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The Inter-American Forum on Governance: an e-Conference series

Migrant Rights are Human Rights

By Jenna L. Hennebry, International Migration Research Centre (IMRC), Wilfrid Laurier University

Although it is the case that a rights discourse has become part of everyday language, the discourse remains relatively weak when it comes to migrant workers in Canada and around the world. Most certainly, the rights discourse has not been translated into everyday practices that protect the rights of migrant workers and their families worldwide. In fact, although we have the language of rights clearly articulated in the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) which offers significant protections for migrant workers, Canada and most other receiving countries have yet to ratify this agreement. Similarly, Canada has not ratified the two International Labour Organization (ILO) conventions that pertain to the rights of migrant workers, C97 Migration for Employment Convention (Revised) (1949) and C143 Migrant Workers (Supplementary Provisions) Conventions (1975). By ratifying these agreements, receiving countries would send a signal that the rights discourse applies to migrants as well as citizens, and it would also indicate a commitment to taking concrete steps towards protecting migrant rights.

A striking feature of contemporary patterns in international migration is the rising number of migrant workers leaving their homes in the global South for jobs in high-income countries. Many high income states have turned to immigration policy to meet employer labour needs through temporary migration, creating new programs or increasing the volume of older versions. The United States, for example, now has over 80 types of temporary visas. In the UK, the liberalization of labour mobility has led to an estimated one million migrant workers arriving from EU accession countries in three short years. While some of these managed migration schemes provide a stepping stone for permanent residence, which is particularly the case with skilled workers, those in so-called low-skilled or unskilled occupations are generally designed to prevent settlement and restrict mobility. However, as evidenced by the history of temporary migration schemes in Europe and the U.S., temporary migration schemes are never temporary and tend to lead to long term settlement and a growth in undocumented migration. Since the significant demand for workers often exceeds the capacities of legal programs, and there are limited permanent migration channels for many migrants from developing countries (particularly those living in poverty), means that there is significant growth in undocumented migration as well.

Although the rights of migrant workers in receiving countries varies considerably, the UN, the ILO and the International Organization for Migration (IOM) acknowledge that migrant workers (both documented and undocumented) are vulnerable to exploitation and human rights abuses. In many instances, migrant worker rights may not be as protected as citizen rights. For example many migrant workforces have historically been prevented or discouraged from unionizing, leaving migrant workers with few mechanisms to challenge working conditions, hours of work, or levels of pay. In some instances, documented migrant workers rights are supposed to be protected under some of the same state regulations and protections as citizen workers. For example, migrant workers in Canada under the Seasonal Agricultural Worker Program are supposed to be protected under federal and provincial labour standards. In practice, however, migrant workers cannot exercise their rights in the same ways as citizens for various reasons, including: language barriers, lack of information, geographic and social isolation, poor transportation, fear of employer reprisal, and dependence on their employer both for permission to remain in host countries and future employment. This leaves migrant workers highly vulnerable to abuses in the labour market, and at the hands of unscrupulous “immigration consultants.” Numerous media reports link unregulated third party recruiters to corruption, exploitation, and fraud, including the “selling” of work permits abroad, charging exorbitant fees to migrants or employers, or providing misinformation regarding the proposed type of work, potential wages, or immigration status. Recently, many of these human rights issues faced among migrant workers in Canada were noted in a report by Canada’s Auditor General, which calls attention to the failure of the federal government to follow up on the legitimacy of job offers and working and living conditions for migrant workers, which ultimately leave these workers in vulnerable situations.

While at times migrant workers fill absolute labour shortages (such as the Bracero program in the U.S.), they are also engaged to fill those jobs that citizens reject, the socially least regarded jobs, which are often the worst paid and most precarious. It is no surprise that migrant workers occupy these rejected jobs, given that most local workers avoid the 'three Ds' : dirty, dangerous and difficult. Low-skilled, seasonal migrant workers and undocumented migrants in particular also face greater health risks, since as the World Health Organization (WHO) notes, they are often concentrated in sectors and occupations with high levels of health risks. Moreover, no matter how dirty, dangerous or exploitative these jobs may be, migrants are not likely to leave them or risk unemployment by contesting working conditions, with households and remittance-economies back home dependent on monthly transfers. This is particularly the case in Mexico, where remittances make important contributions to the national as well as regional economies, not to mention household subsistence and income diversification strategies.

It is no surprise that many developing countries around the world, predominantly in the global south, have ratified the ICMW, such as Mexico and Morocco which are leading exporters of migrants to developed countries in the North. These countries, and many others, have become important resources for labour in the global economy, particularly for developed nations, while developing nations have come to depend on boosts to their GDP through remittances from migrants working abroad.

While remittances may make contributions to GDP, remittance based economies are not without their drawbacks. In particular, remittances most surely have positive impacts with respect to helping families meet subsistence costs (typically in the form of food, housing and education supplies), there is mixed evidence that remittances lead to sustainable and long term development. In fact, remittances may serve to heighten dependency and encourage a culture of migration. Moreover, consequences for migrant health, on families and communities, on culture and social cohesion may be significant – with families separated for long period of time away from their cultural and social groups, and growing divides between migrant and non-migrant families. In addition, brain drain or labour drain in sending countries may be significant, such as in the case of Jamaica or the Philippines. These social and cultural costs must factor into our evaluation of remittance economies and to the role of migration in development.

How do we protect rights of migrants?

The ICMW and the ILO conventions are important steps toward protecting migrant rights, and some governing bodies have moved toward incorporating some of the principles of these conventions into legislation (e.g, the European Union, Germany). At the same time however, given the poor history of these conventions with respect to ratification, it is vital to look beyond these mechanism to promote the protection of the rights of migrants worldwide. States need to be held accountable for human rights violations on their soil, regardless of the legal status of those who experience abuse. Despite the power imbalances, sending countries need to advocate for the rights of their citizens abroad, and international organizations such as the IOM need to put pressure on governments to comply with international rights regimes. Temporary migration programs must have adequate oversight and regulation that ensure migrant rights are protected in both principle and practice. Close monitoring of temporary migration programs, strict penalties for employers and smugglers who abuse workers' rights, and legal avenues for permanent residency would be concrete steps towards ensuring migrant rights. States must look to provide adequate safe avenues for permanent migration and options for regularization, and avoid creating temporary migration programs that bind the rights of migrants to their employers and force many migrants to choose undocumented status when no other options are available for permanent residency.

At the same time, a wider rights discourse in receiving states must be encouraged so that a rights divide does not further develop between citizens and migrants. Instead, the prevailing discourses of migration in developed countries serve to criminalize migrants and support securitization measures that drive a greater wedge between citizens and migrants, which are often used to justify human rights abuses. It is also time to give serious consideration to looking beyond national citizenship as the primary vehicle for the protection of rights, and instead work to develop models that provide human rights for all, citizen and migrant alike.