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Promise and Prospects of the UN's Convention on Migrant Workers

By Jennifer Yau
Migration Policy Institute

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International migration is a growing phenomenon, with an estimated 185 million people living outside their country of origin. As more people migrate, concern about their vulnerability to human rights abuses has increased.

Thus, there is a compelling case for a human rights response in international law. The most recent, large-scale effort is the United Nation's International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW).

The convention, in addition to laying out a comprehensive list of rights for migrant workers and their family members, sets guidelines for the promotion of legal and humane migration channels. The ICMW passed unanimously in a 1990 UN General Assembly, opening it to ratification. By signing the convention, countries agree to a monitoring and reporting process once it enters into force.

Support among nations has been tentative. The ICMW received the 20 ratifications necessary for entry into force in 2003, 13 years after its passing. Today, among the 27 current signatories, major receiving states are notably absent.

Overview of Rights in the UN Convention on Migrant Workers

As its title implies, the ICMW addresses the working situation of migrants, entitling them to the same pay, hours, safety considerations, and other workplace conditions that nationals enjoy. However, the convention goes beyond rights in the workplace by enumerating a comprehensive list of protections for migrants' family members, with the goal of acknowledging migrant workers as more than simply economic factors of production. Indicative of this concern are provisions barring the arbitrary expulsion of legal migrant workers.

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The ICMW does not attempt to create new rights. Rather, it explicitly extends to migrants those rights set forth in other UN documents. In enumerating these rights, the convention often invokes a principle of equal treatment between migrant workers and nationals.

This is true across all of the convention's "fundamental" civil and political protections, such as rights to conscience and religion, access to due process before the law, and humane detention. It is also the case for several economic, social, and cultural rights — including remuneration and employment conditions, social security, emergency medical care, and access to education for children.

Types of Human Rights
Life, liberty, and physical integrity of the person These include the rights to be treated with humanity, dignity, and with due process of law, and prohibitions on arbitrary killing and detention,

Another notable feature of the ICMW is its inclusion of the undocumented. Recognizing the risks undocumented migrants face from employers and others, the ICMW aims to ensure that, despite issues of questionable legal status, "Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law." Even absent legal status, undocumented migrants are ensured certain legal rights.

Migrants with proper documentation enjoy a wider range of rights under the convention than the undocumented, including some level of political participation, access to unemployment benefits and public work schemes, access to education and training opportunities, the ability to form unions, and family reunification.

Notably, the ICMW specifically states that the rights it lays out for undocumented workers should not be interpreted as implying their regularization, and it further endorses that states combat illegal migration while strengthening channels for lawful migration.

Barriers to Ratification

While UN instruments extending human rights protections to other specific groups — such as women, children, and victims of trafficking — have seen high ratification rates, the ICMW has not enjoyed the same reception.

Fundamental tensions arising from social attitudes and economic challenges undermine attempts to extend rights to migrant workers through international law. The following have been identified as major impediments to the convention's ratification.

Rights for Undocumented Workers

The ICMW's extension of rights to undocumented workers has been a major ratification obstacle for receiving countries. Some countries have viewed these rights as a way to encourage, or even reward, undocumented migrants' violations of national immigration laws.

In contrast, others view the inclusion of protections for undocumented workers as the proper application of universal human rights to a vulnerable group. Some have posited that extending certain rights, such as those concerning equal work conditions, to undocumented migrant workers would remove the advantage some employers derive from hiring undocumented migrant workers. As a result, employment conditions for nationals and migrant workers would improve, and migrants would be discouraged from entering a country illegally.

Economic Interests

torture, and other cruel treatment.

Civic freedoms
Basic freedoms protected include freedom of thought, opinion and expression; religious belief and practice; movement within a state; and the right to peaceful assembly and association. Other civil rights include the protection of privacy and family life and the right to equality before the law.

Political rights
In addition to freedom of speech and association, international law protects rights to participate in public affairs and to vote in free and fair elections.

Women's rights
Women's rights to equality and to non-discrimination in the enjoyment of human rights are protected. There are also strong prohibitions on gender-specific forms of harassment, violence, and exploitation.

Workers' rights
International law protects workers' rights to associate, organize and bargain collectively, and have a safe and healthy work environment. It also provides guarantees for a living wage and reasonable working hours.

Economic and social rights
International law guarantees the right to education, to work, to the highest attainable standard of physical and mental health, and to an adequate standard of living, including food and housing.

Right to a clean and healthy environment
This right is protected especially in situations where environmental hazards harm other rights, including to life, health, or privacy.

Children's rights
In addition to the general protection of human rights law, children enjoy particular rights, including the right to have decisions made in their best interests.

Access to information
This includes the right to receive information held by public or private bodies where key public interests are at stake or where it is essential to protect other human rights.

Rights of special groups
International law protects the rights of indigenous peoples, linguistic, religious and racial minorities, the disabled, and the elderly. It prohibits discrimination and exploitation of such groups.

While several fundamental rights, such as protection from forced labor, elicit little controversy, receiving states have expressed the desire to retain discretion in limiting others.

One reservation concerns the ICMW's stipulation that several rights delineated for migrant workers should be applied in a manner equal to that of nationals. In this regard, granting rights of equal access to economic, social, and cultural benefits is seen as costly.

For instance, states have been inclined to draw a distinction between nationals and non-nationals regarding certain employment-related protections laid out by the ICMW for legal migrants, such as rights to unemployment benefits and access to public work schemes intended to combat unemployment. States are less likely to protect migrants in accessing education, health, housing, and other social services as well.

Right to justice
This includes the right to redress for victims of human rights abuses, punishment for perpetrators, and access to courts and other procedures.

International law prohibits discrimination
This includes prohibition on grounds including race, color, sex, language, religion, political opinion, national or social origin, birth, or other status.

Source: "Duties Sans Frontières: Human Rights and Global Social Justice" (International Council on Human Rights Policy, 2003)

States are especially reluctant to make these commitments when they are not able to provide adequately for their own nationals. This is a significant tension for developing countries or countries in times of economic hardship.

Proponents of the convention maintain that these protections are universal human rights which recognize migrant workers as more than merely economic inputs. Moreover, some rights, such as access to health services and housing, may be related to basic rights of life and physical security.

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While receiving countries may be wary of implementing the recommendations laid out by the ICMW due to the cost of services and benefits, they may also want to refrain from guaranteeing rights to work and residency, especially during times of economic hardship. Such flexibility has been used by countries in the past as a way to regulate economic downturns without significant political opposition.

Sending countries that have an interest in providing jobs for their nationals overseas are also wary of signing the convention. Signing obligates them to incur costs associated with imposing sanctions on brokers and recruiters operating illegally and assisting citizens abroad through their embassies and consulates.

Relevance to Migration Today

Some commentators have noted the dramatic changes that have taken place since the ICMW's conception in the early 1970s and its drafting in the 1980s. For instance, at the time of the convention's drafting, states were much more actively involved with the migration of workers, with recruitment being almost exclusively within the state's domain.

Requirements such as the obligation of sending states to give pre-departure orientation to its migrant workers going abroad are much less relevant today. Since then, migration has been facilitated more through private actors and migrants' own networks, thus eroding the ability of states to implement the full range of recommendations outlined in the ICMW.

Administrative Burden

The significant administrative responsibilities of implementation would involve a wide range of state agencies and challenge the resources of countries, for example those in formerly communist Eastern Europe, that have only recently established measures for managing migration.

Even wealthy countries with highly developed administrative capacities have challenges keeping up with existing requirements of their immigration systems, as evidenced by the accumulated backlogs in processing applications in the US and UK, for example.

Some countries, such as the US, have claimed that the level of rights outlined in the convention are equaled or surpassed by existing national laws. In such cases, the requirements for periodic reporting are seen as an additional drain on resources with no additional benefit to migrants.

Conclusion

Although the range of rights afforded to migrant workers in the ICMW has generated controversy ever since its conception, some view the current economic and political climates as an added impediment to ratification. In several receiving countries, anti-immigrant sentiments have increased.

Europe, for instance, has received thousands of migrant workers who are no longer temporary laborers, but permanent ethnic minorities. The unease that natives have felt among a rising trend of culturally distinct people has been coupled with periods of increased unemployment and heavy demands on social programs.

Moreover, the ICMW only has weak provisions for making states accountable. Although the convention provides a mediation mechanism for complaints filed by individuals and states, ratifying governments are not required to accept this provision — and none have elected to do so.

The principles promoted through the convention have nevertheless had an impact in specific countries and regions. Italy, for example, drew upon them in drafting national laws in 1998. In 2002, both the European Parliament and the General Assembly of the Organization of American States urged member countries to ratify the convention.

As acceptance of rights for migrant workers IS conditional on the political will within a state, these developments are hopeful signs.

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MPI • 1400 16th St. NW, Suite 300 • Washington, DC 20036
ph: (001) 202-266-1940 • fax: (001) 202-266-1900
source@migrationpolicy.org