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## Governance of Migration and Transnationalisation of Migrants' Rights – An Organisational Perspective

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## Introduction

The global policy debate on economic migration has in recent years centred upon the “management of migration”<sup>1</sup>, with the main objective being the promotion of cooperation among states in dealing with various dimensions and the complexity of international migration today. This is, thus, clearly a state-owned process. A further global policy development is the revival of a rights-based approach to the ‘management’ of economic migration by the International Labour Organisation (ILO) aimed at addressing the protective deficit for foreign workers in current policy practices by individual states. Given the different interests involved on the part of origin and destination countries’ governments as well as other stakeholders, the push for greater cooperation poses serious challenges to the upholding and advancing of the human rights of migrants.

The subject of migrants’ rights typically conjures up a legalistic understanding as it relates to international human rights law. By contrast, this paper attempts to contribute to the debate on migrants’ rights by focusing not on normative and legal aspects of international human rights law, but by approaching this topic from the perspective of governing institutions and the political processes involved in promoting a rights’ agenda and, where relevant, monitoring their implementation. Apart from states, civil society organisations play a significant part in the governance structures, especially when it comes to raising issues and concerns of ‘the marginalized’ (Grugel and Piper forthcoming). Based on their specific socio-legal position and the tendency to occupy the bottom ranks in labour markets (as also highlighted by global policy makers<sup>2</sup>), migrant workers are without doubt one such marginalized group.

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. Despite trade unions’ ambivalent attitude towards foreign workers generally, it is particularly the main features of the prevailing forms of migration today (its short term contract nature, informalisation, and feminisation) which pose a specific challenge to labour union organising. As evident in the context of Asia, it is alternative organizations such as migrant worker associa-

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<sup>1</sup> This is related to a number of global initiatives, such as the Berne Initiative (for more details, see [www.iom.int/en/know/berneinitiative/index.shtml](http://www.iom.int/en/know/berneinitiative/index.shtml)) and the establishment of the Global Migration Group which is a forum bringing together the heads of several major UN agencies (ILO, UNCTAD, UNHCR, OHCHR, UNODC) as well as the Global Commission on International Migration in 2003.

<sup>2</sup> Such as the ILO (2004) and the GCIM (2005).

tions or NGOs that have taken on an important role as service providers and rights advocates. Civil society activism has also taken place beyond the confines of the nation-state, i.e. transnationally, by forming advocacy networks across the region and beyond. The engagement with global institutions and the use of international norms and law as a tool for advocacy provide important opportunities for advancing a rights' agenda but there are also serious limitations (Grugel and Piper, forthcoming).

This paper focuses on the challenges posed by temporary contract migration (which are on the rise if not even dominant) for the governance of economic migration and political activism from below. The guiding questions are: to what extent does the institutional architecture on the global, regional and national level provide new spaces for political activism? What form offers more possibilities for temporary migrants' organising and the promotion of rights relevant to them? In addressing these questions, I follow Johnston (2001) in taking a sociological perspective on rights. This is to mean that rights first appear not when governments recognize them, but when people begin demanding and exercising them.<sup>3</sup>

The focus here is on collective activism via organisations and their engagement with the subject matter of migrants' rights. In an era of increasingly fluid migration patterns which give rise to very complex rights issues, I argue that a transnational perspective is required in addressing migrants' socio-economic and legal insecurities – theoretically as well as on the operational level.

The ideas in this paper derive from my work on intra-regional migratory flows in Asia. The first section, therefore, briefly outlines the migration patterns and rights issues in this part of the world (which are, however, not confined to Asia but are relevant beyond this region) to then examine the question to what extent the emerging governing regime for economic migration is more concerned with control rather than the rights of migrants - which again is applicable beyond the situation in Asia. The section which follows discusses the importance of a transnational approach to the rights of migrants to balance the almost exclusive concern with the issue of control by states.

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<sup>3</sup> Johnston relates this to his discussion of citizenship and I extend this here to a broader human rights discussion.

## Temporary Migration Schemes and Migrants' Rights issues in Asia

### *Migration Policies*

According to the International Labour Organisation (ILO), Asia constitutes the region with the second largest volume of migrant workers after Europe (22.1 million or 27% as opposed to Europe's 27.5 million or 34%) (ILO 2004:7). A gradual shift of direction of destinations has occurred in recent decades from the Middle East to East and Southeast Asia, with Malaysia, Hong Kong and Singapore having become major 'importers' of migrant workers from Indonesia, the Philippines, Bangladesh and elsewhere.

Asia contrasts with Europe and traditional immigration countries in that Asian governments on the whole have practiced temporary migration schemes only and, thus, officially prevent migrants in the lower skilled categories from settling and reuniting with their families in the host country.<sup>4</sup> As a consequence of lacking integration and family unification policies, the acquisition of permanent residence status, let alone citizenship, is out of reach for most migrants in Asia.<sup>5</sup> Unlike the government-to-government arrangements in Western European guest-worker programs of the 1950s and 1960s, the system that evolved in Asia did not involve governments as such. Rather, recruitment has largely been left to private agencies and a dense network of brokers and intermediaries, a practice that exposes migrants to human and financial exploitation at all stages of the migration process (Asis 2005).

In terms of types of work or sectors, most male migrants find occupation in the construction sector, in the manufacturing sector of small firms and for subcontracting companies, in agriculture such as plantation and rice mills, as well as fisheries and services. In Singapore, many migrants also work in the shipping sector. Migrant women are typically confined to traditional roles in the labour market, mostly in the health sector, entertainment and domestic service. In addition they can also be found working in factories, especially in the garment sector. As entertainers and domestic workers, they are inadequately addressed by labour

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<sup>4</sup> However, according to Parreñas (2004), many European countries prohibit migrant domestic workers from reuniting with their families at their destinations also. Notable exceptions are Italy and Spain. Likewise, Asian governments tacitly allow the presence of migrant workers longer term (often whole families in an undocumented manner) without officially recognizing that settlement does occur and without responding by way of integration policies.

<sup>5</sup> One important 'source' of long term migration and settlement, however, is international marriage, especially between Southeast Asian women and East Asian men (Piper and Roces 2003; Piper and Yamanaka, forthcoming).

legislation, and so are the so-called 'trainees' (mostly men), a system commonly used in Japan and Korea in order to get around official government policy of not allowing the employment of unskilled foreign workers. But it has to be said that even in those sectors covered by labour laws, lower skilled migrant workers often have their employment and associational rights violated (Piper 2006b).

Undocumented migration is the result of a number of complex issues and not purely a matter of unauthorized entry. The number of undocumented migrants is especially high in certain countries. In the case of Malaysia they amount to about 50%, with the highest percentage being in Japan at about 68%. Amongst other, this has to do with porous borders (often separating peoples of the same ethnicity) as for instance between Malaysia and Indonesia or with lacking legal channels for lower skilled migrants despite local demand for such workers (as in Japan). Partly as a result of the high occurrence of irregular migration, wage discrimination and violation of labour rights are rampant (ICFTU-APRO 2003).

In the absence of family reunification policies in Asia, migrant households often constitute transnationally 'split families', either with one parent working abroad or both parents but often in different countries. Because of the strictly temporary nature of migration and the high occurrence of undocumented migration, return migration is common. As migrants are often unable to meet their targets (also to do with the high debts they incur in the recruitment process), they are compelled to re-migrate. This leads to a vicious circle of migration and re-migration.

### *Migrants' Rights Issues*

Lower skilled temporary migrant workers, who form the majority of labour migrants in Asia, are more vulnerable to rights violations as opposed 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 or do not even exist for local workers.

The key issues and concerns for foreign workers which centre upon workplace grievances can be broadly classified under two headings: 1) employment related, and 2) welfare, occupational health and safety issues. Employment-related issues are mainly about non-payment or under-payment of wages and unauthorized deductions. Issues to do with welfare, occupational health and safety are concerns pertaining to accommodation, long working hours and workplace hazards. The latter includes work-related injuries and accidents as well as physical/sexual abuse (as encountered by foreign domestic workers, or FDWs). Official statistics

on numbers and types of the various workplace grievances are rare and mostly non-existent, and so are systematic studies or recording activities by NGOs.

According to a multi-country study (Verité 2005) which covers Vietnam, Indonesia, the Philippines Thailand, Taiwan, Jordan and Malaysia, the list of common abuses against foreign contract labourers were excessive overtime, improper wage payments and withholding of wages. Despite the widespread existence of legislation limiting fees for service, placement or recruitment, fees charged were nevertheless excessive in practice in two regards: they exceed legal limits and often accounted for a large portion of a worker's earnings. This discrepancy between law and actual practice has to do with the absence of formal legal mechanisms for governing the payment of placement fees (with the exception of Vietnam). The report, therefore, concludes that the level of indebtedness of foreign contract workers pertains to 'debt-bondage' consistent with the United Nations (UN) definition of human trafficking.

With domestic work being a highly significant source of legal employment for foreign women and the continuing demand for such services, it deserves special mention. Legal status (work permit) does not necessarily mean recognition by labour laws. In fact, domestic work is widely excluded from national labour legislation. Foreign domestic workers or carers (typically women) do not fall under national employment acts (Singapore, Malaysia, Taiwan) whereas foreign workers in industries such as construction and manufacturing are usually covered by industrial relations legislation. Thus, national employment acts or labour standard laws do not recognise domestic work as a legitimate form of labour despite the otherwise legal work permit most of these migrants hold.

In their attempt to exert control over their populations some, receiving states (most notably Singapore and Malaysia) officially prohibit lower skilled foreign workers (male and female) from marrying citizens or permanent residents. In an extreme form of control of female bodies, some states require migrant women to take periodic pregnancy examinations and to leave the country immediately if they test positive (Huang and Yeoh 2003).

A very complex and highly controversial issue are the human rights of migrant women in the sex and entertainment industry. The only way in which this is tackled by policymakers and international law is via anti-trafficking legislation. To view all women working in this industry as 'victims of trafficking' is problematic and does little to protect these women's rights and interests in practice (Piper 2005c; Augustín 2005).



## Governing architecture – controlling or protecting migrant workers?

One important role of the institutional set-up governing international migration is to produce, reproduce and justify norms which frame global ‘problems’ and shape policy responses. “Regimes that are based solely on norms or informal rules may be weaker and implementation more difficult to achieve compared to regimes that are encased in institutions or international law” (Grugel and Piper, forthcoming). But such regimes with strong global institutions are rare. Moreover, global institutions can do little by way of implementing policies without state and non-state actors supporting them. In order to really make a difference to people on the ground – here the migrants themselves – their voices need to be heard.

Although the shift in the migration policy debate toward a focus on international cooperation is primarily concerned with control over entry and exit (especially to prevent irregular migration<sup>6</sup>), broader human rights issues as well as the rights of foreign workers have, in fact entered into the discussion (GCIM 2005; IOM and FOM 2005) 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 indeed a serious concern with migrants’ human rights leading to real efforts toward safeguarding their rights, especially in terms of providing mechanisms by which these rights can actually be claimed.

In other words, the important questions the current shift in discourse and policy concerns raises are: are these two elements—managing migration and the protection of migrants’ rights—going hand in hand or do they constitute conflicting areas of concern and policy (with rights issues being sidelined)? How is this reflected and played out in terms of the various governing institutions involved? Do they include non-governmental or civil society organisations in their policy making processes and are there mechanisms in place for the actual claiming of rights?

### *Global governance*

Despite the attention migration has reached in global policy today, there is no comprehensive international legal framework governing cross-border movement of people and related to this,

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<sup>6</sup> 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](http://www.unhrc.ch/prexcom/globalcon.htm)

no one single United Nations (UN) agency whose exclusive mandate is international migration. Rather, the present state of affairs is such that there are various UN agencies whose competences include migration issues by focusing on migrants in their separate roles as workers, refugees, women, or non-citizens – but rarely in the entirety of these roles. Thus, migration has been less successfully institutionalized than for instance childhood. UN human rights treaties and conventions constitute the foundations of all such regimes. But some have evolved toward firm legal rules and have been widely ratified, whilst others remain less institutionalized. Migrant worker specific instruments are among the least ratified and their human rights concerns fragmented (Grugel and Piper, forthcoming).

States are the constituents of international organisations. Governments commonly take a utilitarian approach to migration prioritising their (macro) economic interests: origin countries are often driven by the desire to increase foreign remittances and to solve the problem of high unemployment; destination countries are interested in solving labour market shortages in certain sectors by ensuring a highly flexible and compliant workforce. As a result, governments usually take less notice of migrant workers' needs and concerns as opposed to those of employers – and sometimes not even of those employers who are in favour of increased legal migration of lower skilled workers. This has also become evident in an ILO survey on policy making and the involvement of social partners: “There are,....., only a few examples where the formulation of labour migration policies, laws and regulations takes place through formally established tripartite structures” (2004: 112).

### UN system

Within the UN's current structure, it is the ILO and the Office of the High Commissioner for Human Rights (OHCHR) which are the main standard setting agencies with regard to migrants – in their role as workers (ILO) or non-citizens (OHCHR). The UN Convention for the Rights of All Migrant Workers and their Families (hereafter: CRM) which was passed by the General Assembly in 1990, is the only migrant worker specific instrument by the UN. It only came into force in 2003 after a Global Campaign to boost its ratification was launched in 1998.<sup>7</sup> Until fairly recently, no relevant institutions within the UN had made any efforts to

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<sup>7</sup> The Campaign Steering Committee included 16 leading international bodies on human rights, labour, migration, and church organizations. For more detail see Global campaign website at :[www.migrantsrights.org](http://www.migrantsrights.org).

promote this Convention.<sup>8</sup> Until 1996 it was even difficult to simply obtain a copy of the actual text. It was largely due to NGOs that knowledge about this convention has spread and that its content was translated into local vernaculars. After finally reaching the minimum number of ratifications in 2003, the Committee on Migrant Workers (the CRM's treaty body<sup>9</sup>) was set up. The treaty body system of the OHCHR provides relevant NGOs the opportunity to submit 'shadow reports' to provide an alternative (and critical) view to the one given by governments. Even the submission of individual complaints to the Committee are possible under certain circumstances (what these are, is unclear as this avenue is yet to be tried). In this sense, the Migrant Committee offers a direct avenue for complaints voiced through civil society organisations. Considering the fragmented nature of migrant workers' human rights, a shortcoming of the OHCHR structure is that concerns for migrants are not properly mainstreamed into the workings of *all* treaty bodies – i.e. specific migrant worker issues should be taken up by all treaty bodies since the other six core conventions<sup>10</sup> also cover migrants in their role as non-citizens.<sup>11</sup>

In addition to the treaty bodies, the UN has another system by which it monitors specific types (or target groups) of human rights: country-specific or thematic Special Rapporteurs. The mandate for the Special Rapporteur on the Human Rights of Migrants was created in 1999 and extended for a further three years in 2005 by the Commission on Human Rights, requesting the Special Rapporteur to "examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants". To this end, the main functions of the Rapporteur include the gathering of information from all relevant sources; the formulation of appropriate recommendations; the promotion of the effective application of relevant international norms and standards; and the recommendation of actions and measures. In practical terms, this can be done in a number of ways, such as 'fact-finding missions' (i.e. country visits) for which the Rapporteur, however, needs the invitation of the Government in question; participation in conferences and meetings relating to the human

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<sup>8</sup> See The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat, ICMC, 18 December 2004, which can be obtained from [grange@icmc.net](mailto:grange@icmc.net) and/or [myriam@december18.net](mailto:myriam@december18.net).

<sup>9</sup> The human rights treaty bodies are committees of independent experts which monitor implementation of the seven core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor. For more information, see <http://www.ohchr.org/english/bodies/treaty/index.htm>

<sup>10</sup> These six core conventions are: ICCPR, ICESPR, CERD, CAT, CRC, and CEDAW.

<sup>11</sup> This was argued in the following study: The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat, ICMC and 18 December 2004, which can be obtained from [grange@icmc.net](mailto:grange@icmc.net) and/or [myriam@december18.net](mailto:myriam@december18.net).

rights of migrants; the preparation of an annual report to the Commission on Human Rights.<sup>12</sup> As so often, the budget for these activities is very small and thus the number of country visits very limited.

The ILO has historically always included the protection of migrants as workers in its overall mandate and all of its fundamental core standards as well as its conventions relate to migrant workers. Its first migrant-specific convention dates back to 1949 and its second to 1975. The ILO was also the main technical advisor to the UN during the drafting process of the CRM. To address rights violations, the ILO offers a complaint mechanism based on Article 22 and 23 of its constitution, according to which State Parties are obliged to submit reports on the implementation of the eight fundamental conventions (and every five years on other conventions, to which the two migrant worker-specific conventions belong). The violation of Freedom of Association is the only issue on the basis of which a complaint can be filed even when the perpetrating country has not ratified the relevant convention. Given its tripartite structure, comprised of governments, employer and workers' organizations (that is, trade unions), migrant worker-related concerns and complaints can be channelled through trade unions. This means that NGOs have no direct access to this mechanism but have to seek the support of trade unions. At this moment in time, unions are not in favour of the formal inclusion of NGOs into the ILO governing structure (Waterman 2005). Unions' attempts to organize and assist migrant workers seem to be too recent a policy change to have resulted in concrete usage of the ILO's mechanism to advance *foreign* workers' rights.

#### Inter-governmental system

Outside of the UN system, there are other international organisations whose constituency are also states, such as the International Organisation for Migration (IOM) which is widely supported by many northern governments – more so than the ILO. The reason for governments' preference of the IOM is precisely related to it not being a norm and standard setting international organization and not involving social partners in any direct manner. The IOM constitutes an inter-governmental organization which has no normative framework for the protection of migrants' rights (Human Rights Watch 2003). In addition, the IOM has no effective accountability mechanisms to answer criticisms with regard to its practices and their impact

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<sup>12</sup> For more information, see <http://www.ohchr.org/english/issues/migration/rapporteur/> from where the annual reports can be downloaded (accessed 17 November 2006).

on human rights. Last but not least, the IOM has no official mechanism by which to engage with civil society. NGOs are brought in to carry out projects on the ground but they are not involved in formulating them or in advising on overall policies.

The critical analysis of the emerging trends toward a global 'management of migration' and its impact on advancing migrants' rights is also crucial with regard to another development that runs parallel to the above mentioned, and that is the on-going negotiations at the World Trade Organization (WTO) revolving around GATS/ Mode 4 which indicate a trend to subsume migration under a broader trade agenda. Developing countries are said to often have a surplus in skills in the service sector and GATS provides opportunities 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<sup>13</sup>) with limited commitments by developed countries imposes serious immigration barriers and thus, a limited set of rights.

Another indication for migration being shifted to trade agendas is the inclusion of clauses related to human mobility in Economic Partnership Agreements (EPA). One such example is the recent EPA between Japan and the Philippines, which is phrased in the same style as the GATS Mode 4 by making reference to 'natural persons' as service providers and being geared mostly toward professional and highly skilled workers. Rights and entitlements are not part of the terminology and 'package' of such agreements. Also, and more importantly, the WTO and bilateral negotiations between states are not forums that allow for the input from social partners and other civil society organisations, and thus non-governmental voices which are usually at the forefront of pushing for rights are not given a chance to be heard, nor a chance to monitor and hold states accountable.

### *Regional mechanisms*

At this current stage of the debate on global governance of migration, states are often intimidated by what they seem to perceive as open-ended undertakings which compromise their sovereignty in the migration area. Therefore, regional agreements could be seen as less threatening and, thus, a more effective avenue to go about the advancement of a rights agenda.

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<sup>13</sup> For a full discussion of gendered analysis of the various migration streams, see Piper (2007).

Regional human rights bodies play an important role in consolidating a rights-based approach to migration. The most progressive example here is the Inter-American Human Rights system which offers mechanisms for investigating and promoting human rights in the Americas. On a normative level, the Inter-American Court and the Inter-American Commission for Human Rights have broken new ground in international human rights law by ruling that “all migrants, undocumented and documented alike, are covered by the principles of equality and equal protection” (Satterthwaite 2007). This has never been spelled out in such a direct manner before. In addition, and mirroring the UN system, the Inter-American Commission on Human Rights has created one of the most flexible mechanisms to advance the promotion of human rights: that of special rapporteurships referring to “mandates filled by individuals who are designated to investigate and report on specific thematic human rights concerns” (Satterthwaite 2007). Currently, there are seven issue areas for which rapporteurships have been established and among these are the rights of migrant workers and their families.

All regions in this world have a regional human rights body, except for Asia where a region-wide human rights body does not exist. In this context, it is not surprising that statistically Asia ranks the lowest with regard to its ratification record of UN human rights instruments. Many Asian countries, however, have national human rights commissions, and in 1996, existing national human rights institutions formed the Asia Pacific Forum as a venue to discuss and promote human rights standards in Asia. But this Forum has been preoccupied with conventional civil and political human rights concerns with migrant worker issues not having reached the agenda.

## Transnationalisation of Migrants' Rights

A number of studies have pointed to the serious shortcomings in existing human rights instruments in terms of their flawed coverage of migrant issues and poor ratification record (Satterthwaite 2005; Piper and Satterthwaite 2007). This points to the significance of political activism in order to advance and promote migrant rights. Yet, the academic literature on migrants' rights is dominated by legal scholarship and the few social scientific studies which exist typically discuss the rights of *immigrants* focusing on the gradual acquisition of citizenship rights. In the context of temporary migration schemes, however, approaching rights from the angle of naturalisation makes little sense. Instead, a broader human rights approach is called for - and more importantly as far as this paper is concerned, a transnational perspective to reflect the nature of the dominant nature of migration and the socio-political sphere in

which migrants move and operate. I would like to distinguish here between transnational rights and the political process of transnational activism.

### *Transnational perspective*

The multiple interlocking networks of social relationships that are the basis of today's migration experience have an impact on our understanding of rights - in theory (legal rights) and practice (i.e. the politics behind the granting or non-granting rights to migrants). Contextualising rights with transnationalism points first of all to the fact that taking a dual approach to migration – i.e. as a one-way or one-off emigration and immigration phenomenon – does not capture the reality of the actual complexities which migration involve. Because of the largely temporary nature of migration, many migrants encounter a so-called 'transnationally split family life' whereby spouses and/or children are left behind. The migration experience has, thus, begun to be conceptualized as something that takes place within social fields 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 & Nyberg-Sorensen 2004).

The example of transnational family life also raises the issue of state and societal responsibility: family unification or other family-related matters have typically been treated as the realm for destination countries to deal with but a transnationally split family situation is also an issue of responsibility for origin countries. For temporary migrant workers, for whom conventional family unification policies are irrelevant or not applicable, the conventional notion 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 situation of those left behind from a rights perspective.

In addition, another trend in recent years has been the rising interest of countries of origin in establishing a link to their nationals residing or working overseas (rightly or wrongly referred to in the literature as 'diasporas' or transnational communities). This is largely driven by origin countries' recognition or hope that migrants can advance national development from abroad through monetary remittances, skill transfers or investment (Piper and Yamanaka 2007). To stimulate such assistance, emigrants are increasingly being endowed with special rights toward this end. Two types of such rights have political implications (and are at times the outcome of transnational activism, as in the Philippine case): overseas voting rights and dual citizenship and countries of origin are in fact now more and more inclined to implement

legislation to this end.<sup>14</sup> 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, Ancoq 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 re-migrate. Thus, NGOs do not only want ‘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 Philippines are in this respect the most advanced, with migrant worker activism covering a wide range of issues and organisations, many of which operating transnationally.

With regard to employment or labour rights, the gravest concerns for Asia-based NGOs are breach of contract and the non- or under-payment of wages. The notion of ‘portable justice’ captures the problem when contracted or undocumented migrants are sent back or deported, but were not paid their wages, and the difficulties involved in claiming grievance in labour courts or labour standards offices (Caron 2005, Piper 2005b). 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. This is where transnational networking between NGOs and trade unions gains importance and where the involvement of lawyer associations would be vital. Freedom of association, and the freedom to form organisations, in order to address the violation of specific labour rights thus constitutes a vital core labour standard which is also commonly violated.

The above trends and issues point to the gradual transnationalisation of rights, as I would argue. By this, I refer to: (1) rights which migrants maintain vis-à-vis the country of origin when crossing borders; (2) rights which migrants gain when entering the destination vis-à-vis the country of origin and destination; (3) rights which migrants keep and gain when returning to their country of origin. Conceptually, the idea that origin and destination countries have obligations towards a migrant is covered by existing international instruments – but only in a specific, narrow manner. What I am referring here to is a broader approach to the issue of ‘migrants’ rights’ including the addressing of root causes of migration as well as the transnational socio-political sphere in which migrants operate. In this sense, a new approach to ‘mi-

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<sup>14</sup> In 2000, ten countries in Latin America had passed some form of dual nationality or citizenship including Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Mexico, Panama, Peru and Uruguay; only for 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 vote (Levitt and Nyberg-Sorensen 2004).



grants' rights' is called for which conceptualises rights as broader responsibilities on the part of both the sending and receiving states as well as societies. Last but not least, the notion of 'transnationalisation; also meant to refer to the political process of advancing and promoting rights in form of transnational political activism to reflect the transnational nature of migration.

## Organisational Representation of Migrants in Asia

In the realm of work, the labour movement through trade unions has historically constituted an important vehicle for the representation of workers' interests. However, due to economic restructuring processes globally, the labour movement has lost its traditional constituents (industrial workers) almost globally, and trade unions have to adapt to a world of labour market deregulation in a more creative manner in order to ensure their relevance as 'social reform' actors. In addition to trade unions, a rise in the numbers of migrant associations and NGOs can be witnessed globally advocating more specifically for migrants' rights and offering essential services to this highly marginalized group of workers. These NGOs address a protection deficit often not tackled by trade unions by reaching out to migrant workers or a certain sub-group such as domestic workers (Piper 2005a). In order to incorporate migrant workers into overall political struggle to uphold labour standards, recent studies have argued for a need to enhance collaboration between trade unions and migrant organisations (Piper and Ford 2006).

Apart from the general problem of the erosion of workers' rights globally, the non-citizen (and at times, illegal) status of migrant workers poses an additional problem. The positioning of many migrants in informal and feminised sector jobs is another area that trade unions have for long found difficult to address. The question which arises is to what extent migrant workers are part of the collective agency of the domestic labour movement and acting in solidarity with local workers and vice versa? Furthermore, especially in view of temporary contract schemes, how is the transnational nature of migration reflected in transnational operating of trade unions? Research shows that it is in fact NGOs and migrant associations which are at the forefront of transnational advocacy networks. Trade unions have remained nationally oriented and hierarchically structured. They have not fully embraced the networking form, making them less nimble and capable of dealing with the scale and complexity of worker migration (Waterman 2003). How can the serious limitations of conventional trade unionism in organising migrant workers be overcome?

The political organising of migrant workers poses a particular challenge in contexts where migration is characterized by widespread informalization, temporariness, and/or illegality. Migrant associations, trade unions and other civil society institutions have an important role to play in offering support services and advocating for the rights of migrants. This has been recognized by academics (Ford and Piper, forthcoming) as well as policymakers (ILO 2004; GCIM 2005). These different types of organizations have their respective strengths and weaknesses, based on their organizational 'histories' and processes, offering different opportunities and posing different limitations for advocacy and labour organising. In recent years, new strategies have begun to emerge in form of intra-organizational policy shifts – and trade unions opening their doors to migrant workers - or reform processes and inter-organizational alliances within and across borders.

### *Transnational organising*

In view of contemporary migration patterns being largely of short-term nature, often irregular, it is crucial to link country of origin to country of destination in analysing international migration issues and formulating responses. Given the contract labour policies or the tacit approval of illegal migration involving 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.

The emerging research area of transnational political activism has generated important studies within several different scholarly disciplines, including International Relations (IR). As I have provided a detailed literature review elsewhere (Piper and Uhlin 2004), I will not elaborate this any further here but simply make two points: firstly, issues pertaining to labour in general and women workers in specific have been an important ingredient in the development of transnational perspectives on political activism (Fonow 2003; Herold 1995). In such works, male and female workers emerge as social agents and not merely as passive bearers of the power of global capital. And secondly, as demonstrated by the social movement literature, the effectiveness of political activism is related to networking and alliance building, nationally and transnationally, to accumulate enough force to have any impact.

Much of the literature on transnational advocacy networks has focused on NGOs or civil society organisations. In the context of protecting foreign workers, the meaning of *transnational* networking and organizing, I would argue, refers to (1) local citizens campaigning on behalf of non-citizens (where there is no political space for non-citizens to be political active, such as in Singapore and Malaysia, or when their status as ‘illegal’ prevents them from being active); (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.

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 have been subject to research (see e.g. Piper 2003; Ford 2004; Piper and Ford 2006). The extent to which migrant worker NGOs are able to form alliances, especially within destination countries, and assert sufficient pressure on governments to achieve change has been questioned (Wee and Sim 2005).

Waterman (2001, 2003) has developed the notion of ‘social movement unionism’ as a synthesis of trade-union theory with that of ‘new social movement’ theory<sup>15</sup>, arguing that the crisis of trade unionism is rooted in the fact that the labour movement is still understood in organisational/institutional terms when it needs to be understood in networking/communicational ones (as new social movements have done). He argues that although labour is not the only source for social change, it constitutes an important ally and would achieve its full potential if aligned with other democratic social movements. With traditional workers and unions no longer being the norm of political struggle for social justice, labour movements have to rethink their way of operating. Recent studies on migrant worker NGOs in the Southeast Asian context have argued on a similar line: that regular collaboration with trade unions would enhance NGOs’ advocacy efforts (Piper and Ford 2006). In Asia, it is the Philippines where the concept of social movement unionism has been operationalized to some extent (Alcid 2006).

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<sup>15</sup> To be precise, Waterman (2003) argues that social movement unionism should be reconceptualised in “Class+New Social Movement” terms.

One concrete example of a Filipino instigated coalition of trans-national and trans-institutional character establishing a link to global governance structure is that formed in response to the Hong Kong government's plans to impose a levy and wage cut on FDWs working in Hong Kong. A coalition of migrant worker organisations stepped up their opposition against this. In January 2003, the Coalition for Migrants' Rights (CMR), through its member-unions the Indonesian Migrant Workers Union (IMWU) and Asian Domestic Workers Union (ADWU) filed their initial complaint to the ILO. After the Hong Kong government formally announced on 26 February that it would go ahead with the wage cut and levy, CMR and its union-members sent a follow-up letter and position paper to the ILO to formalise their complaint against the Hong Kong government. CMR is complaining that the Hong Kong government has violated ILO Convention 97, of which Hong Kong is a State-party. CMR also argues that the wage cut and levy will result in more excessive agency fees and abuses against the FDWs, especially Indonesians, and will thus worsen the forced labour situation faced by many FDWs. This is against the principle of ILO Conventions 29 and 105, to combat forced labour situations. Hong Kong is also State-party to these conventions. The Hong Kong Confederation of Trade Unions (HKCTU) was present at the press conference in Hong Kong and declared its support to this initiative of CMR and the migrant unions.<sup>16</sup> To date, the ILO's ruling on this is not known.

## Concluding Remarks

International migration poses a new challenge in the subject area of migrants' rights, for research and policymakers alike, and the conceptual and normative linkages between a rights-based approach to migration, and how to translate this into concerted political action, have yet to be worked out. It seems that the way forward lies in transnational and trans-institutional networking and coalition building from below by making creative use of global and regional governance structures.

In the current political climate, the role of the regional level is probably more significant than the UN system. Most states at this stage are intimidated by what they perceive as open-ended undertakings which compromise their sovereignty in the migration area. Although

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<sup>16</sup> See article "FDW Unions File Case at ILO Against HK Government", <http://www.asian-migrants.org/news/104841654146853.php> (downloaded on 26/03/2005)

such a notion may be wrong, it remains a fact that it is smaller regional agreements which are perceived as less threatening and might, thus, prove to be a better starting point for the recognition of migrant rights (as part of a ‘step by step’ approach). This is a particularly difficult task in a region like Asia where regional mechanisms are the least developed world-wide. In this context, the UN is still a significant venue for voicing rights concerns. Its mechanisms for claiming rights are highly under-used, overtly bureaucratic and lengthy, and more symbolic than effective. One should, however, not totally dismiss its symbolic value.

It is migration associations and trade unions which have key leadership roles to play in generating strategies, common approaches and in mobilizing societies to ensure the implementation of a rights-based approach to the management of migration. The increasing levels of international labour migration and the political activism surrounding foreign workers - especially when seen from a transnational perspective – have the potential to reinvigorate labour activism in general by highlighting the global connections between local and foreign workers.

Apart from transnational networking, however, it is equally as important for the various organisations involved in worker advocacy to form trans-institutional alliances. Stronger collaboration and alliance formation between the broader human rights community, migrant associations, trade unions and other influential actors such as lawyer associations is needed. Social movement unionism in a transnational context seems the way to go.

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 to 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).<sup>17</sup>

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<sup>17</sup> A phrase that I have taken from Waterman (2003) which he applied to a slightly different context.

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