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## **Migrants' Human Rights**

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*Annotation:* In the last decade, protection of the human rights of migrants has been increasingly recognized and has risen up the international agenda. In order to fulfill their legal obligations at the international and national levels, governments in many regions have acknowledged the need to integrate the health needs and vulnerabilities of migrants into their national plans, policies and strategies. Migrants' human rights and development presents a unique collection of important accessible and sometimes provocative writing in the area of migration with a particular focus on the human rights and development aspect of modern migration trends and responses. This article is about law evolution and its application in the migration field. It is inseparable from the economic and political contexts where they exist. The article underlies actuality of international human rights and labor standards.

*Keywords:* Migrants, human rights, effects of migration.

## **Мигранты и права человека**

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*Аннотация:* Последнее десятилетие защита прав мигрантов вызывает все больший интерес международной общественности. Чтобы выполнить свои правовые обязательства на международном и национальном уровнях, правительства многих стран признали необходимость объединения потребности в медицинской помощи и незащитности мигрантов в национальных доктринах, политике и стратегии. В статье раскрывается мысль, что эволюция права и его применения в сфере миграции неотделимы от экономического и политического контекста, в котором они существуют. В основе статьи лежит предположение о возможности применения международных норм прав человека и трудовых стандартов.

*Ключевые слова:* Мигранты, права человека, последствия миграции.

*Introduction:* Who are migrants? It is definitely not easy moving to a new country. Many people do it, and many countries have been built on the back of migrants, but that doesn't mean that changing countries is a walk in the park. The

stress of the move and adjustment to the new country, as well as the loss of so much from the old, can lead to anxiety and depression and other psychological problems amongst migrant.

Migrants are a particularly vulnerable population, but they have been often invisible on the international human rights agenda. No single institution has a mandate that is comparable to UNHCR's protection role for refugees, and perhaps most national migration policy making takes place outside a human rights framework.

Worldwide, there is an estimated 191 million migrants; The last 50 years has seen an almost doubling of migration; 115 million migrants live in developed countries; 20% (approximately 38 million) live in the US alone, making up 13% of its population; 33% of all migrants live in Europe; 75% live in just 28 countries; Women constitute approximately half of all migrants at around 95 million; There were 36 million migrations (an average of approximately 2.4 million per year); 33 million wound up in industrialized countries; 75% of the increases occurred in just 17 countries; migration decreased in 72 countries in the same period; many having moved for a variety of reasons in which the search for protection and the search for opportunity are inextricably entwined.

The four states with the largest numbers of migrants (California, Hawaii, New Mexico and Texas) have already become "majority/minority" (less than 50 percent White) states. In the past 2 decades, a growing number of states with no previous immigrant population have seen very high rates of new migration. Southern states have experienced the most dramatic change in migrant population compared to other states.

Why Do People Migrate? People emigrate from one country to another for a variety of complex reasons. Some are forced to move, due to conflict or to escape persecution and prejudices, while others may voluntarily migrate. Although such a

move may be necessary, it can be quite traumatic on top of the challenges experienced so far.

There may be the additional pressure to earn enough to live (in a more expensive-to-live-in country) and send back meager savings. An economic migrant, a person searching for work or better opportunities, will be stepping into the unknown an exciting prospect if the person is already well-to-do, or daunting at least, if out of desperation. As Inter Press Service (IPS) reported, the European Union has recently acknowledged a concern about migration that has not received much media attention. That is, a large number of people are attempting to leave the devastation of their own country caused by the current form of globalization and other political and economic policies, which, as well as creating winners, is creating a large number of losers, and increasing inequality. Tackling poverty and addressing issues of development and opportunity are important aspects of tackling this type of immigration.

Migrants are often to be found working in jobs that are dirty, dangerous and degrading. While for some migration is a positive and empowering experience, far too many migrants have to endure human rights violations, discrimination, and exploitation.

Effects of migration. Migration can have positive and negative impacts on both the host (recipient) country, and the original country. One of the first stressful steps in the experience for new migrants to cope with is the loss of family and friends. This can cause an empty longing that is hard to relieve and that can lead to depression. In families, it is often those who were the least enthusiastic about the move that feel the most pain, and the sense of powerless over their life can exacerbate their grief. Telephone and internet calls can lessen the pain, but they cannot replicate the touch and smell of loved ones. Language barriers frequently add to the difficulties of new migrants.

Culture: Cultural differences can have a huge impact on immigrants. They might feel that they stand out uncomfortably because of the way they dress, or be horrified

by the way their children want to dress. Immigrants might not have easy access to an appropriate place of worship. They might have to go to work during important holy days and festivals. They might find that the things they did in their homeland, such as circumcising children, growing tobacco or cannabis, slaughtering a sheep in the garden, drinking alcohol, or having more than one wife, are taboo or illegal in the new country, and this creates confusion and mental stress.

**Family and friends:** Those migrants who are lucky enough to have family or friends in the new country often move in with them until they can arrange their own accommodation. It can be difficult to rent a property without a job, credit rating, and a local rental reference, and new immigrants from poorer countries often cannot afford rent, bonds, and furnishing; so cramming the family into a relative spare bedroom, or sleeping everyone on the floor or sofa in the living room, is a common practice. Although living with experienced settlers in many ways helps migrants adjust to a new country, sharing small spaces, living out of suitcases, and feeling as if they are imposing on others, can add to stress and affect self-esteem.

**Language:** Even those people, who have spoken English as a first language, can often struggle to have their accent understood, and vice versa. Language problems can create obstacles to social and professional integration, increase stress, and reduce self-esteem, creating more social isolation.

**Food:** The loss of familiar foods can be difficult for many immigrants, particularly those who have had little experience with foods from other cultures. Luckily, many supermarkets and specialty shops increasingly have foodstuff from other countries, although at inflated prices. Even so, immigrants typically miss the local markets and fresh produce of their homeland.

**Work:** One of the most difficult aspects of immigration is finding work. Qualifications are too often not transferable, so people with high level qualifications and years of experience at management and professional levels, can find themselves being forced to clean toilets or drive taxis to feed their families.

**Age:** Older people tend to find it harder to learn a new language and are generally less flexible in their ways than their younger counterparts. If an elderly immigrant has retired, or is not able or willing to get a job, they will tend to stay more isolated and interact less with the local population. Non-working mothers can have the same difficulties.

**Children:** Children pick up the lifestyles and languages of their peers relatively quickly, but for them it can feel like living between two worlds: worlds with different languages, cultures and values. With their superior language skills, children are often called on to be interpreters for their elders in all sorts of situations, which can confuse roles and add to stress. Having to tell a doctor the details of a parental health concern is not easy for a young person.

**Psychological Impact:** All of this can take its toll on new immigrants and their families, creating symptoms of depression, anxiety, stress, or other mental health issues. If one family member develops psychological problems, their problems can impact the whole family. Children are particularly vulnerable in this regard.

**Stigma:** In many cultures there is a great deal of stigma attached to mental health problems. In some it mixes with spiritual beliefs and believed to be a sign of evil in the sufferer. Mental Health professionals are uncommon in many cultures, so immigrants from those communities are unlikely to seek help.

Immigration can also attract criminal elements, from trafficking in drugs and people to other forms of crime and corruption.

**Human rights.** Human rights are moral principles or norms that describe certain standards of human behavior, and are regularly protected as legal rights in national and international law. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being," and which are "inherent in all human beings" regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian

in the sense of being the same for everyone. They require empathy and the rule of law and impose an obligation on persons to respect the human rights of others. They should not be taken away except as a result of due process based on specific circumstances, and require freedom from unlawful imprisonment, torture, and execution.

The doctrine of human rights has been highly influential within international law, global and regional institutions. Actions by states and non-governmental organizations form a basis of public policy worldwide. The idea of human rights suggests that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." The strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day. The precise meaning of the term right is controversial and is the subject of continued philosophical debate; while there is consensus that human rights encompasses a wide variety of rights such as the right to a fair trial, protection against enslavement, prohibition of genocide, free speech, or a right to education, there is disagreement about which of these particular rights should be included within the general framework of human rights; some thinkers suggest that human rights should be a minimum requirement to avoid the worst-case abuses, while others see it as a higher standard.

Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the atrocities of The Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly in 1948. Ancient peoples did not have the same modern-day conception of universal human rights. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval natural law tradition that became prominent during the Enlightenment with such philosophers as John Locke, Francis Hutcheson, and Jean-Jacques

Burlamaqui, and which featured prominently in the political discourse of the American Revolution and the French Revolution. From this foundation, the modern human rights arguments emerged over the latter half of the twentieth century, possibly as a reaction to slavery, torture, genocide, and war crimes, as a realization of inherent human vulnerability and as being a precondition for the possibility of a just society.

A human rights approach to migration. Yet, migrants contribute to economic growth and human development in both home and host countries and enrich societies through cultural diversity, fostering understanding and respect among peoples, cultures and societies. Migration is also an important means for migrants and their families to improve life conditions and realize their human rights.

A human rights approach to migration places the migrant at the center of migration policies and management, and pays particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national action plans and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia.

Migrants are a particularly vulnerable population, but they have been low – often invisible – on the international human rights agenda. No single institution has a mandate that is comparable to UNHCR's protection role for refugees, and much – perhaps most – national migration policy making takes place outside a human rights framework.

A migrant's human rights are largely defined by the migration "category" to which he or she belongs, and by the reasons underlying that migration. At one end of the human rights/migration spectrum are voluntary migrants, including migrant workers and other economic migrants. At the other end, more than 10 million refugees are forced to leave their countries to escape persecution. Victims of trafficking occupy an intermediate point on the spectrum. Both they and refugees

have special rights protections in international law. In the case of refugees, these protections have become a separate and well-established protection regime.

Voluntary migrants, who constitute most of the world's estimated 185 million migrants, are protected under general principles of international human rights law, and increasingly under the UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW), which recently entered into force. In 2005, the number of international migrants was between 185 and 192 million. This represents approximately three percent of the world population, comparable to the population of Brazil. Nearly all countries are concerned by migration, whether as sending, transit, or receiving countries, or as a combination of these. International migration has become an intrinsic feature of globalization.

"It is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of millions of people, and affects countries of origin, transit and destination. We need to understand better the causes of international flows of people and their complex interrelationship with development." United Nations Secretary General, Kofi Annan, from his report on strengthening the Organization, 9 November 2002.

The United Nations Convention constitutes a comprehensive international treaty regarding the protection of migrant workers' rights. It emphasizes the connection between migration and human rights, which is increasingly becoming a crucial policy topic worldwide. The Convention aims at protecting migrant workers and members of their families; its existence sets a moral standard, and serves as a guide and stimulus for the promotion of migrant rights in each country.

In the Preamble, the Convention recalls conventions by International Labor Organization on migrant workers: Migration for Employment Convention (Revised), 1949, Migrant Workers (Supplementary Provisions) Convention, 1975 and on forced labor; Forced Labor Convention and Abolition of Forced Labor Convention as well as international human rights treaties including Convention against Discrimination in

Education. The primary objective of the Convention is to foster respect for migrants' human rights. Migrants are not only workers, they are also human beings. The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment, and the same working conditions for migrants and nationals. The Convention innovates because it relies on the fundamental notion that all migrants should have access to a minimum degree of protection. The Convention recognizes that legal migrants have the legitimacy to claim more rights than undocumented migrants, but it stresses that undocumented migrants must see their fundamental human rights respected, like all human beings.

In the meantime, the Convention proposes that actions be taken to eradicate clandestine movements, notably through the fight against misleading information inciting people to migrate irregularly, and through sanctions against traffickers and employers of undocumented migrants.

Article 7 of this Convention protects the rights of migrant workers and their families regardless of "sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status". This Convention is also recalled by the Convention on the Rights of Persons with Disabilities at the Preamble.

The Convention required a minimum of 20 ratifications before it could enter into force. When El Salvador and Guatemala ratified it on 14 March 2003, this threshold was reached.

As of 2014, the following 47 states have ratified the Convention: Albania, Argentina, Algeria, Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guyana, Guinea, Honduras, Indonesia, Jamaica, Kyrgyzstan, Lesotho, Libya, Mali, Mauritania, Mexico, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda,

Senegal, Seychelles, Sri Lanka, Saint Vincent and the Grenadines, Syria, Tajikistan, Turkey, Uganda and Uruguay.

In addition, several countries have signed the Convention but not yet ratified it. (This means that their government has expressed the intention of adhering to the Convention but is not yet bound to do so at international law.) These countries are: Armenia, Benin, Cambodia, Cameroon, Chad Comoros, Republic of the Congo, Gabon, Guinea-Bissau, Haiti, Liberia, Madagascar, Palau, Serbia and Montenegro (now applies to Serbia and Montenegro), Sierra Leone, Togo, and Venezuela. So far, countries that have ratified the Convention are primarily countries of origin of migrants (such as Mexico, Morocco and the Philippines). For these countries, the Convention is an important vehicle to protect their citizens living abroad. In the Philippines, for example, ratification of the Convention took place in a context characterized by several cases of Filipino workers being mistreated abroad: such cases hurt the Filipino population and prompted the ratification of the Convention. However, these countries are also transit and destination countries, and the Convention delineates their responsibility to protect the rights of migrants on their territory. No migrant-receiving state in Western Europe or North America has ratified the Convention. Other important receiving countries, such as Australia, Arab states of the Persian Gulf, India and South Africa have not ratified the Convention.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an United Nations multilateral treaty governing the protection of migrant workers and families. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003. The Committee on Migrant Workers (CMW) monitors implementation of the convention, and is one of the seven UN-linked human rights treaty bodies.

High Commissioner for Human Rights Navi Pillay has made promoting and protecting the human rights of all migrants a priority of the work of her office

(OHCHR).The protection of migrants is an urgent and growing human rights challenge.

Human rights violations against migrants, including denial of access to fundamental economic and social rights such as the right to education or the right to health, are often closely linked to discriminatory laws and practice, and to deep-seated attitudes of prejudice and xenophobia against migrants.

Conclusion: Immigration human rights treaties, regimes, and discourse help construct a new vision for the treatment of migrants and their families. While the direct influence of such treaties on state practice through ratification and domestic implementation may be limited, law works on populations in many different ways. This paper emphasizes the alternate influences of human rights treaties through agenda setting for regional consultative processes, the dissemination and distribution of best practices, and the creation of a universalizing, humanizing discourse that can counter moral disengagement from migrants.

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