

IMPACT OF GLOBAL TRADE MAKES MIGRANT WORKERS VULNERABLE TO EXPLOITATION

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Taking a migrant rights approach to the issue of global labor migration is increasingly being promoted as a way of ensuring that the human rights of migrant workers are protected. Together with such an approach, the international community must address all factors that are created by globalization, specifically, how international trade agreements and global trade policies make migrant workers vulnerable to exploitation.

In the context of worker rights, significant push factors for migration include poverty level incomes, low wages in rural areas, and lack of employment opportunities in poor countries, coupled with higher wages and greater job opportunities in urban areas and rich nations. Despite its general trade benefits, globalization has created an ever-widening wealth gap between countries, and rural and urban areas within countries.

Indeed, it is the lack of viable trade opportunities at home that often pushes workers to migrate in search of better options. Global trade policies, initiated through market liberalization and the structural adjustment policies (SAPs) of the World Bank and International Monetary Fund, are major causes of the gap in income and employment opportunities, displacing workers from their local livelihoods. For example, the flood of cheap Chinese products from China to Indonesia in Year 2010 after Free Trade Agreement ASEAN-China implemented caused many garment factories in Indonesia to close, and terminated many workers. Having lost their livelihoods, and faced with few employment opportunities in rural areas, those workers today planned to migrate to urban areas in Malaysia or Singapore to compete for jobs in plantations. This migration resulted in lower wages in urban centers and displaced workers who, in turn, migrated to countries such as Malaysia or Singapore in search of work.

The demand for cheap labor is a crucial pull factor for labor migration. Often, migrant workers fill positions that workers in the domestic workforce refuse to do because of low wages or harsh working conditions (3D, Dirty, Dangerous, and Degrading). Studies of other trade sectors, such as construction, in other parts of the world show a similar pattern of increasing demand for cheap migrant labor accompanied by declining wages, benefits, and labor and safety standards.

When sectors employ primarily migrant workers, the employers' profit potential is much higher than would be the case if local labor were employed, particularly in the case of trafficked persons. Migrant workers, especially those in the informal economy, are invariably paid at a lower rate than local workers and usually do not receive benefits, such as healthcare or pensions, that would raise the costs to employers. Employers may prefer migrant workers over local workers because of their "vulnerability and lack of choice that results from their foreign status. Employers perceive them as comparatively 'flexible' and 'cooperative' with respect to longer working hours, more vulnerable to 'molding' ... and less likely to leave their jobs."

EXPLOITATION OF MIGRANT WORKERS

Globalization and neo-liberal trade policies are leading to an increased flexibility of the workforce, and the “degradation of work,” where workers are increasingly moving from formal to informal sectors of the economy, from permanent to temporary and contract work, and receiving fewer benefits (such as healthcare and pensions) from their employers. Such a situation puts workers into an increasingly vulnerable position, as the safety net that used to catch them when they were laid off, injured, or unable to find work no longer exists. For example, global trade agreements such as the 2005 phase-out of the Multifiber Arrangement under World Trade Organization (WTO) rules left thousands of female textile and garment contract workers in places like Swaziland, Indonesia, and Bangladesh, without jobs almost overnight. Without adequate severance pay, unemployment insurance, and employment opportunities, many of these young female workers were vulnerable to exploitation by labor recruiters trying to take advantage of the workers' precarious situation by offering them jobs abroad that they had little choice but to accept.

Global trade agreements, which rarely include adequate labor standards and protections, often contribute to the exploitation of migrant workers. For example, the ASEAN-China Free Trade (ACFTA) resulted in increased China investment in several ASEAN countries. This thing has negative impact to several ASEAN countries like Indonesia for decreasing of export textile and closed of garment factories cause many China's textile over flood Indonesia's market. Furthermore, terminated many Indonesian workers in many garment factories in Indonesia, as a result of this global trade. And what do the Indonesian government do to anticipate this condition? They have already enacted several laws to protect Indonesian migrant workers. The effect of closing of factories and terminated employee opening channel to supply workers to overseas, and working as migrant workers.

IMMIGRATION POLICY & RESTRICTIONS ON THE RIGHTS OF MIGRANT WORKERS

Despite the fact that the economies of many host countries rely on migrant workers, these same countries often marginalize and limit the rights of these workers. Host countries use a variety of methods to limit the residency and citizenship rights of foreign workers. Such methods include guest worker programs, sponsorship systems in which workers are tied to a particular employer, rotational systems of migrant labor to limit the duration of foreigners' stay, limits on the ability of migrant workers to bring their families with them, and curbs on naturalization rights. Migrant workers rights organizations have reported that such migration policies are increasing the vulnerability of workers to abuse under legal migration programs and work permit schemes that tie migrant workers to a particular employer. These organizations report a “‘rise in the incidence of unpaid wages, confiscated passports, confinement, lack of job training and even violence’ against migrant workers who are legally present in a number of countries under various work permit schemes.”

Guest worker or temporary migration programs create a subclass of workers entitled to fewer rights. Despite this fact, these types of programs are being mainstreamed, and are even a factor negotiated within international trade agreements. Members of the WTO are negotiating the General Agreement on Trade in Services (GATS) Mode 4,

which deals with the temporary international migration of workers for the purpose of services provision. This is essentially a framework for a global guest worker program because it ties workers' visas to a specific employer or contract, creating a subclass of temporary workers who are not entitled to the same rights as citizen workers and permanent immigrants.

Indeed, many countries legislate restrictive immigration policies for political advantage, making it more difficult for workers to enter a country legally in search of employment, even when there is a demand for such labor or jobs available. Anti-Slavery International emphasizes, "Governments in developed countries are generally reluctant to publicly recognize their dependency on both skilled and unskilled migrant labour. However, the reality is that demand for migrant workers will be filled by irregular migration unless policy makers recognize that it is in their national interest to facilitate and manage this process." Unequal treatment in terms of workers rights and irregular migration greatly increases the vulnerability of migrant workers to exploitation.

For example, the government of Malaysia periodically implements mass deportations or expulsions of undocumented migrant workers especially from Indonesia. According to Amnesty International, in 2002 "the government ordered an estimated 600,000 undocumented migrant workers to leave Malaysia before an August 2002 deadline, after which harsher penalties were to be imposed under the newly amended Immigration Act, including sentences of up to five years imprisonment and six strokes of the cane." As a result, more than 300,000 migrant workers left the country. Many of these workers were forced to leave Malaysia without their wages or back pay. In addition, many had either nowhere to go or no way to get there, and thus sat in make-shift camps just over the Malaysian border. In those camps, the migrant workers were vulnerable to abuse and exploitation by agents, employers, and traffickers, who took advantage of their precarious situation. The Malaysian government implements such policies despite its acknowledgement of the contribution made by foreign labor in developing the country's economy and productive capacity.

Countries place migrant workers in a vulnerable position by imposing immigration laws that are not in line with the trade realities of a permanent demand for cheap labor. Restrictive immigration policies, now being sanctioned through global trade policies and trade agreements, often force workers to migrate through irregular channels, increasing their vulnerability to exploitation.

INTERNATIONAL INSTRUMENTS

The United Nations (UN) and the International Labor Organization (ILO) have developed comprehensive international instruments to protect the rights of migrant workers. However, the reluctance of migrant-receiving states to broaden the rights afforded to migrant workers results in the infrequent ratification and enforcement of these instruments by the states at which they are primarily aimed. Moreover, these instruments do not address many of the global trade and trade policy issues discussed above, and thus leave migrant workers vulnerable to abuse.

The *UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families* entered into force in July 2003, after thirteen years of

efforts to receive enough ratifications. Similarly, ILO Conventions, specifically Convention No. 97 on Migration for Employment and No. 143 on Migrant Workers, provide migrant workers with more well-defined rights than the UN Convention in terms of freedom of association and the rights to organize, social security, education, training, housing, cultural rights, and other collective freedoms.

Critics note, however, that both the UN and the ILO lack effective enforcement mechanisms. Ironically, not every labor-sending countries that have ratified these conventions, for example Indonesia. And also None of the major labor-receiving countries, such as the United States, Canada, Japan, India, or any of the Gulf States, have ratified either ILO convention or fully ratified the UN Convention. The lack of ratification and enforcement mechanisms in labor-receiving countries like the Malaysia, Singapore for Indonesia cases renders these conventions hollow.

Other core labor standards, however, may be used to protect migrant workers. For example, in 2003 the Inter-American Court of Human Rights issued an advisory opinion, entitled, "Legal Status and Rights of Undocumented Migrants." The Court stated that employment and labor rights must be extended to all workers equally, regardless of immigration status. The Court's decision holds that undocumented workers are entitled to the same labor rights as citizens and documented workers, including back pay and wages owed, protection from discrimination, and protection for health and safety on the job.

Indeed, migrant workers must be extended basic workplace rights. As a start, the core international labor standards must apply to all workers. These include the: 1) freedom of association and collective bargaining; 2) elimination of forced and compulsory labor; 3) elimination of discrimination in respect of employment and occupation; and 4) abolition of child labor. Other internationally accepted labor standards, such as equal remuneration, safety and health at the workplace, and wage and hour protections, must also be extended to all workers regardless of their nationality, or even their immigration status.

CONCLUSION

Global trade policies, implemented through instruments such as trade agreements and SAPs, have a direct impact on the movement of workers. They also have the direct effect of increasing the vulnerability of migrant workers to exploitation. The international community must take measures to address these vulnerabilities. Possible measures include incorporating worker rights and labor standard protections into migrant labor management agreements, taking into account the effects on workers of trade agreements and other market liberalization policies, and ensuring that minimum labor standards and protections are included in such agreements. Additional measures include developing immigration laws and policies that take into account trade realities, focusing on job creation where people live, and creating safe migration processes. A migrant rights-based approach must take into account trade justice and the rights of workers in the workplace. The last but very important is to develop awareness of worker rights and labor standard protections to the migrant worker themselves, by providing standard curriculum of Labor Law for every migrant workers in shelters, or training camp.