

THE EMPOWERMENT OF MIGRANT WORKERS IN A PRECARIOUS SITUATION

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Migrants in a precarious situation—including undocumented migrants and temporary migrant workers—generally occupy the lowest-paid jobs in any society. Their rights are often trampled by those who profit from “cheap labor,” such as exploitative employers, greedy landlords, unethical recruiters, loan sharks, and smugglers. To reduce the precarity that fuels exploitation, migrants need to be empowered to defend their own rights. Mechanisms exist that have benefited other exploited minorities: unionization, inspections, and regularization of status. In the UN Global Compact for Safe, Orderly, and Regular Migration, States adopted a compendium of measures that now must be implemented to ensure that migrants’ rights are effectively protected.

Context

Migrants cross borders to create a better life for themselves and provide a future for their families. Some flee violence and discrimination: they may be recognized as refugees. Others flee destitution and lack of opportunities. They come from all backgrounds, and have diverse motivations and various skill sets.

Many migrants find themselves treated well in their countries of residence. Most often, they are part of the various categories of privileged migrants, those with education, money, social capital, transferable skills in high demand, or with a combination of the above.

In contrast, migrants in a precarious situation include undocumented migrants (i.e., those who have lost their legal status or never had such status) and temporary migrant workers with a precarious administrative status (such as seasonal workers or those working under a single-employer sponsorship program or Kafala system) (CEACR 2016). In both cases, they often occupy the lowest-paid jobs in society, and they will not have access to permanent residence or citizenship. It is these migrants that this policy brief will address.

All are survivors. They do not lack agency. Many encounter significant risks to find work internationally and support their families. They make life-altering decisions on a regular basis and are also part of underground support networks (Jinnah 2020). They show courage, determination, and imagination.

But their social and legal condition in the host country is marked by precarity. What they fear most is being returned to their country of origin empty-handed. Failure to support their families and to meet all the social expectations they are burdened with is

unbearable. Most migrants will go to great lengths to avoid being deported, including accepting deplorable working conditions, long hours, double shifts, delayed wages, unsafe working environments, or other conditions that would be unacceptable for citizens.

Precarious migrants rarely complain, protest, contest, organize, unionize, or demonstrate. Speaking up is rarely an option, for fear of retaliation. Sticking their neck out may mean being detected by the authorities as undocumented, or identified by their employer as a troublemaker, the consequence of which is usually termination of their employment, which may be followed by detention and deportation. Repression creates fear, which is part of employers’ and States’ strategy for keeping wages low. Migrants’ most frequent response is to stay under the radar and, whatever happens, discreetly “move on” and try to find another, more reliable employer. All persons in authority who are in contact with migrants know there will rarely be consequences to exploitation, and many do exploit migrants’ enforced silence: employers, landlords, recruiters, and smugglers.

There are multiple challenges to addressing the precariousness of migrant workers.

Migrant workers’ marginalization is difficult to overcome unless they can advocate for themselves without risk (Vettori 2017). Apart from precluding the enforcement of rights, migrants’ inability to publicly advocate for themselves in safety precludes them from contradicting erroneous and stereotypical assumptions about them, most notably that migrants steal jobs from citizens, are a threat to public health, or increase criminality and insecurity.

However, this precariousness is not accidental: precarious labor markets are created by the toxic combination of labor policies (when enforcement against exploitative employers is lacking) (Qatar NHRC 2018; Crépeau 2014a) and immigration policies (when they are intent on punishing precarious migrants rather than their exploiters) (ILO 2018; CEACR 2019). After three decades of globalization, many industrial sectors have shifted their center of gravity from the Global North to the Global South in order to benefit from lower labor costs. However, some sectors—such as agriculture, care, construction, extraction, fisheries, and hospitality—cannot be relocated. In such markets, labor conditions have been shifted in the opposite direction, from the Global South to the Global North.

Governments have therefore created or tolerated policy frameworks and administrative practices that benefit their own labor markets, without providing appropriate human and labor rights protections for migrant workers.

States have also failed to properly reduce underground labor markets in these same economic sectors. Migrants go where jobs are available. Undocumented migrants respond to the loud call of millions of employers across the globe who offer jobs in exploitative labor conditions and at very low wages, in order to lower their labor costs. They also find operators who will provide them with mobility solutions that States are refusing to provide, thus increasing their debt load and forcing them to rely on criminalized operations of migrant smuggling which push them deeper underground and silence them. States proclaim they want to stop undocumented migration, yet this cannot be achieved unless they significantly reduce the pull factor constituted by such underground labor markets. Suddenly stopping undocumented migration would render hundreds of thousands of businesses uncompetitive and bankrupt overnight. Blaming the migrants rather than the economic operators who prey on them is another way to increase migrants' precariousness and make them more pliable to exploitation (Crépeau 2014b).

Precariousness, then, is perpetuated through political and economic structures created by the state and negative stereotypes of migrants (South Africa 2017). Complaint mechanisms with investigative powers are ineffectual for migrants: protection remains a mirage when migrants cannot, and do not, actually complain, for fear of detection, detention, and deportation if undocumented, or fear of being fired or labeled as troublemakers and blacklisted from future contracts if on temporary work permits.

Since migrants generally do not have the right to vote, their concerns have very little impact on politicians, who have no electoral incentive to be responsive. Politicians can ignore migrants, especially if approaching migration policy from the migrants' perspective might draw a negative reaction from those who can vote.

Policies on migration are mostly made by non-migrants (the

politicians), for the benefit of non-migrants (the electorate), with little consultation with migrants, and especially not the undocumented or temporary. Because migrants' voices are absent from public policy debates, the resulting policies are not informed by the experience of those most affected. Such debates are therefore based on stereotypes, threats, and fantasies, as was the case when committees of men made policies about women.

Unless and until migrants gain some electoral traction, most politicians will not pay much attention. Although some cities have started to provide voting rights to all residents, and not only nationals (Harkins 2016), this practice will not be generalized anytime soon.

What is currently needed is to make the voice of these migrant workers heard in other ways.

Already, many lawyers, nongovernmental organizations, and churches are supporting migrants when fighting for their rights. When a case goes to court, tribunals often side with them, since courts will more often base their decisions on the logic and coherence of the law and are less swayed by electoral calculations or political preconceptions.

However, to make the voice of these migrant workers heard, several techniques, which have been used in the past for other marginalized groups, also need to be activated. These mechanisms already exist. But they are too often inaccessible to migrants in a precarious situation.

Unionization

Migrants in a precarious situation today are in the same economic niche as the 19th-century European industrial *lumpenproletariat* for whom labor unions were initially created. As they seek to counter the power imbalances between employers and employees, trade unions empower workers, protect their interests, and allow for collective bargaining.

In 1998, the International Labour Organization (ILO) adopted the *Declaration on Fundamental Principles and Rights at Work*. According to the Declaration, "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions." The first of the four principles mentioned is "freedom of association and the effective recognition of the right to collective bargaining" (ILO 1998).

In many countries, unions are not currently in favor (CEACR 2016). Most employers try to avoid unionization. Certain jurisdictions prohibit unionization, in law or in practice. Meanwhile, the labor market is changing, becoming more fluid and less structured. Considering the current deunionization trend in many countries and the growing number of workers who are in need of better social protection (for example, in the gig

economy), forms of labor associations need to be put in place in order to protect the rights of all workers, including migrants in precarious situations.

The Global Compact for Migration (UNGA 2018) specifically acknowledges the role of unions seven times, and calls for “establishing partnerships with all relevant stakeholders, including employers, migrant workers organizations and trade unions” (paragraph 22.d) to ensure migrants’ rights are adequately protected.

Through the Global Compact, States also agreed to “providing migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions” (paragraph 22.i).

Unions remain vital to migrant workers. Without any political clout, migrants would greatly benefit from unions’ support for the respect of their rights: States should facilitate unionization instead of hampering it.

Firewalls

The increasing political conflation of undocumented migration with criminality has resulted in migrants being driven underground in many ways (CMW 2016). Increasingly, in many Global North countries, immigration enforcement officials try to arrest undocumented migrants (with a view to their detention and deportation) where basic public services are provided and they require those public service providers to report their clients’ immigration status to immigration authorities.

Undocumented migrants therefore fear detection and deportation if accessing such services. Migrants might not register their children in schools if school officials report their immigration status. Migrants might not seek health care or seek it only very late if health care officials can denounce them. Migrants who face exploitation in their workplace will not call labor inspectors if such inspectors’ first reflex is to check their immigration papers. Migrants who are victims of family violence will not call social workers if this might lead to their deportation. Migrants who witness or suffer violence or crime may not come forward if the police might, in the process, arrest and deport them based on their undocumented migration status.

Immigration enforcement authorities often enlist other public service professionals such as labor inspectors, police officers, and school authorities as auxiliaries in the search for undocumented migrants (Martin and Miller 2000). Some private service operators, such as bankers and landlords, are also required to disclose their clients’ immigration status to immigration enforcement authorities.

Creating “firewalls” between immigration enforcement and

public services has thus been recommended by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe in its *General Policy Recommendation N°16 on safeguarding irregularly present migrants from discrimination*. Principles of access to public services without fear have also been endorsed by States in the Global Compact for Migration. Although the term “firewall” was considered too controversial and was deleted after appearing in the initial draft of the compact, States agreed to “ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services” (paragraph 31) and to “ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery” (paragraph 31.b).

Many examples of such firewalls exist around the world. Some cities have prohibited their local police force from requesting immigration papers from persons who are being ticketed or from sharing immigration status information with immigration enforcement about persons who are being detained (CEACR 2016; CESCR 2016). Hospitals and schools have frequently refused to ask about the immigration status of their patients or students or to communicate that information to immigration officials. In all cases, the firewall was used to protect the mission of the public service from harmful interference. Public health is not served when migrants do not go to hospital for fear of arrest and deportation. The right to education is at stake when parents fear sending their children to school. Public order is threatened when people do not call the police when shots are fired in their neighbor’s apartment or will not testify in the case of a mugging.

Labor Inspections and Health and Safety Inspections

Since complaint mechanisms are inefficient for most migrant workers in a precarious situation, better inspection mechanisms are needed (*Migration for Employment Convention*, Articles 15–17 [ILO 1949]; *Labour Inspection Convention*, No. 81 [ILO 1947]). Almost everywhere, labor inspection services and health and safety inspection services are underfunded and understaffed. They cannot properly regulate labor markets, even for workers who are citizens or permanent residents. For domestic workers and agricultural workers, who work and in many cases live on the property of their employer, labor inspections and health and safety inspections are often excluded by law or absent in practice.

Further, when migrant workers do not speak the local language, labor inspectors often lack resources for interpretation services and will therefore forego meeting migrant workers in person (CEACR 2016).

Moreover, labor inspectors are often mandated to search for undocumented workers and collaborate with immigration enforcement mechanisms. Thus, migrant workers cannot

consider them as allies in their fight for dignified labor conditions (Bachinger et al. 2017).

Implementation of labor law and policies ensuring decent work is a key objective of the Global Compact for Migration. States have committed to strengthening “the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors, ensuring that international human rights and labour law is observed to prevent all forms of exploitation, slavery, servitude, and forced, compulsory or child labour” (paragraph 22.f).

Making labor inspections effective at monitoring the implementation of labor and health and safety standards for all workers, and especially in sectors known to foster labor exploitation, would greatly enhance the protection of the rights of all migrant workers, regardless of status. Ensuring that a firewall exists between labor and health and safety inspection services and immigration enforcement services would also empower migrant workers to call on labor inspectors when rights and applicable standards are violated.

Better enforcement of labor standards would contribute to reducing underground labor markets where exploitation is rife (Hoffmann and Rabe 2014), thus reducing the pull factor for undocumented migration.

Regularization and Change of Status

Changing the narrative about migrants implies ensuring that their voice is heard. The only way to ensure that they can safely speak up and participate in public debates is to provide them with a secure immigration status, a status that will better protect them from exploitation and silencing.

For undocumented migrants, this means having easy access to simple procedures allowing them to obtain a regular status as a migrant worker. Regularizing migrants who have resided for a period of time in a country, thus contributing to the economy and being part of the social fabric, should be a key integration strategy, allowing them to continue to thrive in their host society.

In the Global Compact for Migration, although the term “regularization” was considered too controversial and was deleted after the initial draft (although it curiously reappeared in the final official French translation), States have indeed agreed to “facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population” (paragraph 23.i) and to “develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination,

to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion” (paragraph 23.h).

For temporary migrant workers, this would mean avoiding single-employer work permits and allowing those migrant workers to easily change their employer if labor conditions are unsatisfactory. It should also facilitate the transition between statuses, so that the migrant worker can quickly respond to the needs of employers in the labor market.

The Global Compact for Migration also commits States to “develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law” (paragraph 22.g).

Integration Policies and Practices

Economic and social integration of migrants in their host communities empowers them to dislodge stereotypes by demonstrating to their neighbors and coworkers how much they contribute socially and economically to their host society (UNODC and IFRCRCS 2015).

Integrating migrants is not an automatic process. It requires investments commensurate to the task. In terms of comparison, one might consider the social and fiscal efforts necessary for the urban integration of people from the countryside during the “rural exodus” of the 20th century. States and cities built suburbs, schools, hospitals, transit systems, highways, and so forth. Efforts of similar magnitude are necessary as migration increases to respond to the economic and social needs of host societies.

Another comparison can be made with States’ investment in education. For as much as two decades of individuals’ lifetimes, States invest in them, from day care to university. Then, as adults, these same individuals start working: they create, invent, perform, produce wealth, pay taxes. In contrast, most migrants are young adults, whose education has been paid for by the country of origin. Providing them with integration mechanisms that maximize their social and economic impact in the host society seems the smartest of short-term investments.

Integration policies include standards, programs, and institutions covering a number of issues: language courses, professional training, mentoring, recognition of credentials, anti-hate speech, anti-racism, access to housing, access to schools, access to justice, social security, health coverage, access to employment insurance, and many more. Such integration policies will need to be coordinated over the medium term through strategic planning processes, involving all relevant stakeholders such as cities, social workers, unions, civil society, and migrants themselves (Task Force on Justice 2019).

Indeed, in the Global Compact for Migration, States have committed to “foster inclusive and cohesive societies by empowering migrants to become active members of society and promoting the reciprocal engagement of receiving communities and migrants in the exercise of their rights and obligations towards each other, including observance of national laws and respect for customs of the country of destination. We further commit to strengthen the welfare of all members of societies by minimizing disparities, avoiding polarization and increasing public confidence in policies and institutions related to migration, in line with the acknowledgment that fully integrated migrants are better positioned to contribute to prosperity” (paragraph 32).

States also agreed “to invest in innovative solutions that facilitate mutual recognition of skills, qualifications and competences of migrant workers at all skills levels, and promote demand-driven skills development to optimize the employability of migrants in formal labour markets in countries of destination and in countries of origin upon return, as well as to ensure decent work in labour migration” (paragraph 34).

They have further committed “to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services. We further commit to strengthen migrant-inclusive service delivery systems, notwithstanding that nationals and regular migrants may be entitled to more comprehensive service provision, while ensuring that any differential treatment must be based on law, proportionate, pursue a legitimate aim, in accordance with international human rights law” (paragraph 31). Of particular note, migrants’ access to public services should be offered “regardless of their migration status,” including to undocumented migrants and all temporary migrant workers.

Facilitating Mobility

Following Target 10.7 of the UN Sustainable Development Goals, the Global Compact for Migration’s main message is that of “facilitating mobility”.

In particular, States have committed to “adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration” (paragraph 21).

Ten subparagraphs detail various ways in which this “facilitation” can be achieved, from academic exchanges to family reunification, from humanitarian mobility and disaster relief to skills-matching mechanisms, from international cooperation agreements to consultation with the private sector and other key stakeholders, and from visa facilitation or liberalization to streamlining the recruitment industry.

One particular feature of this mobility facilitation is that it will encourage migrants who cannot find a place in the labor market to leave the country in search of other opportunities, thus reducing undocumented migration. One of the most damaging consequences of the thickening of borders in recent years has been migrants’ fear of not being able to return if they leave the host country, a fear that has led many to overstay their visas and live on the margins of society.

In fact, all the measures described here as empowering migrants are part of the Global Compact’s agenda for facilitating mobility, as they will combine to allow migrants to trust the authorities of host States and speak up to defend their rights and protect their interests.

Conclusion

All in all, the vision proposed by the Global Compact for Migration and agreed to by over three-quarters of the United Nations’ Member States is that of a migrant worker who is generally free to legally cross borders for her own purposes, including studying, reuniting with family, or looking for a job; who can compete in free but regulated labor markets in the host society; who benefits from general equality of treatment with nationals; and who is actively encouraged to become a full and engaged member of the host society.

This vision of a facilitated mobility and basic equality of rights between migrants and citizens—apart from the right to enter and stay in the country, which will remain the national’s prerogative—is also envisioned by the 2030 Agenda on Sustainable Development (UNGA 2015). This leaves less than a decade to make some progress on these objectives.

In summary, the policy goals presented in this brief suggest that States should:

1. Facilitate the unionization of migrant workers in sectors known to be rife with exploitation.
2. Establish “firewalls” between public services and immigration enforcement mechanisms, in order to foster trust between host country authorities and migrant communities.
3. Direct labor and health and safety inspection mechanisms to focus their work in sectors known to be rife with exploitation, and to do so regardless of the immigration status of the migrant workers.
4. Facilitate regularization of status for undocumented workers, access to secure immigration status for all migrant workers, and facilitated processes for change of status for all migrant workers.
5. Invest in integration policies at all levels to ensure that the relationship between migrants and their host society are the most harmonious and productive for all concerned.
6. Facilitate legal cross-border mobility for most migrants, by offering multiple mobility options that will allow

migrants at all levels of the economy to realize their ambitions and allow employers to find the workforce they need.

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