

International Dialogue on Migration 2017

Understanding migrant vulnerabilities: A solution-based approach towards a global compact that reduces vulnerabilities and empowers migrants

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- Potentially problematic framing of questions. Seem to presume that migrants are or may be inherently 'vulnerable' and that the starting point is to better tailor responses to this vulnerability
- Starting point/ focus needs to be on the very laws, regulations, policies and practices, including economic, development and geopolitical policies that make populations vulnerable to displacement and forced migration - often in perilous even fatal, circumstances; and vulnerable to exploitation during transit and on arrival
- We are not, happily, approaching these questions in a vacuum. That is to say, that we do have the necessary tools at our disposal to confront the challenges that are leading to massive forced displacement and migration of peoples. The international human rights and humanitarian law framework is sufficient, even if guidance on the relevant laws and their implementation at national level is always welcome. The obligations contained in these instruments incorporate fundamental principles, such as that of equality and non-discrimination, and underscore the State's duty to respect, protect and fulfil human rights, including access to justice and remedies.
- A recent relevant addition to the body of international instruments is the ILO Employment and Decent Work for Peace and Resilience Recommendation, 2017, which gives some guidance on, amongst other things, addressing the situation of migrants affected by crisis situations. Recent policy guidelines adopted by the ILO (based on existing international norms), namely the ILO Guiding Principles and Operation Guidelines for Fair Recruitment and the ILO Guiding Principles on the access of refugees and other displaced persons to the labour market
- What is often glaringly lacking is the political will to tackle the situations that render populations vulnerable to forced migration, and migrants vulnerable to exploitation
- To give some concrete examples of this from the labour side: addressing risks and vulnerabilities of migrant workers to exploitation and abuse, including violence, demands a collective response. Yet in many parts of the world the ability for migrant workers to organise in defence of their rights is limited either in law or in practice. Indeed the ability of all workers to organise is increasingly limited in either law or practice
- Restricting the freedom of association and right to engage in collective bargaining of migrant workers, of itself, restricts their access to decent work and exposes them to the risk of exploitation

The dominant model has become temporary and circular migration and it often seems that little or no attention has been paid to the additional risks and vulnerabilities to which such programmes expose migrant workers. On the contrary, they are often touted as a triple win solution. For vast numbers of migrants, particularly those in less-skilled, low-paid jobs, the reality is rather different. It is difficult to see migrant workers as winners in circular schemes, or as able to exercise their own agency, since they have limited choice regarding the jobs, change of employers, family unification and timing of return, among others. Further limitations include:

- No path to residency and extended (even long-term) separation from family
- Deskilling and lack of labour mobility (i.e. inability to 'switch up – or even sideways)
- Poverty wages, increased exposure to health and safety risks and no/inadequate access to social protection including (but not only) worker injury compensation schemes, maternity protection coverage and retirement benefits. In the worst cases this we see migrant workers trapped in modern forms of slavery
- Associated designated employer, tied visa, employer sponsorship that effectively prevents migrant workers from escaping abusive or exploitative employment without falling into irregularity
- Links between immigration and labour inspection/enforcement mechanisms, which mean that migrant workers will not risk complaining about breaches in the terms and conditions of their employment, no matter how serious, so strong is the fear of deportation
- Practices of so-called 'black-listing', which, for example can bar migrant workers from participation in seasonal programmes, simply for seeking to exercise their labour and trade union rights
- Inability in practice, if not in law, to join trade unions and exercise their rights to freedom of association and collective bargaining.

Of course there are also characteristics that may render certain people more vulnerable to risks during the migration process, including at country of destination:

- Less skilled migrant workers often find themselves more at risk, not because of their skillset, but because of the nature of migration regimes that typically apply to less skilled migrant workers
- Child labour is reportedly rife among refugee populations and unaccompanied minors often do not receive adequate protection
- Women migrant workers are often excluded from essential social protection such as maternity leave and care, child care, and sexual and reproductive health services. Women and girls may arrive at their destination pregnant as a result of rape during transit, yet be excluded from specialised medical attention, including medical, trauma and counselling services.
- Undocumented migrants are particularly at risk of abuse and exploitation, but they are often deliberately excluded from protections and find it near impossible to exercise their human rights.

There are solutions to many of these challenges. Again, they require political will. An important aspect of global migration policy and sustainable development should be to address the root causes of migration and provide decent work opportunities and development in home countries so that migration becomes an option rather than a necessity. The Sustainable Development Goals can also offer an

opportunity to change course, but if and only if, we rethink the economic, development and geopolitical models that are creating such dramatic inequalities between and within countries.

Our recommendations would include, as a minimum:

- Ensure that migration policies, particularly those intended to address migrants in situations of vulnerability, to mitigate and eliminate migrants' exposure to vulnerabilities are firmly based in international human, humanitarian and labour law, including (but not limited to) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, The ILO Convention on Migration for Employment (numbers 97 and 143) and the 1951 Refugee Convention
- Create, rather than ever increasingly restricting, pathways to permanent migration for migrant workers at all skills levels
- Ensure the right to organise and bargain collectively in practice for all migrant workers, including those in temporary, circular and seasonal schemes; as well as for refugees
- Ensure the application of the right to equal treatment and non-discrimination, including in respect of wages and other working conditions (such as working hours and OSH), protection from exploitation, violence and harassment and portability of/access to social protection. This also means that migrant workers should not experience any deductions from wages, which local workers would not (i.e. in relation to recruitment fees and related costs; withholding a portion of wages that is then returned to the worker when he/she returns home...)
- Abolish tied employment/sponsorship requirements. At the very minimum, such visa types /work permits occupation or sector wide, increasing the migrant worker's ability to change employers, particularly in cases of exploitation and abuse
- Regulate the recruitment industry and ensure proper enforcement of those regulations
- Apply active labour market policies and programmes to build inclusive and resilient labour markets that provide decent work opportunities for local, migrant and refugee populations alike
- Ensure/'test' labour market needs for migrant labour through social dialogue and tripartite structures. Often labour mobility/migration programmes, appear to spring up at the sole behest of employers and may tend to satisfy a desire for cheap labour rather than reflecting real shortages in labour supply
- adopt appropriate measures, including legislative measures and campaigns, that combat discrimination and xenophobia in the workplace and highlight the positive contributions of refugees, with the active engagement of employers' and workers' organizations and of civil society
- Combat social exclusion through investment in quality education; skills, including skills upgrading, language and vocational training

- Ensure consultation and encourage active participation of employers' and workers' organizations in planning, implementing and monitoring labour migration policies and measures; including measures aimed at the economic and social integration of refugees
- Make use of regularisation programmes - e.g. of Haitian workers in Brazil. These are too often seen as an unpalatable and politically inexpedient measure by governments
- Establish firewalls between immigration control and access to public services and access to justice for migrants, particularly undocumented migrants, who are in the most vulnerable situation. Migrants should never be denied access to public services or to justice due to their immigration status