

Labor Rights and Social Justice for Migrant Workers – Prospects and Priorities for the 21st Century

by
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The Problem

While the term “globalization” is often associated with increasing levels of transnational trade and investment, increased labor migration is also a central component of an integrated world economy.

Current estimates by the International Organization for Migration (IOM) and the International Labour Organization (ILO) indicate that approximately 175 million people live outside their country of origin, with 86 million of these economically active migrant and immigrant workers. In the United States, over 21,000,000 workers are foreign or foreign-born, constituting approximately 15 percent of the total labor force. Over 2.2 million of these workers are migrants on temporary work permits. Furthermore, estimates indicate that there are approximately 12 million undocumented immigrants currently in the United States, with over seven million working in a wide range of service and industrial jobs.

As workers without permanent residency status in the society within which they work, migrant workers often face extreme conditions of social, economic, and political marginalization. Thus, migration processes have been accompanied by calls for strategies to improve the economic and political rights of migrants in many industrialized societies. The goal of combining an open labor market with social protection for the growing numbers of migrant workers has emerged as a key social policy imperative for the 21st century.

In the United States, migration has been the subject of an intense social policy debate in recent years. These debates have been advanced by: (i) policy proposals to expand the size and scope of existing temporary foreign worker programs; and (ii) growing awareness of the conditions of marginalization many of these workers experience. In 2004-05, the George W. Bush Administration introduced proposals for an expanded “guestworker” program, framing the proposals as a solution to two main concerns. First, the proposed program was presented as a means to improve border security to control the growing numbers of undocumented migrants crossing the United States-Mexican border. Second, the program was characterized as a means to secure a labor force to fill hundreds of thousands of low-wage, low-security jobs in agriculture, private sector services, labor-intensive manufacturing, and construction. Legal status through the program would last for three years and be renewable for another three. Upon completion of a six year term, workers would be required to return permanently to their country of origin.

In direct contrast to an expanded “guestworker” program that would reproduce the marginalization of migrant workers through temporary work permits and residency status, there has been growing pressure from social justice organizations to develop strategies to protect and advance the social and economic rights of migrant workers. At the heart of these strategies lies the aim of promoting social inclusion and eliminating the differential treatment that emerges through the “guestworker” model. From this perspective, migrants should not be prevented from settling in the society within which they work, and should have access to processes that lead to

the same social, political, and economic rights as citizens.

Taking this perspective, this chapter identifies the need to address the labor rights of migrant workers as a key social policy challenge for the 21st century. An agenda for social justice must include strategies to promote the social and economic rights of migrants, and foster stronger mechanisms for social inclusion of migrant workers and their families. The chapter first elaborates on some of the conditions of marginalization experienced by migrant workers, and then offers recommendations and strategies to address these conditions.

The Research Evidence

Contemporary migration patterns are connected to what the ILO terms a ‘global jobs crisis,’ whereby currently over one billion people are un/underemployed.

In this context, the International Organization for Migration has identified South to North migration as the fastest growing migration path, with the top ten emigration countries in the global South and approximately 60 percent of migrants residing in industrialized countries in the North. These patterns are also connected to economic restructuring experienced within many industrialized economies in response to the economic downturn of the early 1970s, processes that have produced growing demands for workers in a wide range of low-wage occupational categories. Growing numbers of immigrant and migrant workers perform many important but often invisible forms of labor in the major cities of the global economy, in both service and manufacturing sectors. Overall, while migrant labor ranges across occupational categories, including both ‘high-skill’ and ‘low-skill’ occupations, the United Nations has found that workers in ‘low-skill’, low-security occupations continue to be the majority of migrants. In the United States, labor market data indicate that foreign workers are employed as follows:

Sector	Employment of Foreign Workers (Percentage of Total Foreign Employment, 2001-02)
Agriculture and fishing	3
Mining, manufacturing and energy	17
Construction	6
Wholesale and Retail Trade	20
Hotel and Restaurant	10
Education	6
Health and Community Services	11
Households	1
Other Services	23

Academic research on the experiences of migrant workers in the United States has documented multi-faceted conditions of marginalization and social exclusion. Migrants commonly experience multiple forms of discrimination in employment, including limited access to jobs and vocational training. They may also experience a lack of protection from labor laws (health and safety, minimum labor standards, freedom of association) due to employment in either informal economies or occupations where there are legislative exemptions, such as agriculture.

“Guestworker” programs - like the H-2A program in the agricultural sector - that tie migrants to a particular occupation and prevent permanent settlement have contributed to the construction of racialized underclasses of workers, as these migrants are often restricted to jobs that are characterized by low status and employment insecurity, and that are subject to high fluctuations in demand. In the case of undocumented migrant workers in ‘informal’/‘underground’ economies, wages are substantially below the native born, while employment security and access to social benefits are nonexistent. Moreover, migrant women workers experience heightened conditions of marginalization due to the intensification of gendered wage inequalities that occurs through employment in informal service economies and private households as caregivers.

Migrant workers in both “guestworker” programs and informal economies play a key role in filling labor market demands. Yet many migrants experience regular conditions of unpaid and substandard wages, hours of work well in excess of legal maximums, frequent workplace injuries and an absence of health and safety protection, and an overall lack of enforcement of applicable workplace laws. These factors are all compounded by the constant threat of deportation, making migrants unlikely to report labor rights violations. These types of processes have the effect of creating a particular form of social exclusion, whereby migrants are granted access to the labor market (formally or informally), but not to other social supports and forms of social protection.

Policy Recommendations and Solutions

The persistence of these conditions indicates that the need to address the marginalization and social exclusion of migrant workers constitutes a key social policy challenge for the 21st century.

Migration is a transnational process; yet, addressing the conditions of marginalization experienced by migrant workers requires national and local solutions, as federal, state and local governments remain the key mechanism through which legal rights are established and enforced. This chapter identifies six specific recommendations to advance the rights of migrant workers as part of an agenda for social justice. These strategies focus on education and outreach, legal enforcement, and promoting equal treatment of migrants with nationals in employment conditions and opportunities. Moving beyond the national level, there are transnational and international instruments designed to protect the human rights of migrants. Strengthening and effectively implementing these instruments is also a central component to a broader agenda for social justice for migrant workers.

1. Expand education and outreach about basic labor rights

While a lack of labor rights information is not the primary reason why migrants experience economic marginalization, improving access to such information would constitute an important step in a broader agenda for social justice. Labor rights information includes information about legislated standards (minimum wages, maximum hours of work, etc), freedom of association rights, and information about how to register complaints regarding employer non-compliance. This information should be made available to employers, with mandatory requirements to post labor rights information in the first language of migrant workers in all workplaces.

2. Ensure that minimum labor standards are applied and enforced

A key aspect of the marginalization and differential treatment experienced by many migrant workers lies in insufficient coverage and enforcement of basic labor standards, including minimum wage, maximum hours of work, overtime protections, health and safety, and freedom of association. This is a particularly pressing problem in agricultural work, as there are many exemptions from legislated standards in this sector. Expanding the coverage of existing labor standards legislation to currently exempted employees is thus essential.

For those who are covered by labor legislation, employer non-compliance with existing standards plays a key role in creating and sustaining conditions of labor market vulnerability. In addition to expanding legislative coverage, improving compliance to existing standards is also imperative. Improving compliance could be achieved through improving education about minimum labor standards for employers, increasing fines for violations, increasing the number and frequency of workplace inspections, and increasing the funding directed towards enforcement activities. Increasing proactive workplace inspections would also have the effect of reducing the onus on individual workers to initiate complaints, a process they may be reluctant to do for fear of reprisal, as they may be in a very vulnerable position vis-à-vis their employer.

3. Create work visas that permit labor market mobility

Lack of labor market mobility is produced through either temporary work visas that tie migrants to a specific employer, or through undocumented status, which restricts labor market participation to informal employment arrangements in the ‘underground’ economy. The lack of labor market mobility reinforces conditions of marginalization as, without access to employment alternatives, migrants are placed in a heightened condition of vulnerability vis-à-vis their employer. This increases the likelihood of substandard wages and the propensity for labor rights violations. Creating access to work visas that would permit labor market mobility is thus key to eliminating the labor rights ‘trap’ created through the inability to seek alternative employment. In conjunction with this strategy, steps should be taken to improve access to vocational training to further facilitate labor market mobility.

4. Provide a process for migrant workers and their families to gain permanent residency, including the legalization of status for those who are undocumented.

Lack of labor market mobility is compounded by lack of access to permanent residency. Without settlement rights, migrant workers are in a permanent state of dislocation, with the constant threat of repatriation/deportation. For those in temporary “guestworker” arrangements, this becomes immanent upon the completion of the employment contract. For those who are undocumented, this remains a daily threat. The lack of residency rights heightens conditions of exploitation experienced in the workplace as fear of repatriation/deportation further reduces the likelihood of registering complaints regarding employer violations of basic labor rights. Lack of residency rights also exacerbates broader conditions of social and economic marginalization, as those without permanent status are unable to access social benefits provided by the state. Thus, like work visas that would allow for labor market mobility, a process to enable access to residency rights should be developed for migrant workers and their families.

5. Work with Mexican and Canadian governments to strengthen the enforcement capacities of the North American Agreement on Labor Cooperation (NAALC).

The principles of non-discrimination and equal treatment of migrants are contained in the North American Agreement on Labor Cooperation, the labor standards side agreement to NAFTA. The agreement includes a commitment to the promotion of guiding principles in the area of labor standards, subject to each country's domestic laws, including providing migrant workers with the same legal protection as nationals in terms of working conditions. The capacities of the NAALC to protect migrant workers in the NAFTA region are limited, however, as the agency responsible for administering the NAALC – the North American Commission for Labor Cooperation - has very little power to ensure compliance, deferring the role of labor law enforcement to each respective nation-state. In the case of migrant workers, this simply reinforces the lack of labor rights regulation discussed above. Enhancing the enforcement capacities of the NAALC would thereby constitute an important step in improving the labor rights protections for migrant workers.

6. Work with international bodies to adopt and implement UN and ILO conventions concerning migrant workers

There are three major international conventions that pertain to the rights of migrant workers. At the heart of each of the conventions is the aim of eliminating discrimination against migrant workers, promoting equal treatment with nationals, and ensuring coverage by minimum labor standards:

- UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- International Labour Organization Convention Concerning Migration for Employment (No. 97, Revised), 1949
- International Labour Organization Convention Concerning Migrant Workers (No. 143) (Supplementary Provisions), 1975

The United Nations convention was adopted in 1990 and entered into force in 2003. The convention aims to eliminate the exploitation of migrant workers through a set of international standards that address the treatment of documented and undocumented migrants and that define obligations and responsibilities of sending and receiving states. In particular, the convention stipulates that migrant workers should receive equal treatment to nationals in terms of pay, conditions of work, and terms of employment. ILO Convention 97 aims to ensure assistance to migrants in the employment context. It calls on ratifying states to provide accurate employment information to other member states, to eliminate misleading information, and to assist migrants in the migration-for-employment process. It also requires ratifying states to ensure that migrants receive treatment equal to nationals regarding laws and regulations that shape working conditions, and that they do not experience discrimination on the bases of nationality, race, religion or sex. Finally, ILO Convention 143 aims to both alleviate abusive situations in employment and to promote equality of opportunity and treatment. States that ratify the convention are expected to respect the human rights of migrant workers and to promote equal

treatment to nationals in employment conditions, social security, and trade union and cultural rights.

While international labor standards such as those developed through the ILO lack effective enforcement mechanisms, these conventions nonetheless serve a normative and educative role, providing principles against which labor rights implementation strategies can be measured. As these conventions have yet to be adopted by the United States, their ratification and implementation would constitute another important step in a social justice agenda for migrant workers.

Moving beyond the specific strategies presented in this chapter, a broader agenda for social justice for migrant workers would include strategies to more fully promote social inclusion by facilitating involvement in political decision-making processes, increasing access to affordable housing, and combating racism in all forms and at all levels of society. In effect, this means developing a human rights-based approach that promotes processes for permanent settlement, family unity, and quality of life. As a beginning point, social policy models are needed whereby migrant workers are ensured equal rights and equal treatment as nationals and where membership in a national community is eliminated as a means through which to intensify labor exploitation.

INTERNET RESOURCES

- Global Forum on Migration and Development: www.gfmd-fmmd.org
- International Labour Organization: www.ilo.org
- International Organization for Migration: www.iom.int
- Human Rights Watch: www.hrw.org
- Migration Policy Institute: www.migrationpolicy.org
- North American Commission for Labor Cooperation: www.naalc.org
- Southern Poverty Law Center Immigrant Justice Project: www.splcenter.org/legal/ijp.jsp
- United Nations: www.un.org

Key Resources

Bacon, David. 2004. *The Children of NAFTA: Labor Wars on the U.S./Mexico Border*. Berkeley: University of California Press.

Bensusan, Graciela. 2002. "NAFTA and Labor: Impacts and Outlooks." Pp. 243-64 in *NAFTA in the New Millennium*, edited by E.J. Chambers and P.H. Smith. La Jolla, CA: Centre for U.S.-Mexican Studies.

Castles, Stephen. 2004. "Why Migration Policies Fail." *Ethnic and Racial Studies* 27(2): 205-27.

Commission for Labor Cooperation. 2002. *Protection of Migrant Agricultural Workers in Canada, Mexico and the United States*. Washington, D.C.: Commission for Labor Cooperation.

- Engelen, Ewald. 2003. "How to Combine Openness and Protection? Citizenship, Migration, and Welfare Regimes." *Politics and Society* 31(4): 503-36.
- Ehrenreich, Barbara, and Arlie Hochschild. 2002. *Global Woman: Nannies, Maids, and Sex Workers in the New Economy*. New York: Metropolitan.
- Gonzalez, Gilbert. 2004. *Guest Workers or Colonized Labor? Mexican Migration to the United States*. Boulder: Paradigm.
- Harris, Nigel. 1995. *The New Untouchables: Immigration and the New World Worker*. London & New York: I.B. Taurus.
- Hollifield, James. 2004. "The Emerging Migration State." *International Migration Review* XXXVIII(3): 885-912.
- International Organization for Migration. 2002. *International Comparative Study of Migration Legislation and Practice*. Geneva: IOM.
- 2003. "Facts and Figures on International Migration." *Migration Policy Issues*, No. 2, March.
- International Labour Conference. 2004. "Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy." *Report on the Committee on Migrant Workers*. Geneva: ILO.
- Mann, Geoff. 2001. "The State, Race, and 'Wage Slavery' in the Forest Sector of the Pacific North-West United States." *Journal of Peasant Studies* 29(1): 61-88.
- Martin, Philip. 2002. "Mexican Workers and U.S. Agriculture: The Revolving Door." *International Migration Review* 36(4): 1124-42.
- Mattila, Heikki. 2000. "Protection of Migrants' Human Rights: Principles and Practice." *International Migration* 38(6): 53-71.
- Morris, Lydia. 1994. *Dangerous Classes: The Underclass and Social Citizenship*. London and New York: Routledge.
- North American Congress on Latin America. 2007. "Of Migrants and Minutemen: Inside the Immigration Battle." *NACLA Report on the Americas* 40(3).
- Organisation for Economic Co-operation and Development. 2004. *Trends in International Migration*. 2003 Edition. Paris: OECD
- 2005. *Trends in International Migration*. 2004 edition. Paris: OECD.

- Pastor, Manuel, and Susan Alva. 2004. "Guest Workers and the New Transnationalism: Possibilities and Realities in an Age of Repression". *Social Justice* 34(1-2): 92-112.
- Reed, Augusta, and Charlotte Yates. 2004. "The Limitations to Global Labour Standards: The ILO Declaration on Fundamental Principles and Rights at Work." Pp. 243-56 in *The Auto Pact: Investment, Labour, and the WTO*, edited by M. Irish. London: Kluwer Law International.
- Sassen, Saskia. 2002. "Deconstructing Labor Demand in Today's Advanced Economies: Implications for Low-Wage Employment." Pp. 73-94 in *Laboring Below the Line: The New Ethnography of Poverty, Low-Wage Work, and Survival in the Global Economy*, edited by F. Munger. New York: Russell Sage.
- Southern Poverty Law Center. 2007. *Close to Slavery: Guestworker Programs in the United States*. Montgomery, AL: SPLC.
- Stephen, Lynn. 2001. "Globalization, the State, and the Creation of Flexible Indigenous Workers: Mixtec Farmworkers in Oregon." *Urban Anthropology & Studies of Cultural Systems & World Economic Development* 30(2-3): 189-214.
- Taran, Patrick. 2001. "Human Rights of Migrants: Challenges of the New Decade." *International Migration* 38(6): 7-47.
- United Nations. 2004. *World Economic and Social Survey 2004, International Migration*. New York: United Nations.
- Vogul, Richard. 2006. "Undocumented Workers and the U.S. Informal Economy." *Monthly Review* 58(3): 29-39.
- Wilson, Tamar Diana. 2000. "Anti-immigrant Sentiment and the Problem of Reproduction/Maintenance in Mexican Immigration to the United States." *Critique of Anthropology* 20(2): 191-213.

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