Asia Research Institute

Working Paper Series

No. 58

Economic Migration and the Transnationalisation of the Rights of Foreign Workers – A Concept Note

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February 2006

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Economic Migration and the Transnationalisation of the Rights of Foreign Workers – A Concept Note[1]

Nicola Piper

Introduction

Over the last decade and a half, international migration has become an increasingly recognized feature of contemporary social and economic life in countries across the world (ILO 2004; IOM 2004; GCIM 2005). Manifestations of positive and negative implications as well as opportunities for the overlapping sets and subsets of stakeholders have drawn the attention of both researchers and policymakers. Two global reports (*World Commission on the Social Dimension of Globalization*, and *Global Commission on Human Security*) have placed migration issues firmly among their recommendations for a global policy agenda [2]. Most recently, the Global Commission on International Migration issued its final report in October 2005 which places governance and human rights dimensions at the centre of the migration debate. Prior to these commissions, the UN Special Rapporteurship on the Human Rights of Migrants was established in 1999, and in 2004 the ILO devoted its annual congress to the issue of migrant labour (its final Plan of Action advocated a rights-based approach to migration). The issue of how to deal with cross-border migration to maximize positive outcomes for all has thus gained major attention by institutions involved in global policy making, and the issue of migrant's rights has become a major component of the global policy debate.

The subject of migrants' rights typically conjures up a legalistic understanding as it relates to international human rights law. What we can broadly observe regarding the legal situation of migrants is that there are serious protection gaps, largely related to changing migration patterns and the dominance of certain types of migrants who have emerged as particularly vulnerable (Piper and Satterthwaite forthcoming; Cholewinski forthcoming). On the whole, migrant specific

[2] This was not the case throughout the 1990s when international migration was invisible on the global policy agenda. No UN agency had migrants or migration processes as priorities, not even the ILO (Newland 2005).

rights have been described as among, if not *the,* least clear and enforced group of human rights targeting marginalized groups such as refugees, women, and children[3]. The lack of recognition of migrants' rights in practice means migrants have little real access to rights which is largely related to political and cultural bias against foreign workers (Gosh 2003). Another major reason, however, is the absence of a social movement capable of supporting the rights of all migrants, legal and undocumented, and the lack of advocacy in the field of migration policy (Thouez 2005).

In this paper, I attempt to contribute to the debate on migrants' human rights by focusing not only on normative and legal aspects of international human rights law, but also on the issue of political participation and empowerment of migrant workers. Political participation points to the importance of institutions or organisations through which to channel advocacy. In the realm of work, it is the labour movement through trade unions which has historically constituted an important institutional entity for the representation of workers' interests. The main problem for foreign workers, however, is their status as non-citizens, and trade unions historically had a rather ambivalent stance vis-à-vis migrant workers (Kahmann 2002). In addition, many of today's labour migrants work on short-term contracts, are undocumented and tend to be concentrated in the informal sectors of the economy. These features pose a specific challenge to labour union organising. The feminization of migration and women's position in mainly informal sector jobs is another area that trade unions have long neglected or found impossible to deal with. In this way, migrant labour organizing, or rather the lack thereof, points to serious limitations of conventional trade unionism in addressing specific vulnerabilities of this type of worker.

It is alternative organizations such as migrant worker associations or NGOs working on migrant issues that have taken on an important role as argued and documented by a number of scholars (Ford 2004; Piper 2004 and 2005; Wee and Sim 2005). There is growing evidence of civil society activism locally (Taran 2000) and the forming of intra-regional networks to address and promote a migrants' rights agenda in Asia and elsewhere (Piper 2003, 2004, 2005). Major international human rights NGOs such as Human Rights Watch and Amnesty International have

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[3] As in the 1951 Geneva Refugee Convention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

also begun to engage with migrant worker issues.[4] In addition, the last few years have also witnessed encouraging developments in trade union action.[5] However, in order to achieve real success, it has also been argued that the various types of organizations need to cooperate or collaborate (Gallin 2000).

By introducing a social movement or activist perspective into the academic debate on the human rights of migrants – a debate which is to date largely dominated by legal scholars - I follow Johnston (2001) in taking a sociological or social scientific perspective on rights. That is to say, rights first appear not when governments recognize them, but when people begin demanding and exercising them.[6] It is through meaningful institutions that such an enabling environment can be created leading to the empowerment of workers through education, knowledge provision etc. Awareness is only the first step, however. What is really significant is participation in 'voice institutions' (ILO Socio-Economic Security Programme 2004:339).

For academic research, one of the many (if not main) challenges presented in the social scientific sphere is the role of migration in the transformation of human society and its institutional/organisational make-up, requiring us to revisit those social scientific concepts that are based on the parameters of the nation-state. The existing flows of economic migration today which take place under increasingly restrictive policies aimed at reducing the length of stay and number of migrants, with the result of citizenship being placed out of reach for many migrants, call for a paradigm shift which can incorporate greater levels of 'transnationalism' (i.e. maintenance of a strong link between country of origin and destination). To reflect the nature of much of today's migration, our conventional understanding of concepts such as citizenship and human rights need to be re-assessed for their validity or relevance. This is where the concept of '*transnationalisation of rights*' enters the debate.

To sum up, the objective of this paper is to broaden the subject of the 'Human Rights of migrants' as they appear in international law, to a discussion of the 'rights of migrants' from a

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[4] See for instance the recent statements made by both to the Migrant Worker Committee, December 2005 (http://www.ohchr.org/english/bodies/cmw/mwdiscussion.htm; downloaded January 2005). Also, the three reports by HRW on foreign domestic workers in the US (2001), Malaysia (2004) and Singapore (2005).
[5] Personal interview with IUF, Geneva, December 2005. See also Piper (2005).
[6] Johnston relates this to his discussion of citizenship and I extend this here to a broader human rights discussion.

political activist angle. Reflecting prevailing forms of migration today which impact upon the 'politics of migration', I intend to bridge existing approaches to transnationalism by migration scholars (dominated by spacial and social[7] network analysis) and political scientists as well as sociologists' work on social movements and advocacy networks. In so doing, I shift the focus to the political aspects involved in achieving social justice in a transnationalized world. This paper, thus, constitutes a concept note without providing detailed empirical or case study material.

I begin by outlining broad migration trends as highlighted in the existing literature to provide a background to the type of migration focused upon. My discussion of the implications of these patterns for the rights of migrants is divided into two major parts – the first on the human rights of migrants (legal and normative framework; rights in practice) and the second on transnationalism (transnational perspectives on rights and political activism).

Migration trends/patterns

Both the volumes and patterns of migration have undergone important changes during the last few decades. Since the 1960s, the overall volume of international migrants has doubled. In 2000, the Population Division of the United Nations estimated the total number of international migrants to be approximately 175 million.[8] Thus, about 2.9 per cent of the world's population or one in every 35 persons are moving across borders (IOM 2003). Taken together, migrants would make up the fifth most populous "country" in the world (ILO 2004). According to the ILO, the volume of cross-border movements of workers in search of employment is likely to grow, especially in view of globalization having thus far failed to generate jobs and economic opportunities where people live (World Commission, 2004; ILO 2004: 9).

With regard to the patterns and nature of today's migration flows, major policy concerns relating to international migration that have been highlighted in the existing literature include the rising numbers of irregular/undocumented migration and the increasing shift toward temporary and circular migration as opposed to permanent settlement. Irregular migration, for instance, is now

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[7] 'Social' here understood in a broad sense, including cultural and economic aspects.
[8] This number includes refugees and displaced persons, but it does not capture irregular migrants who often escape official accounting.

much higher than in the 1980s and so is the rate of employment in the informal sectors where many migrants can be found. In addition, the issue of the asylum-migration nexus has been posed by scholars and policy makers alike, arguing that refugee and labour migrants are moving within the same flows in many parts of this world.[9] The restructuring of European welfare states as well as other demographic and labour-market related changes in the North have increased the demand for skilled foreign workers in e.g. the health sector, involving the issue of "brain drain". At the same time, there are increasing numbers of undocumented migrants (usually those classified as unskilled) in certain sectors of the labour market such as agriculture (see e.g. Bell 2004). Those foreign workers are typically "needed but not wanted".

In addition, the temporary character of migration (of unskilled and skilled migrants, as reflected in GATS/Mode 4) is also becoming more common, even in traditional settler countries such as North America and Australia. There has thus been a revival of former guestworker type of migration schemes as well as a slight upsurge in bilateral agreements (ILO 2004). At the same time, government involvement in the recruitment of migrants is less significant in some regions, with private agencies taking the lead. All of these trends have implications for the rights of migrants.

Regional migration

All regions are implicated in the rising cross-border flows of people in search of work and other opportunities, and the associated policy issues have correspondingly risen on political agendas of global institutions as well as of national governments. Although foreign workers still represent a small percentage of industrialized countries' total workforces (4 per cent), migratory flows of workers from the developing to the industrialized countries have been rising in recent decades. The US received the largest proportion (81 per cent), followed by Canada and Australia (11 per cent) and the European Union (ILO 2004:5). Women account for an increasing proportion of international migrants (49 per cent in 2000), reflecting their significant role as primary income earners. The out-migration of women workers is most evident from Asia, with the majority migrating as domestics, workers in the entertainment industry, and to a lesser extent as nurses

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[9] See, for example, Global Consultation on International Protection, *Refugee Protection and Migration Control: Perspectives from UNCHR and IOM*, 31 May 2001; www.unhrc.ch/prexcom/globalcon.htm.

and teachers (ILO 2004: 10-11). Migration of Africans has mostly been discussed in the form of health workers moving to work in northern countries. At the same time, substantial migratory movements continue within the South, and there is evidence of former "sending" countries turning more and more also into "receiving" countries, such as e.g. Mexico, Costa Rica, Chile, Thailand and southern Africa.

Yet, with so much scholarly focus having been more on migration from the developing to the developed world, we risk side-lining intraregional migration and the specific implications of such "south to south" movements. Latin America and the Caribbean, for instance, was the only region in the world which experienced a sharp decline in the number of immigrants during the 1990s. This region's two dominant migratory patterns have been movements between countries within the region and emigration out of the region (ECLAC 1999). Intraregional migration is more likely to involve the poorer strata of migrants and thus the lesser skilled. Movement of the better educated also take place regionally, but little is known about this as research on, for instance, health migrants (nurses, doctors) has focused on south to north migration. Moreover, despite the feminization of migration having been widely commented upon, the gendered nature of regional movements within the south is not very well known.[10]

On the whole, we can observe not only a rise in the mobility of the world's population but also an increasing complexity of such movements. As reflected in terms such as "replacement migration", and "circular and repeat" migration, the binary concepts of "permanent" versus "temporary" do not reflect reality, and neither does the dichotomous classification of countries into "sending" and "receiving" in the light of contemporary migration patterns. Also, increasing diversification in terms of skill levels is taking place.

The two fastest growing regular migration flows have been described as involving: (i) migration of highly skilled people, and (ii) temporary migration (involving both the skilled and unskilled). Yet, legal status does not automatically translate into rights' protection. In fact, employment contracts often contain clauses that actually violate national labour laws and international labour standards. In addition, it is sometimes the nature of the job that determines that a migrant is

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[10] This point has also been made in a recent article by Ruhs and Chang (2004:78).

prone to abuse, such as domestic work. In the specific case of domestic work, however, labour standards are often not clearly spelled out, as this type of work is often explicitly excluded from national employment laws and there is much resistance by governments in the destination countries to amend their laws.[11]

I. The Human Rights of Migrants

Much of the debate on the rights of migrants has focused on legalistic aspects, revolving around the existing international law framework for the protection of migrants (Cholewinski 1998, Aleinikoff and Chetail 2003, and Satterthwaite forthcoming) or on more specific rights, such as political rights (Layton-Henry 1990), and this has typically occurred in the context of liberal states' role as countries of immigration (Joppke 1998). Another angle taken by existing scholarship is citizenship, but the starting point is again the perspective of 'proper' immigration, with family reunification as an option, which does not reflect the situation of temporary migrant workers or the undocumented (Piper 2006). It has also been argued that demanding citizenship rights could actually be detrimental for migrant workers (Bell and Piper 2005).

When we look at who migrates today and under what conditions or circumstances they do so, the picture of migrants' rights takes on a high level of complexity. Reflecting the increasing participation of women in economic migration streams, for instance, gender perspectives have more recently been introduced into the debate on the human rights of migrants by pointing out that the experience of migrant women is often different from migrating men. Thus, it has been argued that the protective capacity of existing Human Rights law is inadequate in the case of certain jobs that are predominantly carried out by women (Piper and Satterthwaite, 2006). Highlighting and analysing the gender blindness of *international* law based upon a feminist analysis is a fairly recent development (Charlesworth and Chinkin 2000) when compared to feminist or gender analyses of jurisprudence in general (Calavita 2006) or of international relations (Whithworth 1994; Tickner 1992).

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[11] This is demonstrated in a recent article in Singapore's *The Strait Times* on Malaysia rejecting a suggestion by Indonesia that "the services of maids come under its labour laws" (13 February 2006:10).

To relate a gender critique of international law more directly to *migrant* women's human rights is an even more recent development. The starting point of the discursive and regulatory analysis of the legal protection (or rather inadequacy thereof) of migrant women is rooted in postcolonial theory, subaltern studies and postmodern feminism (Kapur 2005). Linking this type of critique more directly to the practice of international human rights law, the notion of 'intersectionality' has been introduced into the debate on how to best ensure the protection of the rights of migrant women. This analytical framework aims to explore the various forms of discrimination based upon multiple identities of women (Satterthwaite 2006). The intersection of these 'multiple forms of discrimination' based upon race/ethnicity, sex, class, migrant status etc., thus, requires a comprehensive approach to the otherwise scattered nature of international legal instruments which typically address just one such identity at a time. I shall return to this point below.

1.1 The legal and normative framework of international migration

Certain groups in society, such as children, women, refugees, and also migrant workers, have been targeted by international treaty law to protect them as a category of people identified as particularly weak. In recent years, considerable progress has been made in establishing an international legal and normative framework for managing the movement of people across borders and for protecting the rights of international migrants. This is related to three international agreements that came into force during the past few years: the 1990 UN Convention on the Rights of All Migrant Workers and their Families (hereafter: ICRM) which finally reached the minimum number of ratifications in 2003 and Protocols on Human Smuggling and Human Trafficking. But in comparison to other UN conventions/covenants, the overall rate of ratification of migrant rights specific conventions has been slow. This is the same for the two migrant worker specific ILO conventions (nos. 143 and 97).

The rights of migrants can be categorized according to five broad classifications. They relate to: 1) the pre-departure phase in the country of origin and the actual journey to the destination (revolving around issues such as information about visa requirements or other travel documents, working conditions, recruitment, contracts, medical services etc.); 2) the arrival (involving issues

such as assistance in finding employment, customs exemption); 3) employment (relating to wages, working conditions, job security, social security, health and safety, trade union rights, access to courts, access to other jobs, vocational training and freedom of movement); 4) social and civil rights (e.g. education and culture, transfer of funds to home country, family reunification and visits, advisory services) and 5) return (i.e. assistance with arrangements and rights of returning migrant workers) (ICFTU-APRO 2003). This clearly indicates that both country of origin and destination are responsible for certain rights of migrants.

Once in the country of destination, the core principles of relevance to migrant workers are non-discrimination, equality and equal protection under the law. Migrants' specific vulnerability stems from the fact that they are not citizens of the country in which they work and reside. In addition, a distinction is usually made between 'legal' and' illegal' migrants, with the latter being granted basic human rights, but not the full breadth of rights that legal migrants enjoy (in practice, even these basic rights often do not exist, see below). This makes irregular migrants[12] even more vulnerable as far as international human rights law is concerned.

Taken together, existing UN and ILO conventions provide fairly comprehensive – albeit incomplete[13] - protection but they exist in a fragmented and scattered manner, and it is sometimes not obvious that they could relate to migrant workers when the focus is on the single variable of 'migration status' rather than on multiple variables relevant to women and men who migrate for work – including race or ethnicity, occupation, and gender (Satterthwaite 2006). It is common that destination countries single out the migration status, and by treating workers as non-citizens, especially when they are irregular migrants, the rights of states clearly prevail over the rights of migrants, with states retaining the ultimate right to set the conditions under which foreigners may enter and reside in their territory[14].

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[12] A note on terminology is required here. Migrants without documentation or work permits are typically referred to as 'illegal' which is misleading as it conveys the idea of criminality. Many studies have shown that migrants shift between the status of legality and illegality for various reasons, often beyond their control or knowledge. The term "undocumented" is preferable, but does not cover migrants who enter the destination country legally but later violate their original entry visa. At the 1999 International Symposium on Migration in Bangkok, 21 participating countries agreed to use the term "irregular migrants" which has since become common practice.

[13] See Bimal Gosh' discussion on the inadequate recognition of migrants' rights in international and national law (2003).

[14] See Pécoud and de Gutcheneire (2005) for a summary of the literature on the "no border" debate as well as Martin (2003) on rights of states.

1.2 Migrants' human rights in practice

Despite frequent incidents of abuse and discrimination, migrants' rights have remained on the margins of the international human rights agenda for several reasons. These include lack of data; gaps between different institutional mandates of the UN; parallel systems of protecting employment rights and human rights; relatively little reporting by human rights NGOs; the dominance of refugee protection in the migration field; and the fact that until the ICMR was drafted, human rights law only made explicit reference to migrants – as non-nationals – in the context of free movement. Lack of information – about types of violation, where they occur, their incidence and characteristics - has been an obstacle to policy-making. Violations have been under-recorded particularly in the case of migrant women and of forced or exploitative labour that typically takes place in the underground economy. The result is a high degree of invisibility of certain types of migrants in human rights discussions (Grant 2005:3-4). Much of the above also relates to the absence of vigorous civil society activism from advocacy activities in the field of migration policy (Thouez 2005). This has, however, gradually begun to change – a point to which I shall return below.

As already mentioned, migrants' human rights are at stake in the country of origin, transit and destination. With regard to labour rights at the destination, lower skilled and unskilled workers, who form the majority of migrants, are more vulnerable to rights violations as compared to the skilled as they tend to work in the informal sectors of the labour market, or in sectors where labour standards are not applied, even for local workers. Temporary contract migrants face the problem that their residential status is linked to their work permit which ties them to one employer. At the end of a contract, they have to leave immediately, a situation which employers often take advantage of by not paying the full wages or paying nothing at all. This is even worse for undocumented migrants who cannot predict when the immigration services will detect them. The widespread problems such as non- or under-payment of wages, unfair dismissal, bondage (withholding of travel documents), long working hours, and precarious working conditions affect both male and female migrants. Also, migrant workers' freedom of association (i.e. the right to join trade unions and be represented) is commonly violated.

Another important issue that relates to rights being demanded and practiced is that of 'rights consciousness' and the knowing of one's rights. Various studies have shown that many migrants are not aware of their rights, mainly because of lack of education and/or information. As strangers to the destination society, migrants may be unfamiliar with the national language, laws, and practices, and so less able than others to know and assert their rights. Lack of a rights consciousness is also sometimes related to the thinking by migrants that "this is normal treatment" because treatment in their home country is the same or even worse. A study on Bolivian women migrants (Farah et al. 2002:26), for instance, has shown that the lack of a rights consciousness is related to education and class among migrant women from the same origin country: those of rural origins do typically not recognize the pattern of discrimination because it is common to those who live in rural Bolivia; however, women of urban origins, with a higher degree of education and knowledge of their rights, are the ones that recognize the discriminatory nature of their treatment. There is also another angle to this issue to do with 'de-skilling' or social downward mobility: according to a trade union leader in Southern Europe, those migrant workers who were highly qualified workers in their own countries often do not perceive themselves identity-wise as a labourer at the destination despite performing such jobs and thus do not claim the rights (e.g. through involvement with trade unions) due to them in their new role as labourer (Scrinzi 2003: 83).

What remains a big problem generally speaking with human rights, thus, is the gap between theory and practice, i.e. ratification and actual implementation. A number of recent studies have shown that the possibly most important root cause of non-ratification or non-implementation is political will (Piper and Iredale 2003; Pécoud and De Gutcheneire 2004).

1.3 Intersectionality

Overall, the significance and overall impact of international conventions designed to protect migrant workers is rather minimal at this stage because of the relatively low ratification rate. In addition, new trends in migration, such as its feminisation, are not given sufficient attention. Although the ICRM is unusual among its fellow conventions in its usage of the male and female forms of personal and possessive pronouns (he/she; his/hers etc.) thus making all rights provided

specifically applicable to men and women, it does not address needs differentiated by gender in any way (UN 2004; Cholewinski 1997).

The feminisation of migration and specific vulnerability of female migrants in certain jobs such as domestic work is explicitly mentioned in recent ILO reports and documents – although neither of its migrant worker specific conventions (nos. 144, and 97) do so – and there is an increasing demand, coming mainly from NGOs, for the inclusion of domestic workers into national labour standards laws. Trade unions, however, still seem to be at loss with the organizing of domestic workers and thus, with the issue of how to treat them as 'proper' workers (Piper 2005c).

In a forthcoming article, Satterthwaite has summarized all relevant UN human rights standards that address the main areas of abuse and how governments should go about implementation. The following treaties include protective norms that are applicable to the exploitation of migrant workers: CERD[15], CEDAW, the ICCPR[16], and the ICESCR[17], in addition to the ICMR. Arguments that migrants do not have rights or that the existing human rights framework is inadequate should be countered with clear analyses and insistence on enforcing and monitoring the full breadth of international norms pertaining to migrant workers, female and male. Especially women migrants have sat at the crossroads of three major sets of norms: human rights standards pertaining to women (mostly strong, protective standards), the human rights of workers (clearly articulated and robust) and human rights rules concerning migrants (rules that remain in development but which currently offer less protection than the rules pertaining to women and to workers) (Satterthwaite, forthcoming). This poses a clear but not insurmountable challenge to build an analytical approach to women migrant workers' rights that will encompass all aspects of their experiences.

Addressing the feminisation of migration, existing international instruments specifically targeting migrant workers generally lack gender specific clauses such as references to female migrants being prone to sexual harassment or sexual violence. The lack of explicit mention of women in the major human rights treaties does not limit their applicability to women, but may

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[15] International Convention on the Elimination of All Forms of Racial Discrimination.
[16] International Covenant on Civil and Political Rights.
[17] International Covenant on Economic, Social and Cultural Rights.

reinforce the invisibility of gender-specific violations. In this context, women-specific instruments can play an important role in addressing these lacunae. A recent position paper commissioned by UNIFEM (Satterthwaite 2004) outlines the usefulness of CEDAW in addressing problem areas specific to female migrants, especially for those working in the informal economy and private households.

1.4 Shifts in Global Norms

There has been a gradual shift in recent years (with pressure coming mainly from trade unions and NGOs) to treat migrants first and foremost as workers once they gave entered the territory and are working at the destination, regardless of their legal status. This development has become evident on the international level also, in the revival of a rights-based approach to migration which includes irregular migrants as manifested by the ILO's latest Plan for Action (result of the International Labour Congress, June 2004). The most recent and ground breaking development in this regard, however, is the ruling by the Inter-American Court of Human Rights that clarifies that all migrants – documented and undocumented – are covered by the principles of non-discrimination, equality and equal protection in the host states where they live and work and must not be excluded from the protection of labour laws on the basis of their migration status.

Despite all this, there has been little systematic and critical analysis of the emerging global policy and impact on advancing migrants' rights – especially in the light of parallel trends toward a global 'management of migration'. Although this shift in the migration policy debate to international cooperation is primarily concerned with control over entry and exit as well as prevention of irregular migration,[18] broader human rights issues have entered into the discussion and thus, a concern for the basic units of analysis of migration: the migrants themselves. But it is yet to be seen whether this is a matter of paying mere lip service or whether there is in fact a serious concern with migrants' human rights.

The analysis of these global shifts is also crucial in regard to another development that runs parallel to the above mentioned, and that is the on-going negotiations at the World Trade

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[18]   See e.g. Global Consultation on International Protection, *Refugee Protection and Migration Control: Perspectives from UNCHR and IOM*, 31 May 2001; www.unhrc.ch/prexcom/globalcon.htm.

Organization (WTO) revolving around GATS/ Mode 4 which indicate a trend to subsume migration under a broader trade agenda. GATS is the first multilateral and legally enforceable agreement on international trade in services and Mode 4 concerns the movement of natural persons. Developing countries have a surplus in skills in the service sector and GATS provides opportunity to earn higher wages. But the strictly temporary movement of Mode 4 of GATS targeting the highly skilled (which also means it is more beneficial to male migrants than female [19]) with limited commitments by developed countries imposes serious immigration barriers and thus, a limited set of rights. Although it has been suggested that the GATS negotiations could provide an opportunity to address human rights risks linked to migration (Dommen 2005), the WTO is not a forum that allows for input from social partners, and thus non-governmental voices which are usually at the forefront of pushing for rights are not given a chance to be heard.

1.5 Transnational sphere

Legal interventions have been articulated primarily from the perspective of the host country and the perspectives of the migrant subjects are typically omitted (Kapur 2005). However, considering the fluidity of today's migration flows, a transnational response and analysis is required in which our ideas about "laws and rights are not confined to the boxes of sovereignty, the nation-state, and the autonomous subject of liberal rights discourse" (Kapur, 2005: 137). I would add to this another layer of transnationalism, namely the simultaneous responsibilities by origin and destination countries and societies to ensure legal and social justice for foreign workers – an aspect which has not been explicitly addressed in the existing literature on the rights of migrants. This leads me to the second part of this paper.

II. Transnationalism

In view of contemporary migration patterns being largely of a short-term nature, and often irregular, it is crucial to link countries of origin to countries of destination in analysing

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[19] For a full discussion of gendered migration streams, see Piper (2005b).

international migration issues and formulating responses. Given the widespread nature of contract labour policies and the tacit approval of illegal migration which involve high incidences of return migration, destination and origin countries both take advantage of migrant workers and are thus responsible for their treatment. Government policies rarely reflect such mutual responsibility, and it is up to non-governmental forces to work on highlighting this. The emerging subject of transnational politics offers an analytical tool allowing us to combine domestic and external political factors involved that are of great importance when discussing the politicisation of labour migrants' situation in the context of contemporary patterns of migration.

Within the literature there are some studies which have touched upon, but not fully explored, the political activist angle to the issue of the human rights of migrants -- that is by discussing "bottom up" processes in which non-governmental actors try to achieve legal and social justice for migrant workers (Taran 2000, Gosh 2003, Piper and Iredale 2003). The objective in this part of the paper is to highlight the importance of social action and activism in the effort to promote and implement a migrant rights' agenda. In adopting a transnational perspective, I also seek to reflect today's prevailing forms of migration that are characterized by their short-term nature and high levels of fluidity. By addressing the question "what are the responsibilities of host and destination countries (state and society) when migrant workers move across borders and upon re-migration or return to the country of origin?", I attempt to bridge the literature on transnationalism in migration studies, transnational political activism in sociology and political science, and the literature on the human rights of migrants.

Transnational migration and transnational activism

Theorizing transnationalism began in the early 1990s when US-based anthropologists argued that traditional migration theory which treated migrants in a dichotomous manner as individuals who either departed (emigrants) or arrived (immigrants) did not reflect the experience of many migrants (Levitt and Nyberg-Sorensen 2004). They argued that this false dichotomy should be replaced by a concept which captures multi-stranded social relations linking societies of origin and residence. Treating sending and receiving societies as one single field of analysis thus began. The study of cross-border and global connections has posed a challenge to state-centric views of the world (Vertovec 2001). Adopting a transnational perspective also meant abandoning

methodological nationalism and the study of migration within transnational social fields (ibid.). By developing sociological and spatial analyses of transnational networks, however, transnational studies tend to take an approach that is less directly interested in questions of democracy or the state. Few studies have addressed directly the 'political', narrowly understood, within transnational networks (Grugel 2004). This is where the work of IR scholars, political scientists and political sociologists comes in.

When NGOs and/or social movement organizations not only focus on the domestic or local arena but are also active beyond state borders, transnational activist networks emerge. Transnational political activism challenges conventional understandings of civil society and social movements as well as international relations. 'Transnational' in this context refers to transnational relations, defined as "regular interactions across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or an intergovernmental organization" (Risse-Kappen 1995:3). On a general level, transnational advocacy networks which involve non-state actors have been described as becoming an increasingly viable force in international politics at the end of the 20th century and the beginning of the 21st. Not surprisingly, there is a growing literature that examines such networks, relating them to the global spread of human rights discourse in general (Lipschutz 1992; Macdonald 1994; Keck and Sikkink 1998; Scholte 2000), and to international migration specifically (Gurowitz 1999).

As I have provided a detailed literature review elsewhere on the emerging research area of transnational political activism (Piper 2003; Piper and Uhlin 2004), I will not elaborate this any further but confine my discussion to two points: 1) Issues pertaining to labour in general and women workers specifically have been an important ingredient in the development of transnational perspectives on political activism (Dominguez 2002; MacDonald 2002; Fonow 2003; Herod 1995). In such works, male and female workers emerge as social agents and not merely as passive bearers of the power of global capital; 2) As demonstrated by social movement literature, the effectiveness of political activism is related to networking and alliance building, nationally and transnationally, aimed at accumulating enough force to achieve change.

Transnationalisation of Rights

The multiple interlocking networks of social relationships that are the basis of today's migration experience also have an impact on our understanding of rights - in theory (legal rights) and practice (i.e. the politics behind the granting or non-granting of rights to migrants). Contextualising rights within transnationalism points first of all to the fact that taking a simple approach to migration –i.e. as a one-way or one-off emigration and immigration phenomenon – does not hold true for an increasing number of migrants. This has implications especially for our conventional understanding of citizenship but in the context of temporary contract workers or undocumented migrants, also for labour and social rights. In addition, with much migration today being of a short-term nature, many migrants are experiencing transnationally split family life which creates a new context in which rights are played out. Furthermore, in the context of the rise in studies of transnational communities and/or diasporas, with so much focus being now on migrants as 'agents of development', the granting of dual nationality and overseas voting rights is one of the strategies for maintaining migrants' loyalties to ensure their contribution to development.[20] The analysis of migration has, therefore, begun to be conceptualized as something that takes place within social fields extended beyond those who actually move to those who do not necessarily move but are connected to migrants through networks of social relations across borders. In other words, transnational communities consist of those who migrate and those who stay behind (Levitt and Nyberg-Sorensen 2004).

The issue of migrants' rights has mainly been discussed from the standpoint of the destination countries, often from the perspective of integration policies, settlement and the gradual acquisition of citizenship rights. In a transnational setting, however, the issue of rights takes on a new dimension. Transnationalisation refers to rights which: (1) migrants maintain vis-à-vis the country of origin when crossing borders; (2) migrants gain when entering the destination vis-à-vis the country of origin; (3) migrants keep and gain when returning to their country of origin. Many of these are covered by existing international instruments. Unlike the meaning of 'international' human rights standards, however, which are given to migrants at different stages of the migration process (whereby pre-migration, migration, and return are treated separately), 'transnationalisation' involves not only the simultaneous existence of rights vis-à-vis

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[20] Other strategies include investment policies designed to attract and channel economic remittances and boost local development.

the origin and destination states, but the recognition of (and need for) 'new' rights that reflect the transnational life of migrants. In addition, 'transnationalisation' points to the issue of migrants taking certain rights back and forth across borders. Thus, this conception points to the responsibility on the part of both the sending and receiving state as well as society. It also reflects the fact that much migration is temporary and not necessarily a one-off event resulting in 'immigration' and settlement. In fact, in view of the high incidences of return and re-migration, the acquisition of citizenship in the new country of residence is often not desired by migrants or is simply out of reach. Last but not least, this also highlights transnational political activism to push for a new rights agenda that takes on board the context in which many, if not most, migrants move today.

Furthermore, there is this whole issue area of "portability of rights" or complementarity as they relate to social welfare rights (Tamas 2003). A large number of migrants (typically the older generation) have accrued social rights and are beginning to raise issues of transferability upon returning to their countries of origin. A few existing studies (some in the context of Northern African immigrants in France) have shown that some rights, such as pension rights, are reduced if accessed outside the country in which they were built up. A different example of social rights in the transnational sphere relates to the frequent occurrence of transnationally split families for whom conventional family unification policies are irrelevant or not applicable. The concept of 'rights to a family life' might take secondary importance compared to a different set of rights for the left behind. So far, there has been too little discussion on the rights of those left behind.

The Office for the High Commissioner for Human Rights (OHCHR) invited the submission of discussion papers for the Migrant Committee's *Open Day of Dialogue* in December 2005 which was on the theme of 'protecting the rights of all migrant workers as a tool to enhance development'.[21] A few of the contributions raised the issue of "portable justice" in the context of the violation of labour rights and the way in which migrants are prevented from seeking redress – while still working in the country of destination, at the end of their contracts or after deportation when detected for working illegally (Smith and Paoletti 2005, Caron 2005, Piper 2005d). This shows that a specific group of rights such as employment/labour rights are also a transnational

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[21] See http://www.ohchr.org/english/bodies/cmw/docs/global.pdf (accessed 10 February 2006).

issue which is not for destination countries to deal with alone. States' policies, however, often focus on migration aspects alone when enforcing laws and not on labour aspects (in terms of monitoring etc.).

The largest concern with regard to employment rights is in fact breach of contract and/or the non- or under-payment of wages. The difficulty of claiming grievance in labour courts or labour standards offices because of the workers' migration status has been raised (Smith and Paoletti 2005, Caron 2005, Piper 2005d). Often, when temporary contract migrants lose their job (even in cases of unfair dismissal) they are made to return home and thus have no channels available for recourse. In Malaysia, e.g., such migrants can obtain a special visa, but it costs MY Ringgit 100 per month (which constitutes a substantial part of their monthly income) and the migrant is not allowed to work during this period – an impossible situation. This is where transnational networking between NGOs and trade unions gains importance and where embassies should also take a more active role, for instance by providing lawyers.

As mentioned above, in the area of development in recent years, another trend has been the rising interest of countries of origin in establishing a link to their nationals who are overseas (referred to as 'diasporas' or transnational communities). This is largely driven by their recognition or hope that migrants can advance national development from abroad through remittances or investment. To stimulate such assistance, emigrants are increasingly being endowed with special rights toward this end. Two types of such rights have political implications: overseas voting rights and dual citizenship. Countries of origin are in fact now more and more inclined to give overseas voting rights and dual citizenship.[22] Migrant associations have been at the forefront in advocating for overseas voting rights – with success in the Philippines and unsuccessfully in Sri Lanka (Iredale, Piper, Ancog 2005) but often based on a different take on development – i.e. the creation of jobs and socio-economic security at home that would allow more migrants not having to migrate in the first place or at least not having to remigrate. Thus, NGOs do not only want

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[22] In 2000, ten countries in Latin America had passed some form of dual nationality or citizenship legislation, including Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Mexico, Panama, Peru and Uruguay; only four countries had such provisions prior to 1991 (Jones-Correa 1998; Levitt & Nyberg-Sorensen 2004). Other countries recognize dual membership selectively, with specific signatories (like China, India etc.). Countries such as Brazil, the Dominican Republic, Mexico and the Philippines allow the expatriate to vote (Levitt and Nyberg-Sorensen 2004).

'elite' migrants to have a stake in politics in the country of origin, but also the large number of low or unskilled temporary migrant workers.

The notion of 'transnationalisation of rights' is in its early stage of conceptualisation and represents an important paradigm shift to the understanding of 'migrants' rights' focusing on the simultaneous responsibilities of origin and destination countries. It is vital to incorporate the voices of migrants themselves. There are institutional channels that function as 'voice institutions'. This is the subject of the next section which shifts our attention to the political activist perspective and the role of social partners and NGOs.

Transnational Migrant Politics

In this section, I would like to raise the issue of "demanding or voicing rights" which might not yet be officially recognized by governments. This typically happens via collective action and through an organisational framework. What types of institutions or organisations are involved in formulating and pushing for the recognition of migrant rights, and what kind of rights do they focus on? This very much depends on migrants' legal and employment status as well as political space given to political activism.

Much of the literature on transnational advocacy networks has focused on civil society organisations. In the specific context of protecting migrant workers, the meaning of *transnational* networking and organizing, which reflects the nature of cross-border migration involving at least two countries, refers to (1) local citizens campaigning on behalf of non-citizens; (2) activists following their compatriot migrant workers to the destination and campaigning on their behalf from there; (3) migrants campaigning on their own behalf challenging the government at the origin as well as destination; (4) migrant workers or their compatriot activists campaigning on behalf of all migrant nationalities, not only their own nationality group (Piper 2005a).

Unlike NGOs, trade unions' involvement has not been analysed from a transnational perspective in the specific context of international migration and protection of foreign workers. Instead, in

the small but gradually expanding literature on migrant worker support organisations, it is the rise of NGOs and other voluntary associations committed to addressing dire needs and alleviating serious problems of migrants in general and migrant women in particular that has been subject to research (see e.g. Piper 2003; Piper and Yamanaka 2003). The extent to which migrant worker associations are able to form alliances, especially within destination countries, and assert sufficient pressure on governments to achieve change has, however, been questioned (Sim and Wee 2005). Domestic work emerges again as a particularly vulnerable job category where forming alliances with women's organisation is hampered by the sheer fact that these women activists are the employers of domestic helpers.

Recent transnational perspectives that introduce an understanding of migration as involving social processes that bridge countries of origin and destination (Nyberg-Soerensen et al., 2002) also include the realm of politics. Five major groupings have been suggested: (1) immigrant politics (political activities by migrants to improve their situation in the country of destination); (2) homeland politics (political activities directed towards the domestic or foreign policy of the country of origin); (3) home town politics (initiatives from abroad aimed at participation in the development of local communities of origin); (4) diaspora politics (political practices confined to group barred from direct participation in the homelands' political system) and; (5) transnational politics (political activities directed at both country of origin and destination). This implies that migrants can and do act as political agents and lobbyists in defence of an array of issues implicating the countries at both ends of the migration chain. What is, however, missing in the above classification is labour activism and the role of traditional worker organisations, i.e. trade unions, in responding transnationally to the situation of the significant numbers of highly vulnerable foreign workers.

This 'missing link' of trade unions has partly to do with the little engagement that trade unions have shown because of three main reasons: (1) trade unions either regard migrant workers as better off and thus in no need of political attention (sending perspective); (2) the migrants work in sectors that are regarded as impossible to organize (receiving perspective) or in jobs that are not recognized as 'proper' work as reflected in the explicit exclusion from national labour laws, such as domestic workers; and in addition (3) the transnational/short term nature of much of today's migratory flows whereby political activism is not only directed against destination

governments' policies, but also origin governments' policies (and trade unions tend to be more nationally oriented). The political void left by trade unions has to some extent been filled by NGOs.

NGOs and Migrant Associations

Non-governmental organisations have for a long time filled an important gap by addressing labour issues (Gallin 2000). Empirical evidence from the developing South acknowledges even more the importance and influence of non-traditional, non-union labour organizing (Ford 2004; Hutchison and Brown 2001). Not all of these NGOs concern themselves primarily with labour issues but all contribute to a complex web of activism (Ford 2004).

Due to a lack of political space for certain types of activism and a non-legal status, it is sometimes impossible or difficult for migrants to set up their own organisations. In such circumstances, migrants depend on local citizens to take up their concerns. This is happening in countries such as Singapore and Malaysia where self-organising is impossible. In countries where it is difficult but not impossible, such as Japan, Korea and Taiwan, migrants have been more actively involved in setting up their own organisations. A particularly well documented example in this regard is in Hong Kong (Yamanaka and Piper 2006; Wee and Sim 2005).

Availability or lack of political space partly explains the different types of groups involved in migrant labour advocacy and service provision. Recent country studies on four major countries[23] involved in assisting labour migrants in Southeast Asia – Singapore, Malaysia, Indonesia and the Philippines – have provided a detailed mapping of existing organisations and their strategies to promote and protect migrants. These studies have made a clear distinction between migrant worker associations (run by migrants or former migrants) and NGOs. Self-organising has been identified as particularly effective, which underpins not only the importance of 'freedom of association', but also 'freedom to form political organisations' (direct and indirect violation thereof is widespread).

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[23] They were presented at the workshop *Migrant Labour in Southeast Asia* held at the Asia Research Institute in Singapore (24-25 August 2005) in cooperation with the Friedrich Ebert Foundation which put up the funding for the fieldwork and the workshop. These country studies (by Alcid, Ford and Piper) are currently under revision for publication in the *Asian and Pacific Migration Journal* planned for mid-2006.

From an activist perspective, Filipinos have emerged as the most widely and best-organized group of migrants, to the extent that they are even engaged in 'training' other groups of migrants to become good activists (as happens in Hong Kong) (Piper 2005c). This is related to a number of factors that I have discussed elsewhere (Piper and Uhlin 2002; Yamanaka and Piper 2006). The arguably most successful of networks run by Filipinos, in terms of its widespread grassroots support as well as overseas networking, is MIGRANTE International which is a global alliance of overseas Filipino organizations. Membership based, staffed by activists who were formerly migrants themselves, and supported from the grassroots level, MIGRANTE has been vital in organizing Filipino migrants on a large scale. Among its objectives are to strengthen unity and organizations of overseas Filipinos and their families in the Philippines and to defend the rights and welfare of overseas Filipinos. It has 95 member organizations in 22 countries in all global regions. By trying to address the root causes of migration in the Philippines, the NGO and its networks are also addressing migrant workers rights "at home". Another Philippine-based, but clearly more regionally-oriented, network is MFA (Migrant Forum in Asia). It is a 260+ membership organization covering the whole of Asia (West, South, Southeast, Northeast, and East), including NGOs from sending and receiving countries.[24] Its member-NGOs support any migrant workers, female and male, of any nationality in Asia. They hold regular regional meetings, exchange information (and also engage in lobbying) via email.[25]

Broadly, the main issues fought for by migrant worker associations and NGOs are employment-related rights and improved working conditions. In the specific case of domestic workers who are locked into informal interactions within the home, much of the activism has appealed to the "morals" of employers as reflected in campaigns such as "Dignity is Overdue" (Singapore, Malaysia) and called for standard contracts as a minimum protection. Trade union council and NGOs also call for the right of all workers to put an end to under- or non-payment of wages and to create a 'culture of payment of wages'. In Malaysia, for instance, this includes a call for the right to stay by issuing foreign workers not just social pass visas but work permit visas. In the Philippines, activism by and for migrants' rights has become particularly broad to include, e.g., the rights of family members left behind, rights to economic security 'at home', as well as

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[24] For more details, see www.mfasia.org.
[25] For examples of non-Filipino players in the field of migrant NGOs and networks , see Piper (2005c)

absentee voting rights – a campaign which resulted in the passing of the Overseas Voting Bill in 2004.

Trade Unions

Based on a global survey, Johnsson (2005:2) observes in a recent paper that the union movement as a whole considers "reaching out to the unorganized and vulnerable" a key part to ensuring the future relevance of trade unions. He goes on to describe unions as "one of the most progressive actors in the migration debate" and as "active in organizing them and defending the rights of migrant workers". It is debatable whether unions are in fact at the forefront in the migration debate. There might be regional variations. Empirical evidence from Asia, for instance, suggests rather that it is migrant worker associations and NGOs. Also, this might not be the case at every level of the trade union movement, i.e. international unions' policies might not trickle down to local unions. Also, it is yet to be seen to what extent rhetorics have actually been translated into action (projects and programmes).

At the global confederation level, the International Confederation of Free Trade Unions (ICFTU) has advocated migrant rights in many venues and was a crucial participant in the 2004 International Labour Conference in Geneva. In a recent policy paper, the ICFTU (2003) argues that a discussion among affiliated organizations is needed to deliberate on "mainstreaming" migrant workers into unions' broad activities. In 2000, a workshop was organized on this very topic. As a result, many of its affiliates in several countries have started addressing the problems of migrant labour - not only employment issues but also in terms of the social fall-outs like racism and xenophobia.

The ICFTU's Regional Organization for Asia and Pacific (APRO) has also organized a few regional consultations on the role of trade unions in protection of migrant workers (ICFTU-APRO 2003). ICFTU-APRO's Action Plan from 2003 includes two major recommendations: 1. establishing migrant workers' desk or committee; 2. recruiting migrant workers as union

members. The first has been realized by some national centres, such as Singapore's NTUC[26]. Malaysia's TUC has a sub-committee/section on foreign workers but they do not have the funding for full time staff to work on migrant labour related issues, let alone for legal assistance (interview, July 2005, Kuala Lumpur). The second recommendation   by ICFTU-APRO constitutes a still underdeveloped aspect of trade union work in Southeast Asia (as elsewhere). But more recently, the MTUC has reaffirmed its commitment to assist and organize migrant workers, including domestic workers.[27] In Thailand, trade union leaders have formulated the so-called Phuket Declaration resulting from an ILO workshop on migrant labour in August 2005 in which they declare (amongst other items) that "Thai Trade Unions should be committed to organize and recruit migrant workers". [28]

Part of these new initiatives is also the attempt to cooperate transnationally in order to offer better protection to temporary migrant workers. The two declarations mentioned above (MTUC and Phuket) include in their 'action plan' the promotion of close cooperation with unions in sending and receiving countries. The MTUC document recommends that sending countries should "develop a system for networking and information exchange between sending and receiving countries". As laudable as these rhetorical statements are, it is to be seen whether resources will be made available for such transnational cooperation.

Another mode of transnational organising is the hiring of an activist from the migrants' country of origin to overcome the language barrier. Trade unions in the UK and Sweden are said to have hired trade unionists from Eastern Europe to organize Eastern European migrant workers at the destination[29]. Philippines-based trade unions have sent organisers to Hong Kong to assist with the setting up of domestic worker unions there.

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[26] According to a recent questionnaire sent out by the ILO to trade unions around the world (to which 42 trade unions responded, among them NTUC Singapore), 16 unions replied affirmatively to the question whether they have a designated migration officer, two of which in Southeast Asia: Hong Kong and NTUC Singapore. The main responsibilities of such migration officers were mostly (1) training and information, followed by (2) policy advocacy, (3) individual assistance and lastly (4) recruiting members. NTUC Singapore's designated migration officer is part of the 'Migrant Workers Forum' (MWF) which was set up in 2002, chaired by Mr. Yeo Guat Kwang.

[27] Concluding Resolution, MTCU Conference on Migrant Workers, April 18-19, 2005, Petaling Jaya Malaysia. I thank Mr. Ragwhan, ILO Bangkok, for sharing this information with me.
[28] I am grateful to Mr. Ragwhan at the ILO Bangkok office for sharing this document with me.
[29] Personal conversation with senior staff member at the IUF in Geneva, December 2005.

As these developments indicate, there is globally a new understanding of trade unions emerging as "unions without borders". International unions such as the PSI and IUF have come up with another idea: a transnational membership card. This provides a worker who is a member in his/her country of origin and migrates to work in another country where the union has a branch with automatic membership there.

An interesting argument which has been emerging among social movement scholars is that the labour movement can only achieve its full potential today in alignment, or merger, with other democratic social movements. Participants need to be enabled to express themselves and act not only as workers but as members of a community (Johnston 2001). In other words, struggles for labour rights are feeding into a larger citizenship movement -- that is, a movement of women, the future of children and family relationships that cross borders. This links up with another argument made in addressing the root cause of trade unions' loss of power in recent years: unions are urged to reflect upon their form of operating which is still primarily organizational/institutional during times when both capitalism and the global solidarity movement are taking the network form. The conception of 'social movement unionism' has thus been suggested as an alternative (Waterman 2003).[30]

The argument that trade unions should opening themselves up toward a broader 'social movement unionism' and take on a networking form to link up with NGOs reflects the above argument about an 'intersectionality' approach to international human rights law. Satterthwaite (2006) has demonstrated this in the specific context of women migrants. By focusing on a single aspect of experience – i.e. that of being a woman or member of a racial minority – human rights professionals may fail to examine ways in which rights standards can provide protection for individuals who experience multi-layered forms of discrimination. The application of the methodology of intersectionality to human rights law has thus been suggested to offer a more robust set of standards relating to women migrant workers – and this can easily be extended to other groups of migrant workers. This has implications for activism. In the case of migrant women, Satterthwaite (ibid.) argues that a dominant focus by activists on the ratification of the

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[30] To be precise, Waterman (2003) argues that social movement unionism should be reconceptualised in 'Class+New Social Movement' terms.

UN Convention on Migrant Workers Rights could actually be detrimental because it would allow states to marginalize the obligations they owe to women migrants under existing human rights law. Based on the fact that the rights of women migrants are already included in the panoply of standards set out in existing and widely-ratified human rights treaties, it would make more sense to focus attention and resources on those when addressing the vulnerability of women migrants in their various roles (ibid.).

Implications for citizenship

Citizenship has so far been mainly discussed in the context of destination countries and from the viewpoint of citizenship in the new country of settlement (Piper 1998). But citizenship is not necessarily the most pressing issue in the context of temporary migrant workers, such as those in Southeast and East Asian societies where the largest proportion of workers work on short-term contracts without the realistic hope that they will ever be equal members of the political community. Rather, the liberal-democratic theorists' ideal of extending citizenship after a certain period of time (usually around five years) ignores the actual needs and interests of migrant workers (Bell and Piper 2005). In fact, NGOs campaign for labour or employment rights, improved working conditions and, in the context of domestic workers and informal interactions within the home, for good relationships with the employer. In fact, NGOs campaign for labour or employment rights, and citizenship is not seen as the key to alleviating the high level of abuse that migrants often experience (see Bell and Piper 2005 for a more detailed discussion).

In the case of temporary migrant workers, citizenship can take on a 'transnational' meaning to refer to politically active citizens in origin as well as destination countries advocating migrants' rights (Ball and Piper 2002; Rodriguez 2002). Citizenship in this sense is understood as a practice rather than just a status (Oldfield 1990). This is different from 'external citizenship' referring to the right to seek diplomatic assistance and protection when abroad from one's native country and the issue of reformed and improved consular services abroad in response to overseas migrants' needs. What the conception of 'transnational citizenship' does refer to is the complex nature of political struggle for migrants' rights with solidarity being built across all borders.

The Human Rights of Migrants and the Rights of Migrants - Concluding Remarks

Overall, there is today more concern for, and understanding of, the rights of migrants and the seeking of solutions as to how to protect foreign workers and reduce their socio-economic and legal insecurities through an institutional set-up that is based upon a comprehensive rights-based perspective. But this has yet to lead to more comprehensive research as well as workable policy agendas. It is the objective of this paper to make a contribution to this in the form of a concept note (based on fragments of empirical examples) by arguing for a bridge between insights from social scientific theorizing of transnationalism and legalistic approaches to the human rights of migrants.

This has led me to introduce the notion of the 'transnationalisation of rights' which I relate to: 1) the nature/content of migrants' rights and the extent to which they reflect prevailing forms of migration today; and 2) political activism aimed at the promotion and implementation of such rights through meaningful organisations. The emphasis is put on rights which involve simultaneous responsibilities by origin and destination countries and societies vis-à-vis foreign workers. In this regard, I highlight the importance of political activists' contribution to the articulation and promotion of the rights of migrants which is most effective when it takes place by way of transnational networking to reflect the transnational nature of cross-border migration.

The methodology of intersectionality to respond to the multiple identities of workers (as non-nationals, women, workers etc.) and its significance in terms of practical political mobilisation corresponds to arguments made for a broader social movement unionism based on inter-organisational networking between trade unions and NGOs and intra-organisational networking ('unions without borders'). In this way, new approaches to international human rights law and transnational political activism come together to provide impetus for ensuring better and more effective protection of migrant workers. Migrants' rights thus are understood here (1) as a projection from new experiences of social struggle, and (2) as a theoretical synthesis (transnationalism and human rights discourse).[31] In this way, the issue of 'the human rights of migrants' has emerged here as a broader discussion of 'the migrants' rights'.

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[31] A phrase that I have taken from Waterman (2003) which he applied to a slightly different context.

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