cases where there is a violation of labour laws by the employer or where the WMWs are abused or victims of any unlawful activity. Emergency repatriation, apart from cases where there is war, epidemics, or calamities, should be provided for in the law.

In relation to anti-trafficking, obligations are embodied in CEDAW Article 6, which provides that: "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." The Filipino legal framework is again deemed largely in compliance with CEDAW, with a few notable exceptions including: definitional issues that result in provisions that are discriminatory in relation to treatment of prostitution; a lack of provision for non-face-to-face court proceedings; and a lack of provision of gender-sensitive training to prosecutors, immigration officials, social workers and health professionals to ensure that victims of trafficking are dealt with appropriately and that services are provided free of charge.

#### 7.3 Social Protection

As noted by the UNDP report on successful social protection floor initiatives, "about 80 per cent of the global population lives in social insecurity, unable to enjoy a set of social guarantees that enable them to deal with life's risks. Most of them are women and children, work in the informal economy, and/or belong to socially unprotected groups, such as people living with disabilities or HIV/AIDS or migrant workers" (UNDP, 2011). Migrant workers are especially vulnerable to poor social protection, unemployment and poverty, as "they often do not enjoy the same rights and protection as nationals" (Awad, 2009). Despite the vital contributions that migrant workers make to the economies of their host and home countries, they are among the most excluded from even basic social protection coverage. As noted by the ILO, migrant workers risk losing entitlement to social security benefits in their country of origin due to their absence and may at the same time encounter restrictive conditions under the social security system of the host country. They may pay into social security schemes, either in their home countries or countries of destination, but may not receive any corresponding benefit. They may face constraints in the portability of these rights. Schemes may have long residency requirements, making it

difficult for temporary migrants to claim their benefits, effectively amounting exclusion from any form of social protection when engaged in temporary or informal work (ILO, 2013).

In migrant receiving states, categories of entry and immigration status (in particular permanent residency) can be particularly important to a migrant's level of social protection (Anderson and Ruhs, 2010). In addition to immigration and residency requirements, property rights or occupation may impact access to social benefits.

Social protection gaps are compounded by gender, with lack of parental benefits, maternity leave, poor access to maternal health systems and care; and precarity heightened due to pregnancy, etc., affecting women workers specifically. In Mexico, for example, WMWs from Central America have unequal rights to social security, meaning there is limited access to maternity leave, the right to a pension, daycare for their children, disability pay and holiday pay, among other benefits (IMUMI, 2015: 48). While in 2014, the Instituto Mexicano del Seguro Social (IMSS) approved agreements to encourage and facilitate the inclusion of domestic workers into the social security system, enrolment of such workers is done voluntarily by the employer. Further, federal regulations disadvantage workers who are engaged in the domestic/household work sector in Mexico. Among others, the Ley Federal del Trabajo (LFT) (Federal Labour Law) does not entitle workers in this sector overtime pay; and only on an optional basis provides access to social security for those working in a private home (not obligatory); there is not regulation stipulating that employers must provide the worker a detailed contract outlining their rights; there is a lack of job security for workers since an employer may terminate the employment relationship at any time without cause, and without liability (IMUMI, 2015: 48).

Due to the nature of many migrants' work contracts, they are typically not accorded the same benefits as citizens in the areas of pension provision. Yet migrant workers, and particularly women migrant workers, can spend many years in countries of destination working either seasonally or without proper residency requirements, typically in occupations that the country desperately needs filled. Despite the widespread liberal traditions of many destination countries that ostensibly espouse the values of inclusion for its citizen population, a major segment of the labour market remains outside this tradition and outside the system of pension provision. Global capitalist restructuring partly explains this gap; where the state previously retained universal pension provision systems with defined benefit (DB) contributions, more

#### 7.4 Health

A growing body of research highlights the global trend of increased health risk vulnerabilities that migrants face (Zimmerman et al., 2011). The World Health Organization (WHO) maintains that migrants are most vulnerable to health risks whilst on the move/in transit (WHO, 2003). The WHO (2003) also indicated that migrants classified as *low-skilled* are frequently employed in labour sectors and jobs with associated high health risks. "In respect to social security, if someone does not have a contract and works illegally, this person does not have any guarantee; they do not have any insurance; they are not contributing to any pension while they are working in Italy."

Interview with Lawyer, Member of the common observatory between the Moldovan and Italian Forensic Council, November, 2014

countries have shifted to individual-focused defined contribution (DC) systems (Barr and Diamond, 2009; Broadbent et al., 2006). Another is the surge in temporary foreign worker programs that are designed so that pensions are not paid out (Avato et al., 2010).

The realities of WMWs working outside of their home countries, commonly in informal sectors, compounded with the lack of portability of social protection, creates a situation where women face challenges in meeting the qualifying conditions for welfare or pensions. Many ageing guest workers in Europe, for example, do not retain access to pensionable benefits (Ruspini, 2009). For example, in Moldova, the dual pension system for migrants is particularly complicated and difficult for migrants to navigate. Many WMWs leave Italy before reaching the retirement age but once they return to Moldova they cannot access pension contributions previously paid into the system as there is no agreement between Italy and Moldova to transfer the contributions (Interview with Cultural Mediator, November 2014).

WMWs face significant vulnerabilities to health risks that stem from their gender, their immigration status, their employment and living conditions, and workplace contexts. For example, for WMWs under managed temporary migration programs in either Spain or Canada's agriculture industries, the heightened workplace exposure to chemicals and other hazards pose particular risks to women's reproductive health. Further, employer control and on-farm housing add unique risks to women migrant workers. Women have sexual and reproductive health needs that differ to men. Issues of pregnancy, access to sexual, reproductive and pre/antenatal health services must be considered and addressed for migrant women. Women migrants who have an irregular status or work in an informal sector will typically not have access to such services and will commonly have to deal with these issues themselves or, in the case of abortion, through unregulated clinics. Heightened risk to sexual violence, harassment and assault concurrently increases risks of sexually transmitted infections as well as unwanted pregnancies.

WMWs also have mental health needs as a result of leaving children behind in home countries (McLaughlin, 2010; Preibisch and Encalada Grez, 2010; Grez, 2013; Rodriguez, 2010; Hondagneu-Soltelo, 2010). Social isolation is also a factor among some groups of women migrant workers, such as among those working as domestic workers in private homes, where the workplace is not shared by other workers, and housing is potentially in remote or isolated geographic areas – both of which are overlaid by cultural isolation when the migrant worker is from a different country of origin, practices a different religion than their employer's family, and when there are language barriers, etc. (McLaughlin, 2009).

#### Access to Care

These risks are further compounded by barriers to accessing health care and insurance, especially around sensitive health issues (e.g. sexual, reproductive, and mental health). Most migrant workers are subject to the unilateral law of the country and region in which they are working regarding access to health services; and often it is assumed that health systems designed for residents and citizens will provide a means of access for non-permanent migrant populations (WHO, 2010). Sweden, often exemplified as the standard in health care, has legislation that provides migrant workers limited health services for a fee but uptake is highly variable (Alexander, 2010).

#### MENTAL HEALTH An Example from Italy

Psychological illnesses are common among the elderly in Italy; care workers often assume positions of responsibility for those that may have reduced mental or physical capacities. Yet, the workers have little psychological support and have limited opportunity to express their experiences or talk about their problems (Italian Focus Group, November 2014). Many care workers are affected by the significant demands of this kind of work; being on call for 24 hours, with little opportunity for other pursuits, can contribute to mental health problems (Interview with Journalist, November 2014). Often, women being hired for these roles are not professionals and do not have the proper education for such work. Additionally, many women are not aware that care work brings with it a risk of physical and psychological health issues.

(Interview with Italian Lawyer, November 2014)

Employers are often expected to act as mediators in arranging healthcare for migrants. Migrant labourers in Malaysia have no legal entitlement to health care or health insurance, for example. According to national legislation, the state depends on employers to facilitate health care coverage. This reliance on employers has resulted in documented instances of abuse towards workers and a general lack of coverage provided (Gurowitz, 2000; WHO, 2010). Indeed, it is particularly challenging for women to negotiate access to health services, with their predominantly male employers and supervisors acting as intermediaries. In some countries, such as Italy, there is access to the emergency health care irrespective of legal status or financial situation but for a cost. Individuals must pay for the care, but it is not necessary to pay before the treatment. Romanians, even as European citizens, have to pay for health care in Italy if they don't have a regular job ensures social protection and provides health insurance. If Moldovans

do not have a permit to stay, they can get a temporary health care card. However, in recent years, free access to health care is decreasing because of the economic crisis (Interview with Italian NGO, November 2014). Moreover, those without a regular permit to stay "are often scared to go to the hospital because they think the doctors will inform the police" (Interview with Italian NGO, November 2014).

Even within managed labour migration programs with significant government involvement, employers are often tasked with providing access to health insurance and information about access to health services; they often act as translators, transportation providers, and mediators despite the unequal power relations (McLaughlin, Hennebry and Haines, 2014). This is particularly problematic when regulations permit employers to replace sick or injured workers (Hennebry et al., 2015; McLaughlin, 2009; Otero and Preibisch, 2010).

In addition, in some cases, laws designed to promote health care for women migrants can enhance their criminalization, especially in the case of sex work. For example, while Chiapas has promoted access to health for women workers in the sex industry, the motivation has been customer protection against spread of sexually transmitted infections (STIs) instead of guaranteeing the rights of workers. This situation leads to discrimination and violence for these women during health checks so the effect of this policy does not benefit them. (Instituto Estatal de las Mujeres de Chiapas, 2008; Pérez and Roldán, 2011; Leyva and Quintino, 2011). Similarly, in Singapore and Thailand, there are cases where the possession of condoms has been used as evidence that the worker is engaged in an illegal activity and provides cause for arrest (Project X, 2015).

Finally, discourses and perceptions of WMWs, informed by both sexist and racialized thinking, can also impact their expectations of receiving or seeking care, their access to care, and ultimately, their health. For example, as one interviewee noted regarding Moldovan women in Italy, the sociopolitical legacies of Moldova's relationship with the former Soviet Union informs perceptions of and among migrant women. As the interviewee claimed, the normative perception was "one in which work, not personal health, is ascribed value by individuals" (Interview with Italian Journalist, November 2014).

# RECOMMENDATIONS: MAINSTREAMING GENDER INTO MIGRATION

## RECOMMENDATIONS: MAINSTREAMING GENDER INTO MIGRATION

#### 1) Ratify Conventions

Promote wider ratification and signature of relevant conventions, protocols and declarations relating to the human rights of migrant workers, including but not limited to: ICRMW (1990), CEDAW Optional Protocol (2000); the ILO Conventions 97, 143, and 189. Though limited in their scope, these conventions provide the necessary articles that address overall State Parties' obligations to their non-resident populations. If there is any meaningful advancement on the rights and protections of women migrant workers, these conventions must be signed and ratified by state governments (especially by receiving states).

#### 2) Enforce CEDAW

The Committee on the Elimination of All Forms of Discrimination against Women is the most significant enforcement mechanism to ensure State compliance to the articles of CEDAW. It also benefits from the Optional Protocol, which means that there is recourse for individuals or states to refer state practices to the CEDAW Committee in situations of alleged non-compliance. The wide ratification of CEDAW coupled with the development of GR26 and the Optional Protocol make it the most effective international normative tool for the protection and promotion of WMWs' rights. However, despite this, the Optional Protocol is rarely used and the Committee has struggled to be effective in enforcing the application of CEDAW. As such, this report recommends the promotion and strengthening of the Optional Protocol through

advocacy and training. It also recommends a discussion be had on elevating GR26 to a protocol in order to enhance its enforceability.

#### 3) Create a New International Instrument to Promote and Protect the Rights of Women Migrants

We recommend the creation of a new convention or protocol to CEDAW that deals exclusively with WMWs and addresses their particular vulnerabilities. C189 on domestic workers was not designed to respond to the situation of women or migrants and, as such, understandably faces difficulties in comprehensively attempting to do either. While the ICRMW promotes the equal treatment of certain migrants, including women and men as well as undocumented individuals, it does not effectively deal with the specific gendered vulnerabilities that migrant women face and is thus less effective at ensuring protection against gender based discriminations and exclusions. The Palermo Protocol, while widely ratified, does not adequately protect the human rights of women outside of providing aid to victims of trafficking. GR26 does not provide binding articles on the treatment of WMWs. A new convention or enforceable protocol under CEDAW would address the vulnerabilities of women migrants while promoting their agency and equality to men globally. The new convention or protocol would also adopt gender-sensitive language, in recognition of the very different experiences of male migrants from female migrants.

#### 4) Align Policies, Programs and Legal Frameworks with CEDAW

We recommend that all policies, programs and legal frameworks that deal with labour migration and the movement of people for work be developed in line with CEDAW and GR26. Where such policies, programs and frameworks already exist, we recommend they be reviewed and revised accordingly, to ensure the adequate treatment of WMWs in line with CEDAW general recommendations and applicable articles. Strengthening coordination and cooperation between development partners and donors will support this recommendation, ensuring that international rights based and development programs that address migration are themselves gender-responsive and compliant with CEDAW so that all support provided to states is inherently consistent with CEDAW provisions. By way of example, stakeholders (state actors, employers, unions, civil society and development partners) addressing the recruitment of migrant workers, should ensure that initiatives are aligned with normative frameworks and specifically CEDAW, so that the standard of gender-responsive recruitment is elevated, globally, to a strong minimum standard.

#### 5) Ensure Portability of Benefits and Social Security

Women migrants are uniquely vulnerable to a lack of social protection because of the greater likelihood that they are employed in the informal sector. We recommend that State Parties to CEDAW and all others who employ WMWs, ensure equal treatment of these women regarding access to social protection as citizens. This includes adequate portability of benefits, where women are able to totalize their contributions to pensions and employment insurance in the countries of origin and destination. This recommendation can be effected through the lens of the social protection floor, specifically by raising the floor for all workers and residents regardless of citizenship or residency status. With the UN High Level Dialogue on Migration and Development promulgating the idea that migrants be included in the development agendas of sending and receiving countries, the introduction of tools and

instruments necessary to ensure their social protection have now received international support. On the back of this, greater coordination and cooperation must be promoted between sending and receiving countries, to ensure basic social protection, universal access to healthcare and portability of social protection benefits and contributions. This recommendation is also made to researchers and advocates to strengthen the evidence and advocacy towards this end.

#### 6) Improve Data Collection

Numerous calls have been made at the international level to improve data collection methods on the realities faced by WMWs in sex trafficking, care work, domestic work and other sectors (UNODC, 2014; ILO, 2013, 2012). Sex trafficking victims are commonly overrepresented while forced labour victims are commonly underrepresented (UNODC, 2014). We must address these data gaps and blind spots if we are to recognize the problems faced by WMWs as well as their capacities.

#### 7) Seek Transnational Solutions

In the absence of traditional governance frameworks that protect the rights of all migrant women and their families, transnational solutions include alternative governance mechanisms such as bilateralism, transnational partnerships between NGOs, and information-sharing and advocacy across borders. The Philippines has signed numerous agreements with destination countries in lieu of international protections; these lessons could be exported to other country contexts and developed more fully in global forums on migration and development. These efforts must be aimed at both countries of origin and destination.

### 8) Strengthen Migration Governance from Above

In order to provide the protection and promotion of the rights of all women migrant workers, including those in the informal sectors, we must resurrect and replenish right-based approaches to migration governance through the multitude of high-level meetings and forums held at the global level including the Global Forum on Migration and Development. These meetings focus their attentions on 'best practices' of migration management; the human rights of all WMWs and their families should be the primary best practice by which states manage their migration flows. The various international instruments incorporating human rights and migration, the efforts of transnational NGOs and organizations aiming to protect women's rights, must be aligned with national legal frameworks in countries of destination and origin.

#### 9) Increase Private Sector Accountability

Private organizations or individuals recruit WMWs and facilitate their migration at various stages. These recruitments are chiefly done away from state regulation and rely on informal exchanges of information to place women in particular occupations. In addition, private, not-for-profit actors have been instrumental in working with governments and each other in providing protection and identification of victims of trafficking and smuggling, yet often perpetuate notions of women as victims who lack agency and decision-making capacity. There is a crucial lack of study on this particular aspect of women's migration, despite the growing importance of private actors and the migration industry in both the private and not-for-profit spheres. These gaps must be addressed in order to move forward with rights-based approaches at the national and global levels that adhere to human rights instruments. The role and goals of the private migration industry, their operational standards and the legal frameworks that govern them must be critically evaluated; so far this has not been done in any substantive way and these actors are only set to grow in importance.

#### 10) Strengthen WMWs Advocacy

Efforts at the grassroots level and by organizations aimed at the local level need to involve the voices of WMWs and their families in efforts to protect their rights. This involves recognizing their agency in the migration process and highlighting practices that empower women migrants at all stages of their journey. In some cases, non-state or shadow reports written by various organizations can influence certain treaty bodies and duty bearers to act on specific issues. More research on the effects of government policies on WMWs is needed by research institutions, NGOs and advocates for the rights of women and migrant workers. Ensure that WMWs advocacy groups and organizations receive sufficient funding to be able to continue their work advocacting for WMWs' rights and holding governments, private sector and development partners to account. We recommend that WMWs organizations be given a space at all policy negotiation tables and have their voices and opinions elevated so that they are able to directly inform the policies that affect them.

## CONCLUSION

While women constitute almost half of the 244 million people who live and work outside their countries of birth, they have increasingly been migrating autonomously to live and work abroad, resulting in the feminization of migration. Throughout the migration process, women migrant workers face gendered vulnerabilities and risks that impact their ability to work and live in destination countries, and their integration upon return. Even though many migrant women are highly educated and skilled, they are overrepresented in low-skilled and precarious jobs in manufacturing, agricultural, small-scale entrepreneurial, service, as well as in the care sector including nursing, elderly and childcare, cleaning and other related work in households and in public and private institutions. The feminization of migration has occurred alongside a realization that migrants play a key role in the economic development of both source and destination countries - a fact that has been echoed with the inclusion of migration in the UN Sustainable Development Goals (SGDs). However, access to rights and protections for women migrant workers remains an essential component to leveraging the development potential of this population. Toward such aims, this report has highlighted the international and national protection gaps and counterproductive policies and practices that can (re)create vulnerabilities and shape the experience of women migrant workers. Drawing on key tools and frameworks, such as CEDAW, and other international treaties and conventions, this report has recommended concrete ways in which policy makers, governments and international organizations alike can promote the protection of the rights of women migrant workers.

This report is the first instalment of three resulting from the EC funded project focused on promoting the rights of women migrant workers. This report has sought to provide a global overview of WMWs; beginning with an analysis of the key global trends pertaining to migrant labour, the significance of women's labour migration is highlighted. It has also highlighted the great regional variability in the roles occupied by women migrants in labour markets, in families and communities.

The report details and analyses many of the factors affecting the reality of WMWs. Whilst migration can provide an opportunity for empowerment for women, the opportunities available are still very much dictated by discriminatory norms and practices. In particular, the work available to WMWs is in feminized sectors, where women are employed to undertake traditionally female roles (such as care and domestic duties). Similarly, such discrimination extends to the way that WMWs are viewed in terms of both their ability and their worth. Women migrants' work is paid less, is low skilled/unskilled and largely informal and unprotected. Stereotypes and stigma of women migrant workers compounds their devaluing, leaving them more vulnerable to abuse and exploitation, economically, physically and structurally. WMWs commonly work in isolated environments, at the mercy of their employers, with no access to external help or support. Without social protection or health services, they are unable to ensure any security for their future (outside of their earnings) and, in addition to facing a high risk of health complaints, will face loss of work and security if health issues become too severe.

In considering the core international normative framework on the protection of migrant workers, CEDAW GR26 is identified as the most comprehensive in protecting migrant women. C189 and ICRMW both provide benefit and strength to the structure; however, neither is comprehensively gender-responsive and do not provide protection on their own. Whilst CEDAW has a mechanism to enhance accountability through the Optional Protocol, GR26 is in and of itself not enforceable. As such, this report concludes that new and enhanced instruments and mechanisms are needed to ensure that signatories are bound by the provisions of GR26 and that they are enforceable. At national and regional levels, the frameworks to promote and protect the rights of WMWs remain weak in substance and enforceability. From the practices of recruiters and employment agencies, to the provision of equal opportunities and the prevention/protection from violence, significant attention is required at the national and regional levels to ensure that WMWs have access to equal opportunities and are able to enjoy their labour and human rights before, during and after migration. For this reason, the report concludes that in addition to strengthening the international normative framework, greater obligation must be placed on States Parties (as well as private sector and civil society) to ensure that appropriate legislation and regulations are drafted (or amended) in accordance with the provisions of GR26, as a minimum.

In addition, the portability of social protection is identified as key to protecting and promoting WMWs' rights. Through a lens of social protection, the work of women (either as paid or unpaid) must be valued and their unique social needs must be addressed, in particular in relation to reproductive health and elderly care.

The report recognizes three sets of actors that are key to the promotion and protection of WMWs' rights. The first is the international community through the promotion of strengthening and enforcing the normative framework. Governance at this level has the benefit of being informed by the similarities and differences in the experience of WMWs and can respond to global trends with the strength of international agreements. The private sector has a key role in the recruitment and employment of WMWs. Their accountability to the promotion and protection of WMWs' rights is critical to the ability to claim such rights. Recruiters and employers do not need to be proactively abusive to cause WMWs harm; negligence and/or ignorance to the needs of WMWs and the detrimental norms that impact WMWs' lives can cause the same harm.

Whilst attempting to identify trends in the global migration of women, this report ultimately concludes that WMWs can only truthfully be considered as a non-homogenous group. While the migration stories of hundreds of women could be similar on the surface, the protection of their rights and their opportunities to claim them will be driven primarily by the roles and representations ascribed to them, their relationships (at work and at home), and the regulations and categorizations employed by governments, as well as a host of other factors identified throughout this report (e.g. socio-economic status, education, country of origin). Including the voices of WMWs, and their particular perspectives, is therefore crucial to efforts to identify where key protection gaps exist, as well as the formulation of effective strategies for change. The advocacy work that led to the establishment of C189 is a testament to the importance of WMWs' voices in advocating for their own protection. Ultimately, it is these voices that should be given the main stage.

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