

A marginally revised version of this paper is forthcoming in the
Journal of Human Development and Capabilities (June 2010)

Migrant rights, immigration policy and human development*

Martin Ruhs
ESRC Centre on Migration, Policy and Society (COMPAS)
University of Oxford
58 Banbury Road
Oxford OX26QS, UK
martin.ruhs@compas.ox.ac.uk

9,000 words

19 January 2010

Abstract. This paper explores the impacts of the rights of migrant workers (“migrant rights”) on the human development of actual and potential migrants, their families, and other people in migrants’ countries of origin. A key feature of the paper is its consideration of how migrant rights affect both the capability to move and work in higher income countries (i.e. the access of workers in low-income countries to labor markets of higher-income countries) and capabilities while living and working abroad. The paper suggests that there may be a trade-off between the number and some of the socio-economic rights of low-skilled migrant workers admitted to high-income countries and explores the implications for human development.

Keywords: Migrant rights, immigration policy, human development, global labor markets

Bio: Martin Ruhs is an economist at the ESRC Centre on Migration, Policy and Society (COMPAS) at Oxford University. He is the author of “The Potential of Temporary Migration Programmes in Future International Migration Policy (*International Labour Review* 2006) and “Numbers vs Rights: Trade-offs and guest worker programs” (joint with Phil Martin, *International Migration Review* 2008). He is currently working on a book manuscript on the economics and politics of migrant rights, expected in 2011.

*This paper is a revised version of a background paper for UNDP’s Human Development Report 2009. See: http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_23.pdf

1 Introduction

The rights of migrant workers (“migrant rights”) play an important role in shaping the outcomes of migration for migrants and non-migrants in sending and receiving countries. For example, whether or not migrants enjoy the right to free choice of employment in the receiving country’s labor market is likely to affect their earnings, remittances, and competition with local workers. Migrant rights can also influence the decisions and opportunities of individuals or households to migrate to particular countries. Rights to settlement and family reunion, for example, may be an important factor in the choice of destination. They may also affect how easy or difficult it is to be legally admitted to particular countries and therefore help shape global migration flows and patterns.

Most academic studies and policy debates on “migration and development” have paid relatively little attention to the role of migrant rights. Discussions of the economic and developmental effects of international labor migration on migrants and their countries of origin (see, for example, World Bank 2005) have been largely disconnected from debates about rights which are typically based on legal and moral considerations about socio-economic and political vulnerabilities of non-citizens living abroad (see, for example, Taran 2000). The recent discussions at the Global Forum of Migration and Development in Brussels (2007), Manila (2008) and Athens (2009) are important exceptions. The main theme of the forum in Manila was “how the contribution of migrants to development taken in its widest context, can be enhanced by making the protection of their rights a shared responsibility of origin and host societies” (Abella 2008, p.1). In Athens, a roundtable discussion was dedicated to “linking human rights and empowerment for development”. To further develop this important debate, there is an urgent need for more

conceptual and empirical analysis that explicitly links and studies the inter-relationships between migrant rights and development.

The aim of this paper is to conceptualize and explore the potential impacts of migrant rights on the human development of actual and potential migrants, their families, and other people in migrants' countries of origin. A key feature of the paper is its consideration of how migrant rights affect both the *capability to move and work in higher income countries* (i.e. the access of workers in low-income countries to labor markets of higher-income countries) and *capabilities while living and working abroad*. The paper suggests that there may be a trade-off between the number and some of the socio-economic rights of low-skilled migrants admitted to high-income countries and explores the implications for human development.

Building on Ruhs and Martin (2008), the discussion focuses on international *labor migration* and the rights of migrant *workers* who cross borders for the primary purpose of employment abroad. The analysis, therefore, excludes migrants admitted for the purpose of study, family union or re-union and/or humanitarian protection.¹ There is significant variation in the considerations that inform high income countries' policies for regulating the admission and rights of migrant workers, students, family members/dependents and asylum seekers and refugees. For example, economic considerations are likely to have a greater impact on labour immigration policies than on asylum policies. This paper's economic analysis of the relationship between the admission and rights of migrant workers can, therefore, not be expected to be equally applicable to policies towards other types of migrants.

¹ It is important to clarify that many migrants not admitted for the primary purpose of employment may nevertheless take up work in the host country and eventually become "migrant workers" (e.g. recognised refugees, dependents, students working part-time, etc.). This paper is only concerned with migrants who are *admitted* as workers rather than for other reasons.

The paper links different strands of literature on migrant rights, migration impacts, immigration policy and human development. Much of the discussion will be conceptual but arguments are supported by empirical examples and short illustrative case studies. The paper is intended as a “think-piece” that provides a conceptual framework for discussing important but so far largely ignored questions about the relationship between migrant rights and human development. The impacts of immigration and migrant rights on the human development of residents of migrant-receiving countries will not be considered in any detail.

The paper is structured as follows. Section 2 briefly discusses migrant rights in the context of human rights and citizenship rights. I argue that, rather than considering them in isolation, migrant rights are – and should be analyzed as – a core component of nation states’ immigration policies. The analysis of the effects of migrant rights on human development thus needs to consider potential inter-relationships with other migration policy components, including especially the number and selection of migrants admitted, and consider the overall effects of particular “immigration policy regimes” on human development. To facilitate such analysis, Section 3 proposes a simple typology of immigration policy regimes, characterized and differentiated by how they regulate the number, selection and rights of migrants. It discusses, at a conceptual and empirical level, the relationships between the number, selection and rights of migrant workers admitted under different regimes. In light of this analysis, Section 4 then explores how migrant rights impact on the human development of actual and potential migrants, their families and other people in migrants’ countries of origin.

2 Conceptualising migrant rights: human rights and citizenship rights

It is useful to distinguish between two overlapping yet in many ways distinct approaches to conceptualizing and discussing migrant rights. The first approach is to view migrant rights

primarily as human rights. The legal and normative basis of this approach comprises various international human rights treaties and separate legal instruments that specifically relate to migrants. The three most significant international legal instruments that specifically address the rights of migrant workers are the UN's *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (MWC, adopted in 1990) and the ILO's *Migration of Employment Convention* (1949) and the *Migrant Workers (Supplementary Provisions) Convention* (1975). These instruments set out a very comprehensive set of civil, political, economic, social and other rights for migrants, including the right to equal protections under labor laws, anti-discrimination laws and family laws.

In practice, the ratifications of the MWC and ILO conventions on migrant workers by state parties have been very disappointing (see Tables 1 and 2 below), in both absolute terms (i.e. considering the total number of UN and ILO member states) and in relative terms (i.e. compared to the ratifications of other human rights treaties and ILO conventions). The MWC is the least ratified treaty among all major human rights treaties. It has a quarter of the ratifications of the Convention on the Rights of the Child (passed a year before the MWC) and also fewer ratifications than the Convention on the Rights of Persons with Disabilities (passed 16 years *after* the MWC). The few countries that have ratified migrant worker conventions are predominantly migrant-sending rather than migrant-receiving countries.

Table 1: Ratifications of principal international human rights treaties (as of 2008)

UN human rights Treaties (year)	CERD (1965)	CCPR (1966)	CESCR (1966)	CEDAW (1979)	CAT (1984)	CRC (1989)	MWC (1990)	CRPD (2006)
State parties	173	163	159	185	145	193	39	41

CERD = International Convention on the Elimination of All Forms of Racial Discrimination;

CCPR = International Covenant on Civil and Political Rights;

CESCR = International Covenant on Economic, Social and Cultural Rights;

CEDAW = Convention on the Elimination of All Forms of Discrimination Against Women;

CAT= Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

CRC = Convention on the Rights of the Child;

MWC =International Convention on the Protection of All Migrant Workers and Members of their Families.

CRPD =Convention on the Rights of Persons with Disabilities

Source: www.unhchr.ch accessed on 26 Nov 2008

Table 2: Ratifications of ILO fundamental conventions and migrant worker conventions (as of Dec 2008)

ILO conventions	Freedom of association and collective bargaining		Elimination of forced and compulsory labor		Elimination of discrimination in employment and occupation		Abolition of child labor		Migrant Workers	
Convention number (year)	87 (1948)	98 (1949)	29 (1930)	105 (1957)	100 (1951)	111 (1958)	138 (1973)	182 (1999)	97 (1949)	143 (1975)
Number of ratifications by countries	149	159	173	171	166	168	151	169	48	23

Source: See www.ilo.org accessed on 1 Dec 2008

The most cursory review of the rights of migrant workers around the world confirms that the majority, and especially those working in low-waged jobs, enjoy very few of the rights stipulated in international conventions. For example, under most temporary migration programs in North America and Europe, migrants have neither the right to free choice of employment nor the access to welfare benefits that citizens and long-term residents typically enjoy. In many of the Persian Gulf States in the Middle East, which have long admitted significant numbers of migrant workers, the protections of local labor laws do not apply to certain types of migrant labor. In Singapore, migrants working in low-waged jobs are officially prohibited from co-habiting with, or getting married to, a Singaporean citizen. Illegally resident migrants, whose global numbers are substantial, have very few rights regardless of what country they are working in.

The discrepancy between migrant rights in human rights treaties and in practice point to the importance of paying attention to the role and interests of nation states. Many immigration

countries that accept the idea of human rights clearly do not accept that these rights should also apply to migrants living on their territories. Migrant rights cannot, therefore, be comprehensively analyzed and debated without a discussion of citizenship and the role and interests of nation states in granting and restricting migrant rights in the context of their labour immigration policies.

Citizenship links individuals to states and is associated with certain citizenship rights and duties. Migrants without full citizenship status in the host country (“quasi-citizens” or “denizens”, Hammar 1990) are an important and growing group of residents in many countries. The immigration and integration policies of nation states typically result in highly differentiated rights between citizens and various types of non-citizens. Most countries make significant distinctions, for example, between the rights of migrants with permanent residence status (who usually enjoy most of the rights of citizens except for the right to vote); temporary migrants (whose economic and social rights are often restricted); and illegally resident migrants (who typically enjoy few rights in most countries).

The conceptualization of migrant rights as citizenship rights that primarily derive from nation states suggests that, to understand why and when a particular country grants or restricts the rights of different groups of migrants, it is necessary to analyze the potential economic interests as well as political traditions, social structures and cultural understandings (Baubock 1994) that may underlie immigration policy and public policy decisions more generally.

Given this approach, a key argument and starting point of this paper is that the rights of migrant workers are – and should be analyzed as – one of the three core components of labor immigration policy. At its core, the design of labor immigration policy requires nation states to make three fundamental decisions: (i) how to regulate the *number* of migrants to be admitted (e.g. through quotas or points-based systems); (ii) how to *select* migrants (e.g. by skill and/or

nationality); and (iii) what *rights* to grant migrants after admission (e.g. temporary or permanent residence). The analysis of the effects of migrant rights on human development thus needs to consider potential inter-relationships with other migration policy components, including especially the number and selection of migrants admitted, and consider the overall effects of particular “labour immigration policy regimes” on human development.

A key feature of the human development approach is its explicit recognition of the possibility of conflicts and trade-offs between different dimensions of development (or between different components of capability) and the consequent need to engage in open debate and “public reasoning” (Sen 2005) about how to value and prioritize competing capabilities and objectives. In the context of the effects of migration and migrant rights, the capability approach is particularly useful because it can distinguish, and requires critical discussion of potential conflicts, between: (i) the capability to move and work abroad; and (ii) the capabilities while working and living abroad.

3 Numbers vs rights: Towards a typology of policy regimes for low-skilled immigration

This section discusses, at a conceptual and empirical level, the relationship between the number, selection and rights of migrant workers admitted to work in high-income countries. The conceptual analysis is largely (but not exclusively) based on economic considerations. It highlights the key difference between high and low-skilled immigration and then focuses on exploring the relationship between the number and socio-economic rights of migrants admitted for employment in low-skilled jobs in high-income countries. The analysis suggests economic reasons why the labour immigration policies of high-income countries could be characterised by a negative relationship (a trade-off) between the number of low-skilled migrant workers they admit and some of the socio-economic rights that migrant workers are granted upon admission. The hypothesis thus relates to policies for admitting new migrant workers, not the stock of all migrant (i.e. foreign-

born) workers in the host country, and to the rights that migrants receive *upon admission* rather than after some time in the host country.² In light of this analysis, I propose a simple typology of policy regimes for regulating low-skilled labor immigration and provide illustrative empirical examples.

3.1 The economics of regulating the numbers and rights of migrant workers

Economic considerations suggest that we can expect an important asymmetry in the relationship between the numbers and some of the rights of high-skilled and low-skilled migrants admitted to work in high-income countries. Highly skilled migrants are relatively scarce in the global economy. A significant number of high income countries are competing for a relatively small pool of highly qualified workers willing to migrate. As a result, qualified migrants are able to choose among competing destinations, and their choice of destination is likely to depend on both expected earnings and expected rights in destination areas. Countries that offer relatively few socio-economic and other rights (e.g. family reunion, access to permanent residence and citizenship) to highly skilled migrants can be expected to receive relatively small numbers of migrants and *vice versa*. We can thus expect to see a positive relationship between the relative number and rights of highly skilled admitted to high-income countries migrants in practice.

In contrast, the relationship between the number and rights of migrants admitted for low-skilled work in high-income countries is likely to be negative (i.e. characterized by a trade-off). There is an almost unlimited supply of potential migrants in low-income countries willing to accept low-skilled jobs in higher-income countries at wages, employment conditions and rights that are significantly lower than those mandated by local laws and international norms. Migrants may not

² In many but not all liberal democracies migrants acquire additional rights over time, e.g. after switching to another immigration status or after acquiring citizenship of the host country.

demand equal treatment in the labor markets of higher-income countries, especially if they are recently arrived, plan a limited and relatively short spell of employment abroad and/or consider the wages and employment conditions in the labor markets in their countries of origin as their primary “frame of reference” (Piore 1979). The “excess” supply of low-skilled migrant labor means that employers in high-income countries can increase the employment and at the same time reduce the wages and rights of low-skilled migrants. This “out-of-equilibrium” situation will remain as long as national borders prevent the free flow of international labor migrants seeking low-skilled work.

Employers face a downward sloping demand curve for labor, meaning that, *ceteris paribus*, higher labor costs will be associated with fewer workers employed. Certain employment rights for workers – such as the right to minimum wage, work-related benefits and health and safety standards – increase labor costs for employers, thus generating a numbers–rights trade-off. In other words, employers’ demand curve for labor is downward sloping with regard to certain rights. The trade-off between the rights and number of employed workers is familiar, as when employers oppose minimum wage increases because they assert that higher labor costs will mean fewer jobs. The analogy to migrants’ rights is clear: if migrants have all the economic and social rights laid out in ILO and UN conventions, including the right to equal wages and all work-related benefits, their cost to employers will be higher and fewer will be employed. On the other hand, more limited migrant rights may mean lower costs for employers and more migrants employed. In this sense, increasing the rights of migrants can affect their employment in the same way that a higher minimum wage can reduce the number of jobs (for all workers, not just migrants). Of course, it needs to be added that not all rights create significant costs for employers. Nevertheless, it is clear that some rights do create costs and that *significant* increases in labor costs will, *ceteris paribus*, encourage profit-maximizing employers to reduce the number of jobs on offer.

The numbers–rights trade-off described above rests entirely on the rational behavior of employers and workers, and can be expected to hold in any competitive labor market. If the state stipulates a relatively high set of employment rights for low-skilled migrants, employer demand – and thus the number of new migrants legally recruited for low-skilled jobs – can be expected to be lower than what it would be if migrants had fewer rights.

There may also be two other equally important economic factors, stemming from the interests and policies of the state rather than the actions of employers and workers, that help to generate a negative relationship between the number and some of the rights of migrants admitted to work in low-skilled jobs in high-income countries. The first of these factors relates to the fiscal effects of immigration. Everything else being equal, migrants employed in low-waged jobs can be expected to pay fewer taxes and be eligible for more welfare benefits than the average resident of high-income countries. There is empirical research that suggests that the net-fiscal effects of low-skilled migrants can be negative (see, for example, Smith and Edmonston 1997; Rowthorn 2008). In order to minimize the fiscal costs of low-skilled migrants for existing residents, high-income countries may therefore be expected to limit the number of migrants admitted or their access to welfare benefits.

The labor market and income effects of low-skilled immigration may create another incentive for states to admit or increase the number of low-skilled migrants only if some of their rights can be restricted. If the host country's policy objectives are to maximize the overall economic benefits for existing residents while at the same time minimizing adverse impacts on the lowest paid, high income-countries can have economic incentives to admit low-skilled migrants on a temporary rather than permanent basis and restrict their employment to carefully selected sectors and/or occupations of the host economy's labor market. These are sectors and/or occupations

where it is genuinely difficult or impossible to address staff shortages by raising wages and/or alternative mechanisms such as adopting less labor intensive production methods in the short run; and/or where there is evidence that the costs of lower wages (or lower wage growth) that some resident workers incur because of immigration (see e.g. Borjas 2003; Dustmann, Frattini and Preston 2007; Nickell and Saleheen 2008) are outweighed by the benefits the resident population derives from the lower prices of commodities and services that are produced/provided by migrants (see Ruhs 2008).

Taken together, these three factors – (i) the excess supply of low-skilled migrant labor and the downward sloping labor demand curve with respect to some rights; (ii) the fiscal effects of immigration; and (iii) the labor market and income effects of immigration on existing residents of high-income countries – provide an economic basis for expecting to observe a trade-off between the number and some of the socio-economic and other rights of low-skilled migrant workers admitted to work in high-income countries in practice. To avoid unintended confusion and at the risk of stating the obvious, it is worth making two clarifying remarks about this hypothesis.

First, it is important to emphasize that economic considerations are not necessarily the only factor that determine the relationship between the number and rights of migrant workers admitted to high income countries. In practice, nation states' interests and policies on labor immigration may be determined by a range of economic, social, political, moral and other considerations. For example, states that make egalitarianism and/or compliance with international human rights norms key components of their national identity may be reluctant to restrict migrant rights. Restricting migrants' rights may also generate significant social costs, especially if the restrictions are long term and lead to the emergence of a large group of "second-class residents." Furthermore, as shown by a rapidly increasing political science literature on the determinants of immigration policy

(see, for example, Freeman and Kessler 2008), national policy may not always be “rational” and based on a clear set of objectives of maximizing certain economic or other national interests. Policy decisions could instead be the outcome of negotiations, power struggles and compromises made among different actors within the state bureaucracy. Alternatively, immigration policy may be driven by interest groups (see, for example, Freeman 1995). The role of economic considerations in labor immigration policy is essentially an empirical question that is likely to vary across countries and over time. Nevertheless, it is reasonable to expect economic considerations to play at least some role in the design of policies for admitting migrant *workers*. Policies that lead to sustained fiscal losses or significant adverse impacts on low-paid residents are often politically unpopular and may be unsustainable in the long term.

Second, by suggesting the theoretical possibility of a trade-off between the number and some of the rights of low-skilled migrant workers admitted to high-income countries, I am not arguing or assuming that it is normatively desirable to restrict migrant rights. What I am saying is that there are economic effects and mechanisms which suggest that we may observe an inverse relationship between the number and rights of low-skilled migrant admitted to work in high-income countries in practice. If this is so – an open empirical question that I begin to explore below – it is an important consideration to take into account when discussing the effects of migrant rights on human development and the best strategies for promoting a rights-based approach to protecting the well-being of migrants more generally.

3.2 Empirical examples of different policy regimes for low-skilled labor immigration

There are numerous empirical examples that support the hypothesis of a trade-off between the number and rights of low-skilled migrant workers admitted to high-income countries. Depending on how exactly rights and numbers are balanced, it is possible to identify three policy-

regimes for low-skilled immigration: (i) high numbers and few rights; (ii) low numbers and comprehensive rights; and (iii) a balance of numbers and rights that falls between the extremes of (i) and (ii). This section briefly discusses selected empirical examples of these different regimes and tentatively explores the reasons for restricting rights under each regime. The discussion is based on current and past experiences and policies in different countries. How numbers and rights are balanced in a particular country may of course change over time. The focus of the brief discussion below is on initiating discussion by identifying different regimes rather than on systematically analyzing the determinants of policy choices in different countries. In practice, immigration policy regimes are likely to be related to wider economic and social policies, including prevailing welfare policies, as well as to the overall political system and structure. The short case studies below include democratic as well as non-democratic countries with different welfare state policies.

High numbers, few rights: GCC countries

The most extreme examples of countries operating high numbers-few rights labor immigration policies are the oil-rich Gulf Cooperation Council (GCC) States (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). The GCC states admit very large numbers of migrant workers under strict guest worker policies. Although doing all kinds of work, the majority of temporary migrants in GCC countries are employed in medium and low-skilled jobs, especially in the private sector where, in some countries, very few citizens are employed. In Kuwait, for example, temporary migrants constitute over 90 percent of the private sector workforce (Kuwait Institute of Banking Studies, 2006).

Labor migration to GCC countries is primarily regulated through the *kafala* (sponsorship) system which is essentially an employer-led, large-scale guest worker program. Under this system,

migrants' access to welfare benefits and rights in the labor market are significantly restricted. The work permit requires the migrant to work for their sponsor only. It is common for sponsors to hold migrant workers' passports and for migrant workers from different countries to be paid different wages for the same work. Mechanisms for filing grievances are very limited.

In most GCC countries, there is no opportunity to obtain permanent residence. Family reunion is possible but often quite restricted (see, for example, Shah 2005). Since migrants are primarily considered as temporary workers, integration policies and projects are largely absent (Fargues 2006). Although some GCC countries have recently begun to make efforts to grant migrants better protection (Baldwin-Edwards 2005), there have been numerous reports documenting the denial and abuses of migrant workers' rights – in some cases involving basic human rights violations – in GCC countries, especially (but not exclusively) of construction workers and domestic workers (see, for example, Human Rights Watch 2004).

The primary factor explaining the high number and significant restrictions on the rights of migrant workers in GCC states is economic. Since the dramatic increase in oil prices and revenues in 1973-74 and 1979, the *kafala* system has provided a cheap migrant workforce that has facilitated the low-cost provision of goods and services in the private sector and the development and maintenance of a generous welfare state whose benefits and services are largely limited to citizens. This system has clearly been of significant short-term economic benefit to GCC citizens as employers in the private and domestic service sectors and as consumers of public services and products/services provided by the private sector. It has, however, also created long-term economic problems. Most importantly, there have been increasing concerns about disguised and open unemployment of GCC citizens who can no longer be absorbed in the public sector. Because of the almost complete segregation of the labor market, attempts to “localize” the workforce (i.e. to

increase the share of citizens employed in the workforce) in GCC countries have had only limited success (see Shah 2005). According to Dito (2008, p.8), “extending social protection to include migrant workers will contribute toward leveling the gap between national and migrant workers.” In other words, granting more rights to migrants can be expected to result in lower numbers.

A second reason for the restriction of migrant workers’ rights in GCC countries stem from concerns about maintaining the national identity and national security, especially in countries with small populations and where citizens constitute a small minority of the population. The policy of strictly temporary migration with few or no opportunities to acquire permanent residence and citizenship has aimed at maintaining the identities of the citizen population without having to actively pursue policies of reducing the number of migrant workers. Recent policies aimed at localizing the workforce in GCC countries may, however, signal a policy change.

Low numbers, comprehensive rights: Sweden

If the GCC states are at one end of the numbers-rights spectrum (high number - few rights for new migrant workers), Sweden’s policies over the past 35 years have, until very recently, been located at the other end (low numbers – comprehensive rights). With a population of just under nine million, Sweden has one of the world’s most advanced social welfare states. It combines a liberal market economy with an extensive state-run welfare state. Most comparative analyses of social policy consider Sweden the archetypal “social democratic welfare state” that aims at universal coverage and rights and benefit equality. Most wages and employment conditions are determined by collective bargaining and employment conditions generally adhere to industry-wide standards.

About 12 percent of Sweden’s population is foreign-born (OECD 2008). However, only a small minority of Swedish immigrants have been admitted as migrant *workers*. With the exception

of the period 1949-1971 when Sweden experienced labor immigration from Finland and Southern Europe, migration to Sweden has primarily consisted of asylum seekers and family members. Over the past 30 years, labor immigration from outside the common Nordic labor market has been minimal because of a highly restrictive labour immigration policy heavily influenced by labour unions (Bucken-Knapp 2007). Before the policy change in late 2008 (discussed below), the Swedish Migration Board's website made clear that "obtaining Swedish work permits is no easy matter" (Bucken-Knapp 2007). Of the 42,000 non-Nordic nationals issued residence permits in 2005, only 13 percent were granted permits for the purpose of employment (Statistics Sweden website³). Permanent-type labor migration from non-EEA countries was less than 400 persons per year in both 2005 and 2006 (OECD 2008).

Importantly, whenever Sweden has permitted permit labor immigration, migrants were given a comprehensive set of economic and social rights. Sweden's policy of granting migrants a comprehensive set of rights is long-standing and largely due to the strong role and influence of labor unions which are concerned about "social dumping" and adverse impacts on collectively agreed wages and employment conditions.

The experience of the Latvian construction company *Laval un Partnerij* (L&P) is a good example illustrating the trade-off between the number and rights of migrant workers admitted to Sweden. In May 2004, *Laval un Partnerij*, acting through a subsidiary (L&P Baltic Bygg AB, registered in Sweden) posted workers from Latvia to work on the refurbishment of a school near Stockholm. Swedish unions protested because L&P agreed to pay its Latvian workers in Sweden the equivalent of €12 an hour. Swedish unions demanded that L&P pay the equivalent of €16, the wage negotiated for Stockholm-area construction workers, and blocked access to the work site

³ See http://www.scb.se/templates/Publikation_162450.asp accessed on 8 December 2008

when L&P refused. L&P sued to stop the union's action, lost in Swedish labor courts in late 2004, and subsequently left Stockholm (see the discussion in Woolfson and Sommers 2006; and Tamas and Munz, 2006). However, after L&P brought the case back to the Swedish labor court, it was eventually sent to the European Court of Justice (ECJ). In December 2007, the ECJ ruled – to the great shock of Swedish trades unions – that the unions' blockade and sympathy actions to combat social dumping against *Laval un Partneri* represented a restriction on the freedom to provide services. The ruling effectively restricted Swedish trade unions' right to take industrial action to force foreign companies into signing collective agreements when operating in Sweden. It is now the responsibility of the Swedish Labor Court to adjust the ECJ's ruling to national regulations (European Industrial Relations Observatory website⁴).

Very recently, the Swedish government began to consider increased labor immigration of “vital importance to Sweden's ability to meet both present and future challenges in the labor market” (Swedish Ministry of Justice 2008, p.1). In December 2008, new rules were introduced that make it easier for employers to recruit migrant workers of all skill levels from outside the EEA. However, compared to most other high-income countries, Sweden's new labor immigration policies still put significant emphasis on ensuring that immigration does not undermine the maintenance of employment rights and conditions. Under the new rules, job vacancies must have been advertised in Sweden and the EU and the terms of employment must be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry. Furthermore, the relevant union must be given the opportunity to state an opinion on the terms of employment (Swedish Migration Board website⁵).

⁴ See <http://www.eurofound.europa.eu/eiro/2008/01/articles/SE08010191.htm> accessed on 8 December 2008

⁵ See <http://www.migrationsverket.se/english.jsp> accessed on 8 December 2008

Balancing numbers and rights: protecting welfare systems and reviving temporary migration programs

Most liberal-democratic high-income countries' labour immigration policies strike a balance between the number and rights of migrant workers admitted that falls between the two extremes of the GCC states on the one hand and Sweden on the other. It is clear, however, that trade-offs are being made in various countries and that economic considerations are often the main motivation. The trade-offs are often most explicit with regard to the social rights (especially access to the welfare system) of migrant workers. For example, in 1996 the United States decided to keep legal immigration high by restricting access to means tested welfare benefits. The Commission on Immigration Reform, reacting to the perceived cost of providing tax-supported services to immigrants, urged Congress to reduce immigrant admissions but maintain immigrant access to social safety net programs (US Commission on Immigration Reform 1995). Congress rejected this recommendation, and instead kept immigrant numbers high and reduced migrant access to benefits (see Tichenor 2002).

A similar trade-off between openness to immigration and migrant's access to welfare rights could also be observed when the UK and Ireland opened their labor markets to workers from the new EU member states in May 2004. The right to freely take up employment in the "flexible" labor markets in Ireland and the UK was accompanied by increased restrictions on migrants' access to unemployment and welfare benefits. This was because both countries were concerned, partly due to intense political pressure and a very heated public debate (especially in the UK), about the potential danger of a large number of migrants coming to take up welfare benefits rather than work.

The (re-)introduction or expansion of temporary migration programs (TMPs) for low-skilled workers in various high-income countries is another reflection of an increasingly common

policy approach that involves a trade-off between the numbers and rights of low-skilled migrant workers. TMPs increase the number of migrants working legally abroad but at the same time restrict the rights of migrant workers in various different ways. Most TMPs restrict migrants' access to social welfare benefits, free movement in the labor market and often also family reunion. TMPs are controversial because of the unanticipated consequences, including the non-return and eventual settlement of many guest workers, that such programs generated in the past. A number of economic measures and incentives have been proposed to minimize the risk of migrants overstaying their temporary employment visas (see, for example, Abella, 2006; Ruhs, 2006).

4 The effects of migrant rights on human development

The discussion now turns to the key question motivating this paper: how do migrant rights affect human development? The analysis distinguishes between: (i) the capability to move and take up employment abroad; and (ii) capabilities while living and working abroad. I argue that there can be a tension between these two capabilities and that this creates an important question for normative analysis and public debate.

4.1 The capability to move and work abroad

The immigration policies of high-income countries generally welcome skilled and highly skilled workers but are very restrictive with regard to admitting low-skilled workers. Although it is clear that emigration cannot be a “magic bullet”, expanding the capability of low-skilled workers in low-income countries to move and legally take up employment in higher-income countries may be a powerful way of promoting human development of migrants and their families. Under certain circumstances, it may also contribute to wider development in migrants' countries of origin.

Freeman (2006) suggests that wages of workers in high-income countries typically exceed those of workers in similar jobs in low-income countries by four to 12 times. These international wage differences mean that migrants can significantly raise their productivity and make very large financial gains from employment abroad. Because international wage differentials far exceed differences in commodity prices and interest rates, the global efficiency gains of increased migration—most of which would accrue to migrants—are significantly greater than those of further liberalizing international trade and capital flows (see Rodrik, 2002; Freeman, 2006). The World Bank (2005) estimates that increasing the share of migrants in high-income countries by three per cent would generate a global real-income gain of over \$350 billion, exceeding the estimated gains from global trade reform by about 13 per cent. If migrants transfer some of their benefits back to their home countries - in the form of remittances, investment, and/or knowledge transfers - migrant-sending countries may reap a significant share of these global gains from migration.

It is important to emphasize that more low-skilled migration does not automatically translate into faster development of migrants' countries of origin. The effects of remittances, and emigration more generally, can be mixed both in theory and practice (see, for example, Lucas 2005). Research and the experiences of countries of large-scale emigration—such as Egypt, Mexico, and the Philippines—suggest that sending workers abroad cannot, on its own, be an effective development strategy (ILO 2004). Nevertheless, it is clear that, if used effectively, remittances and other transfers migrants make back to their home countries can be of significant benefit to migrants' families and/or to the overall economies of migrants' countries of origin.

The discussion in the previous section has shown that, in practice, we can observe a negative relationship between the numbers and some of the socio-economic and other rights of migrant workers admitted for low-skilled jobs in high-income countries. To maximize the

economic benefits of low-skilled immigration, high-income countries can have economic incentives to carefully and selectively restrict some of the socio-economic rights of migrants. These rights include the rights to free choice of employment, the right to selected welfare benefits and the right to stay permanently in the host country. The implication is that the goal of increasing workers capabilities to move and take up low-skilled jobs in high-income countries may require a (at least temporary) restriction of some of these rights of migrants. Insisting on full and immediate equality of economic and social rights with citizens – as it would be the case if low-skilled migrants are given permanent residence status right upon admission – may be an obstacle to achieving the goal of increasing the number of workers in low-income countries who can access and benefit from working in low-skilled jobs in high-income countries.

4.2 Capabilities while living and working abroad

Migrant rights obviously have an important impact on migrants' human development while living and working abroad. As human development is defined as enlarging choice, capabilities and freedoms, we can generally expect that the economic, social, political, and cultural rights that migrants enjoy will have a positive impact on their human development. For example, the right to public health care and education will promote good health and development of knowledge. Cultural rights enable migrants to practice their own cultures and traditions. The right to family reunion enables a family life. Access to the welfare state could, among other things, offer support in times of economic hardship. And employment rights, such as the rights to a minimum wage (where it exists) and the right to join trade unions will in many cases enable migrants to achieve better outcomes in the labor market.⁶ Conversely, the lack of rights, especially the most basic human

⁶ There is of course considerable debate about the impact of labour market rights and institutions, including the rights to minimum wage and collective bargaining rights, on the labour market outcomes of workers. Some economists argue

rights, can lead to situations where migrants' welfare and capability to act becomes highly dependent on their employer which can lead to very "unfree" living and working conditions.

Various national and international institutions concerned with migrants have published a large number of reports and case studies documenting how a lack of rights can have highly adverse impacts on migrants' personal safety, physical and mental health, ability to participate in social life and outcomes in the labor market. Most academic analyses do not consider specific rights but instead study the consequences of particular immigration statuses associated with restricted rights. Most academic work in this field focuses on the consequences of illegal residence.

Illegally resident migrants can be in a vulnerable position in the host country primarily because of their "deportability" (De Genova 2002). Some employers may offer illegally resident migrants lower wages and inferior employment conditions, either because they take advantage of migrant's deportability and/or simply to account for the increased risk associated with employing migrants without legal residence rights. Taylor (1992) suggests that cost-minimizing employers will allocate illegally residents migrants to jobs where the expected cost of apprehension is lowest; and that such jobs are likely to be relatively low skilled jobs. Illegal residence status may also alter migrants' behavior in the labor market (Kossoudju and Cobb-Clark 2002). Migrants without the right to reside may, for example, have lower reservation wages than workers with the right to legal residence.

Although not at constant risk of removal, migrants employed on legal temporary work permits in low-skilled occupations may also experience lower earnings because of their immigration status. Temporary work permits for low-skilled workers typically restrict migrants'

that more rights and institutions make the labour market less flexible and thus, for example, increase the likelihood of unemployment.

employment to the sector and employer specified on the work permit. Where a change of employer is allowed, a new application for a work permit is usually required by the new employer. This requirement naturally restricts migrants' choice of employment in the labor market and may make it difficult to leave jobs offering adverse employment conditions. Furthermore, a temporary migrant's right to legal residence is usually tied to ongoing employment in the host country. As it can be the case with illegally resident migrants, unscrupulous employers may take advantage of temporary migrants' employment restrictions and offer employment conditions that are lower than those enjoyed by migrants with permanent residence status.

Expanding employment rights can thus be generally expected to have beneficial effects on the economic welfare and human development of migrants. Greater capabilities of migrant workers will often also raise the human development of family members who are living with the migrant abroad.

It is tempting to further conclude that, because of the beneficial impacts on migrant's human development, expanding rights will also promote the human development of those "left-behind" (family members and/or others) in migrants' countries of origin. For example, if expanding rights leads to higher wages, remittances may also increase. The suggestion that more rights for migrants will also promote development in migrants' countries of origin is a plausible possibility. However, it is also important to consider potential exceptions and trade-offs where an increase in certain rights for migrants may lead to a reduction in the benefits of migration for migrants' countries of origin. For example, migrants on temporary residence permits – especially those with families in their home countries – can be expected to remit more of their wages than migrants with permanent residence status abroad. Although the overall empirical evidence on this issue is mixed, there is some evidence that remittances initially increase but eventually decrease

with a migrant's duration of stay in the host country, reflecting the counteracting forces of wage increases (which increase remittances) on the one hand and increased detachment from the home country and family reunification (lowering remittances) over time (see, for example, Carling 2008). Acquiring the right to permanent residence will benefit migrants' human development but the associated decline in remittances (and, if migrants are highly skilled, the potential permanent loss of human capital) could lower human development in migrants' countries of origin. Of course, the impact of rights on remittances is just one type of effect that may be outweighed by other beneficial impacts for sending countries. The research on this issue is limited.

4.3 How to balance numbers and rights to promote human development?

How to best respond to the tension between the positive effects of migrant rights on human development on migrants while living and working abroad, and the negative effects that some socio-economic rights may have on the capability of workers in low-income countries to access labor markets of higher-income countries is an inherently normative question that different people will think about and evaluate in different ways. Although most people would agree that it is important to insist on at least basic human rights for all people regardless of outcomes, there is no single answer to the question whether and under what circumstance it is justifiable to restrict selected socio-economic and other rights of individuals.

As a "people-centered" approach, the human development approach emphasizes the agency and choice of individuals. The debate about how to balance the capability to move and work abroad with capabilities while living and working abroad thus needs to consider the perspectives of migrants and their countries of origin.

Large numbers of migrant workers are employed in countries that severely restrict migrants' rights, suggesting that many workers are willing to tolerate, at least temporarily, a trade-

off between higher wages and fewer rights (also see Abella 2008). Of course, the mere presence of migrants in countries with “high numbers – low rights” policies does not mean that such policies are in the migrants’ best interests and therefore desirable. Nevertheless, the fact that migrants often pay significant recruitment fees to work in such countries highlights the need for a more explicit discussion of the choices that many workers in developing countries face. We can expect considerable variation in migrants’ motivations. Migrants’ intentions (e.g. temporary or permanent stay abroad) and their “frame of reference” are important determinants of the choices they make at particular points in time. The role of good information in order to make informed and rational decisions is likely to be key. Narrow rights-based approaches to migration rarely discuss the agency of migrant workers, i.e. their capacity to make rational and independent decisions when faced with limited options. Instead they often tend to treat migrants as victims of recruiters and smugglers rather than rational economic agents maximizing within constraints.

Sending countries do not always insist on equality of rights in order not to reduce the access of its nationals to labor markets abroad. For example, some major migrant-sending countries are reluctant to ratify the International Convention on the Protection of All Migrant Workers and Members of their Families for fear of losing jobs for their nationals abroad (Piper and Iredale 2003). The conflict between migrant rights and better access to jobs in high-income countries is also apparent in the negotiations about the role of wage-parity in the international movement of service providers within ‘Mode 4’ (which regulates the ‘movement of natural persons’) of the World Trade Organization’s General Agreement on Trade in Services. Many high- income countries want wage parity to protect the jobs of their nationals, but some major sending countries assert that equal wages would limit the numbers of their migrants abroad. “Wage parity . . . is intended to provide a non-discriminatory environment, [but] tends to erode the cost advantage of

hiring foreigners and works like a *de facto* quota” (Chaudhuri *et al.* 2004, p. 366). Chanda (2001, p. 635) goes further, asserting that wage parity “negates the very basis of cross-country labor flows which stems from endowment-based cost differentials between countries”.

5 Conclusion

The rights of migrant workers play an important yet under-researched role in shaping the effects of migration on the human development of migrants, their families and of those “left-behind” in migrants’ countries of origin. A comprehensive analysis of the relationship between migrant rights and human development must consider the intrinsic value of rights and engage with the human rights framework that has been central to most discussion of migrant rights to date. It must also, however, recognize that migrant rights are a subset of “citizenship rights” that derive from nation states and that, in practice, are often severely restricted. In practice, migrant rights can be an important part of nation states’ immigration policies. The analysis of the effects of migrant rights thus needs to consider potential inter-relationships with other aspects of immigration policy, especially the number and selection of migrants admitted to high-income countries, and consider the overall effects of particular “immigration policy regimes” on human development.

Viewed in this way, it cannot simply be assumed that “more rights” will automatically translate into increased human development of migrants, their families and people left-behind in migrants’ countries of origin. To be sure, the protection of rights will in many cases be very important to promoting the human development of workers living and working abroad. The expansion of the rights of migrants can be expected to enhance migrants’ capabilities while abroad. However, as discussed in this paper, some migrant rights can also have an impact on low-skilled workers’ capability to legally move and work abroad. The economic interests and policies of high income countries can help generate a negative relationship (a trade off) between the number of

low-skilled migrants admitted and some of their socio-economic rights immediately after admission. This trade off arises from the fiscal and labor market effects of low-skilled immigration, the large supply of workers in low-income countries seeking access to low-skilled jobs in high-income countries, and from the downward sloping demand curve for labor with regard to employment rights that create costs for employers. The paper has presented empirical examples that support the hypothesis of a trade-off driven by economic mechanisms and effects. There is, however, clearly a need for more systematic empirical research that includes a larger number of countries and that investigates alternative explanations of the relationship between the number and rights of low-skilled migrant workers admitted to high-income countries (see Ruhs 2011). For example, since the preliminary case study approach in this paper has compared democratic and non-democratic countries, future systematic research would need to investigate whether the trade-off applies even after non-democratic countries have been removed from the sample.

The trade-off between increased access to high income countries and socio-economic rights after admission is at the core of current discussions about new or expanded temporary migration programs for low-skilled migrant workers. Such programs can increase the number of low-skilled workers legally employed abroad while restricting some of migrants' rights abroad. The restrictions of rights of TMPs vary significantly between different countries and for different groups of migrants within a particular country. Most people would agree that the restrictions of rights that we currently observe in the GCC states would be unacceptable in liberal democracies. However, there is no easy or universal answer as to when and under what circumstances it is desirable to accept the selective restriction of some socio-economic rights (such as the right to free choice of employment, access to social benefits, and the right to permanent stay in the host country) in order to facilitate better access of low-skilled workers to the labor markets of higher-

income countries. Some view temporary migration programs that restrict migrant rights as inherently discriminatory, unfeasible and thus undesirable, others (including this author) suggest that they may promote human development by expanding workers' choice and capabilities to legally move and work abroad, and that it is therefore important to ask how new TMPs could avoid the adverse consequences of past programs. If we take a people-centered approach that emphasizes agency and choice, the debate about TMPs must take account of the perspectives of migrants and, perhaps to a lesser extent, also their countries of origin. To progress the debate, it would be useful to begin a discussion about the "core" rights that we agree must never be restricted under any TMP, regardless of the effects for development and other consequences.

References

- Abella, M. (2006) 'Policies and Best Practices for Management of Temporary Migration', International Symposium on International Migration and Development, Turin, Italy, 28–30 June.
- Abella, M. (2008) 'Migration, Development and Human Rights: an Overview of the Issues', Global Forum on Migration and Development, Manila,
- Baldwin-Edwards, M. (2005) 'Migration in the Middle East and Mediterranean', A paper prepared for the Global Commission on International Migration, Geneva
- Baubock, R. (1994) *Transnational Citizenship*, Edward Elgar, Aldershot
- Borjas, G. (2003) 'The Labour Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labour Market', *The Quarterly Journal of Economics*, Nov 2003: 1335-1374
- Bucken-Knapp, G. (2007) 'Varieties of Capitalism and Labour Migration Policy', *University West Preprint Series*, 2007:01 (Trollhättan: University West, 2007)
- Carling, J. (2008), 'The Determinants of Migrants' Remittances', *Oxford Review of Economic Policy* 24(3): 582–99.
- Chanda, R. (2001) 'Movement of Natural Persons and the GATS', *World Economy* 24(5):631–654.
- Chaudhuri, S., A. Mattoo, and R. Self (2004) 'Moving People to Deliver Services: How Can the WTO Help?', *Journal of World Trade* 38(3):363–394.
- DeGenova, N. (2002) 'Migrant 'illegality' and deportability in everyday life', *Annual Review of Anthropology* 31:419-47

- Dito, M. (2008) 'GCC Labour Migration Governance', United Nations Expert Group Meeting on International Migration and Development in Asia and the Pacific
- Dustmann, C., Frattini, T., and Preston, I. (2007), 'A Study of Migrant Workers and the National Minimum Wage and Enforcement Issues that Arise', Paper prepared for the Low Pay Commission UK, London.
- Fargues, P. (2006) 'International Migration in the Arab Region: Trends and Policies', United Nations Expert Group Meeting on International Migration and Development in the Arab Region
- Freeman, G. (1995) 'Modes of Immigration Politics in Liberal Democratic States,' *International Migration Review* 29(4): 881-901
- Freeman, G. and A. Kessler (2008) 'Political economy and migration policy', *Journal of Ethnic and Migration Studies* 34(4): 655 - 678
- Freeman, R. (2006), 'People Flows in Globalization', *Journal of Economic Perspectives* 20(2): 145–70.
- Hammar, T. (1990) *Democracy and the Nation State. Aliens, Denizens and Citizens in a World of International Migration*, Avebury, Aldershot
- Human Rights Watch (2004) 'Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia', *Human Rights Watch* 16 (5)
- International Labour Organisation - ILO (2004), 'Towards a Fair Deal for Migrant Workers in the Global Economy', International Labour Conference 2004, ILO, Geneva
- Kossoudji, S. and D. Cobb-Clark (2002) 'Coming out of the shadows: Learning about legal status and wages from the legalized population', *Journal of Labor Economics* 20(3): 598-628
- Kuwait Institute of Banking Studies (2006) "Kuwait – Summary of Major Economic and Financial Indicators.", available at www.kibs.org/eco/ecokmain.html
- Lucas, R. (2005) *International Migration and Economic Development: Lessons from Low-income Countries*, Cheltenham, Edward Elgar.
- Nickell, S. and J. Saleheen (2008) '[The impact of immigration on occupational wages: evidence from Britain](#)', [Working Papers](#) 08-6, Federal Reserve Bank of Boston.
- OECD (2008) *International Migration Outlook 2008*, OECD, Paris
- Piore, M. (1979) *Birds of Passage: Migrant Labor and Industrial Societies*. New York: CUP
- Piper, N., and R. Iredale (2003) *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers. The Asia Pacific Perspective*. Paris: International Migration and Multicultural Policies Section, UNESCO.
- Rodrik, D. (2002), 'Feasible Globalizations', CEPR Discussion Paper, No. 3524.
- Rowthorn, R. (2008) 'The fiscal effects of immigration', *Oxford Review of Economic Policy* 24(3): 560-580

- Ruhs, M. (2011) *The economics and politics of migrant rights* (working title), book manuscript expected in 2011
- Ruhs, M. (2008) 'Economic Research and Labour Immigration Policy', *Oxford Review of Economic Policy*, 24(3): 404-427
- Ruhs, M., and Martin, P. (2008) 'Numbers vs Rights: Trade-offs and Guest Worker Programs', *International Migration Review* 42(1): 249–65
- Ruhs, M. (2006) 'The Potential of Temporary Migration Programmes in Future International Migration Policy', *International Labor Review* 146(1–2):7–36.
- Sen, A. (2005) 'Human rights and capabilities', *Journal of Human Development* 6(2): 151-166
- Shah, N. (2005) 'Restrictive Labor Immigration Policies in the Oil-Rich Gulf: Implications for Sending Asian Countries', IUSSP International Population Conference Tours, France, July 2005
- Smith, J., and B. Edmonston, ed. (1997) *The New Americans*, National Academy Press, Wash. DC.
- Swedish Ministry of Justice (2008) 'New rules for labour immigration', available at www.sweden.gov.se/content/1/c6/10/72/00/717b1d5e.pdf
- Tamas, K., and R. Munz (2006) *Labor Migrants Unbound? EU Enlargement, Transitional Measures and Labor Market Effects*. Institute for Futures Studies, Stockholm
- Taran, P. (2000) 'Human Rights of Migrants', *International Migration* 38(6): 7-51
- Taylor, E. (1992) 'Earnings and mobility of legal and illegal immigrant workers in agriculture', *American Journal of Agricultural Economics* 74(4): 889-896
- Tichenor, D. (2002) *Dividing Lines. The Politics of Immigration Control in America*. Princeton University Press, Princeton.
- US Commission on Immigration Reform (1995) *Legal Immigration, Setting Priorities*, available at www.utexas.edu/lbj/uscir/exesum95.html
- Woolfson, C. and J. Sommers (2006) 'Labour Mobility in Construction: European Implications of the Laval un Partneri Dispute with Swedish Labour', *Europ. J. of Ind. Relations* 12 (1): 49–68
- World Bank (2005) *Global Economic Prospects 2006*, Washington, DC, World Bank.