The Price of Rights: Regulating International Labor Migration

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The Human Rights of Migrants: Why do so few countries care?

Figure 1: Ratifications of International Human Rights Treaties, 1965-2011

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;  
CMW = International Convention on the Protection of All Migrant Workers and Members of their Families.  
CRPD = Convention on the Rights of Persons with Disabilities  
Approach

• Reframing the debate about migrant rights
  – intrinsic value; human rights
  – instrumental role of rights; shaping effects of international labour migration
  – Migrant rights as labour immigration policy: (i) openness, (ii) selection; (iii) rights

• How and why do HICs restrict migrant rights?
  – analyse effects of rights for RCs, migrants and SCs
  – migrant rights cannot be studied in isolation of admissions policy (selection and openness)
  – key distinction: what “is” and what “should be” be
Terminology

- International labour migration
- Labour immigration policy
- Migrant workers
- ‘Migrant receiving’ and ‘migrant-sending’ countries
- Rights
- Legal labour migration
Three hypotheses

H1: openness positively related to skills targeted
- Complementarities; externalities and spill-over effects; fiscal effects; social capital

H2: Some migrant rights positively related to skills
- High skilled workers relatively scarce globally; int. competition for HS migrants; race to the top
- “Unlimited supply” of LS workers; impacts? costs of some rights (e.g. income-based benefits) inversely related to skill;

H3: negative relationship between openness and some migrant rights for low/medium skilled migrants
- Political economy: fiscal and distributional effects
Measuring migrant rights and openness

• Two separate indices that measure:
  – the “openness” of labour immigration programmes in high and middle income countries to admitting migrant workers
  – the legal rights granted to migrant workers after admission
  – Distinction between programmes for low, medium and high skilled migrant workers

• Health warning
  – Methodological challenges
  – Strategy: transparency
46 countries with pop > 2 million

High-income countries (34):
• East Asia and Pacific: Australia, Hong Kong, Japan, Korea, New Zealand, Singapore, Taiwan
• Europe: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, UK
• North America: Canada, US
• Middle East: Israel, Kuwait, Oman, Saudi Arabia, United Arab Emirates.

Upper-middle-income economies (9):
• Argentina, Brazil, Columbia, Dominican Republic, Malaysia, Mexico, Poland, Turkey, Venezuela

Lower-middle income economies (3):
• China, Indonesia, Thailand,
Definition of migrants and skills

• Focus on migrant workers legally admitted for the primary purpose of employment

• Excluded: students, asylum seekers/refugees, family/dependents, self-employed, au-pairs, working holiday-makers, free movement migrants

• Distinction by skills targeted by the programme:
  – Lowskilled: less than high school
  – Skilled: high sch. or equiv. (skilled trades)
  – Highskilled1: bachelor degree or equivalent
  – Highskilled2: higher degree or equivalent

• Year of analysis: early 2008 and early 2009 (today 2009)
### 104 programmes in 2009

Table 1: Labour immigration programmes in the sample, by targeted skill level, country income classification, and region, 2009

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<th>onlyLS</th>
<th>LS</th>
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<th>HS1</th>
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<th>Total # programmes</th>
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Openness index: 12 indicators

Quota:
• existence, type and size of quota

Demand restrictions:
• job offer; labour market test; limited occupations/sectors; economic fee; conditions of employment; trade union involvement

Supply restrictions
• nationality and age; gender and marital status; skills requirements; host country language skills; self-sufficiency
Migrant rights index: 23 indicators (legal rights)

Civil and political rights (5):
- Vote; stand for elections; form association; equal protections before criminal courts and tribunals; documents not confiscated

Economic rights (5):
- Free choice of employment; join trade unions; equal pay; equal employment conditions and protections; redress (employment);

Social rights (5): [time element explicit; 2 sets of indicators]
- Equal access to: unemployment benefits; public retirement pension schemes; public educational institutions and services; public housing inc. social housing; public health services

Residence rights and access to citizenship (5)
- time-limit on residence; employment-residence link; convictions-residence link; direct access to citizenship; redress;

Family reunion and spouses’ work rights (3)
- Family reunion; spouse’s work right; judicial remedy
1. TMPs predominate
2. PMPs limited to high skilled

Figure 4.1: Temporary and permanent labour immigration programmes by targeted skills, 2009

- Permanent
- Temporary with upgrade <= 5 years
- Temporary with upgrade > 5 years
- Strictly temporary
3. Openness positively related to skill level targeted (H1)
4. Variation in restrictions across different rights (all programmes, 2009)
5. Rights restrictions vary across regions (all programmes, 2009)
6. Rights restrictions inversely related to targeted skills (H2), all programmes, 2009
7. Trade-offs between openness and some rights

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Policy rationales in high-income countries

- Trade-off between openness and some rights
  - US 1990s: “immigration yes, welfare no”
  - EU Accession in UK and Ire in 2004
  - Equal rights as tool for restricting A8 immigration in Sweden; Laval Case
  - New TMPs for low-skilled in Can and Aus
  - Trading openness against rights in GCC countries
  - Singapore (trade-off involves civil/political rights)
Perspectives of migrants and their countries of origin

- Migrants
  - Large gains from migration
  - Different dimensions of human development
  - Element of choice and trade-offs; dual frame of reference

- Sending countries
  - Dual objectives: emigration and rights
  - Many empirical examples: Asian countries to GCC; LA countries to US and Can; access vs equal treatment in EU posted workers directive; wage parity in GATS Mode 4
Ethics (in one page! => chapter 7)

- Trade-offs as “second-best”, “dirty hands” policies
  – Most likely clean hands alternative: exclusion
  – firewall around civil and pol. rights except right to vote and right to family life;
  – Allow temporary restrictions: social rights (income-based), free choice of emp, family reunion, access to permanent residence and citizenship
  – Restrictions need to be evidence-based and lead to greater openness
  – Information before departure and protection of exit options
What next for rights-based approach to international labour migration?

➡️ Potential blind spots of human rights based approach: what about “more migration”? “Insisting on equality of rights can come at the price of more restrictive admission policies”

➡️ Most UN agencies have been reluctant to engage with the tension between openness and some migrant rights

➡️ I argue for:

 – Distinguishing between core rights and other rights that can be temporarily restricted (➡️ list of core rights?)
 – Liberalise low-skilled labour migration through TMPs that selectively and temporarily restrict some rights
 – Open debate
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