

IRREGULAR LABOR MIGRATION AND HUMAN RIGHTS

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Abstract: Increased irregular labour migration created augmented human rights concerns around the world. Disparities in economic and living conditions, and high unemployment rates between sending and receiving countries often connected to the causes of labour migration. What is irregular migration? How does the ‘irregular’ status of labour migrants impact their access to basic human rights, such as emergency medical and legal services? This paper examines the human rights concerns in the cases of irregular labour migration in post-soviet Russia. After the collapse of the Soviet Union, Russia became one of the destination countries for irregular labour migration from the former soviet republics. Although the Russian Federation’s labour markets and

economy could handle an excessive number of labour migrants, the existing immigration policy, political and legal administration were not ready to manage it. Human rights of irregular labour migrants is a social phenomenon; it challenges the prevailing notions of political and societal memberships; therefore, it requires greater scholarly discussions.

Keywords: Irregular labour migration, immigration Policy, Human Rights

НЕПРЕРЫВНАЯ ТРУДОВАЯ МИГРАЦИЯ И ПРАВА ЧЕЛОВЕКА

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Аннотация. Рост масштабов нерегулярной трудовой миграции создает дополнительные проблемы прав человека во всем мире. Неравенство в экономических и бытовых условиях и высокий уровень безработицы между странами-отправителями и получателями часто связаны с причинами трудовой миграции. Что такое нерегулярная миграция? Каким образом «нерегулярный» статус трудовых мигрантов влияет на их доступ к основным правам человека, таким как неотложные медицинские и юридические услуги? В настоящем документе рассматриваются проблемы прав человека в случае нерегулярной трудовой миграции в постсоветской России. После распада Советского Союза Россия стала одной из стран назначения для нерегулярной трудовой миграции из бывших советских республик. Несмотря на то, что рынки труда и экономика Российской Федерации могут

справляясь с чрезмерным числом трудовых мигрантов, существующая иммиграционная политика, политическое и юридическое управление не были готовы к ее решению. Права человека нерегулярных трудовых мигрантов являются социальным явлением; он бросает вызов преобладающим представлениям о политическом и социальном членстве; поэтому он требует больших научных дискуссий.

Ключевые слова: Нерегулярная трудовая миграция, иммиграционная политика, права человека

УЗЛУКСИЗ МЕҲНАТ МИГРАЦИЯСИ ВА ИНСОН ХУҚУҚЛАРИ

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Аннотация: номунтазам меҳнат миграцияси кўлами бутун дунёда инсон хуқуқларига оид қўшимча муаммоларга сабаб бўлмоқда. Юборувчи ва қабул қилувчи давлатлар ўртасида иқтисодий ва майший шарт-шароитлардаги нотенглик, ҳамда ишсизликнинг юқори даражаси одатда меҳнат миграцияси сабаблари билан боғлиқ. Номунтазам меҳнат миграцияси нима? Меҳнат мигрантларининг “номунтазам” мақоми уларнинг тиббий ва юридик хизмат каби асосий инсон хуқуқларига бўлган кафолатига қандай таъсир этади? Мазкур мақолада постсовет Россияда номунтазам меҳнат миграцияси шароитида инсон хукуқлари муаммолари ўрганилган. Совет иттифоқи парчалангандан сўнг Россия собиқ совет республикаларидан келаётган номунтазам меҳнат миграцияси давлатига айланди. Россия Федерацияси меҳнат бозори ва иқтисодиёти беҳад сонли мигрантларга эҳтиёж сезсада, мавжуд иммиграцион сиёsat,

сиёсий ва хуқукий бошқарув бу масала ечимиға тайёр әмас әди. Номунтазам мекнат мигрантларининг инсон хукуқлари муаммоси ижтимоий воқеилик ҳисобланади, бу муаммо сиёсий ва ижтимоий ҳамжамият даражасидадир, шунинг учун ҳам йирик илмий мунозараларга муҳтож.

Калит сўзлар: Номунтазам мекнат миграцияси, мекнат миграцияси, иммиграцион сиёсат, инсон хукуқлари.

Introduction

The human rights of international migrants especially irregular labour migrants became one of the central concerns in the international agenda as the magnitude of such migration increased around the world. Complexity of their status requires intellectual and well-considered policy design to protect their rights. In addition, bilateral and multilateral agreements, and collaborating Universal Human Rights agenda with law-enforcement based framework are very significant for reducing potential challenges. Irregular labour migration is one of the most complex types of migration and presents profound challenges for both sending and receiving states, as well as for the migrants, themselves. At their core, the concerns of both sending and receiving states focus mainly on the cost-benefit analysis of such migration.

This paper relies predominantly on literature review, including primary and secondary resources, governmental reports and reports from NGOs, relevant research and some media review. After clarifying the concept of irregular migration in this framework, the analysis of the “push” and “pull” factors in sending and receiving states will be examined. Irregular migration, the human rights of the irregular migrants and the absence of political mechanism to legalize such migration will be observed in the case of the Russian

Federation in late 1990s and 2000s. The article will be concluded by general overview of the issue and the suggestion of future policy recommendations to improve the cases of irregular migration.

Statement of the problem

According to the United Nations report on international migration in October, 2008, about three percent of the world's population in 2005 resided outside of their home country: "the largest number of migrants live in Europe (64 million), followed by Asia (53 million) and Northern America (45 million)."ⁱ The economically-motivated migrants represent a very large portion of this segment. Sixty percent of the world's migrants currently reside in the more developed regions, where almost one in every ten people is a migrant.ⁱⁱ Although it is difficult to obtain accurate data, work permits, surveys, information from government registration agencies and bilateral agreements are often used to measure labour migration.ⁱⁱⁱ

Protecting the "universal, indivisible, inalienable and interdependent rights"^{iv} of irregular labour migrants remains intensely controversial for several reasons. Adopting a law-enforcement based approach to migration leads to an abuse of international law and human rights norms. The absence or ineffectiveness of bilateral or multilateral agreements protecting the human rights of this type of migrants is also a common issue at the international level. At the state level, cooperation and dialogue between sending and receiving states aimed at maximizing the benefits of migration, taking into consideration the "push" and "pull" factors and the magnitude of immigration in order to optimize migration laws, can reduce irregular migration which, in turn, increases the likelihood that migrants' human rights will be protected.

Analysis of irregular labor migration raises questions broadly applicable to many regions around the world.

Although a declining labour force in the job market goes hand-in-hand with increased labour immigration, the lack of a competent migration policy and administration system creates an excessively difficult situation.^v For example, even after three decades of struggle and numerous reforms in the structure of migration, the rights of irregular labour migrants remained particularly ambivalent, confusing, challenging and, in the worst cases, discriminatory, exploitative and unjust in case of the Russian Federation – which will be examined in this paper. The situation requires more academic research, comparative analysis, critical perspectives and compatible policy development.

Every sovereign state has the right to regulate migration across their borders, but migration policies that adopt a law enforcement approach to migration, including militarized border controls, detention, deportation, mandatory registration and work permit requirements, have two main negative effects: they lead to an increase in irregular migration and they result in increased abuse of irregular migrants' rights. Often these migrants, especially the irregular ones, work long hours, without any days off in unsafe workplaces and live in grossly inadequate housing conditions. While registration and work permits can prevent migrants from deportation and detention by law enforcement, they do not offer any social or medical protection.

What is irregular migration?

The phrase 'irregular migration' does not have a universally acknowledged definition but is generally understood to refer to the movement of desperate and vulnerable immigrants to a country other than their own without proper documentation.^{vi}

Irregular migrants are often represented as people who take enormous risks to secretly or illegally pass across borders with the help of smugglers in some concealed way. Migrants who enter a country legally can become irregular, whether through the expiry of their visas or residence permits, withdrawal of their authorization to work by their employers or the denial of their claims for asylum. The term ‘irregular’ was recommended by the International Symposium on Migration in Bangkok, in the “Towards Regional Cooperation on Irregular/Undocumented Migration” in April, 1999, and then by the International Labour Office at its 2004 International Conference in Geneva.^{vii} This term avoids describing migrants as ‘illegal,’ a term which labels their migration as a criminal act, which fails to recognize the complexity of this phenomenon. Despite this recommendation, media and expert analysis in many countries still widely refers to irregular migration as ‘illegal’.

International migration became one of the top global policy issues associated with economic and political challenges, as well as one which presents great developmental opportunities. Growth in transnational migration is a byproduct of globalization, which is characterized as an escalation in the worldwide movement of goods and services in response to the demographic changes, advancement of internet and technology, and intensification in economic differences between industrialized and non-industrialized states. While large corporations move their services to the places where cheaper labour and goods are available, smaller businesses in receiving countries often try to take advantage of irregular labour migrants as a source of cheap labour. As a consequence, migration in search of employment or better life opportunities in the countries with better economies became more common.

The labour market in many destination countries, as a result, separated into two segments: a primary labour market for skilled and documented workers, who are usually native workers, and a secondary labour market for unskilled workers, often undocumented and irregular migrants.

Increased migration requires new approaches to the issues it presents; however, the increase in migration itself often far outpaces the development of governing policies and regulations. Migration is generally beneficial for many reasons: remittances sent by migrants to their families assist the overall economy of sending states, and increased development and the supply of needed labour benefit receiving states. Although migration is the backbone of development, receiving states often fear the flow of irregular migration.^{viii} The main challenge for many receiving states is to find a balance between labour market demands, humanitarian protection of migrants and national security. In many cases, states take national security and labour market need much more seriously than the protection of the rights of migrants.

Irregular labour migration in case of the Russian Federation in late 1990s and 2000s

While ‘push’ factors, including unemployment rate, economic and political situation, low living conditions and high birth rates in the sending states are responsible for migrants’ leaving their countries of origin, ‘pull’ factors help determine the conditions in their destination countries. For example, the breakdown of the Soviet Union increased the inflow of labour migrants to Russia from CIS (Commonwealth of Independent States) countries. Although Russia was also experiencing some level of economic crisis in the 1990s, the standard of living was still much higher than the rest of the former Soviet republics. The United Nation’s expert group

pointed out that “during 1990-2000, Russia took second place in the list of countries actively accepting migrants with a parameter of 13.3 million people arriving.”^{ix}

During Vladimir Putin’s first tenure as Russian president,¹ the nation’s economy recovered from depression and started to grow rapidly. The standard of living also improved quickly, causing the inflow of migrants to increase even more. A good economy, stagnation in the size of the Russian population and a growing need for unskilled cheap labour in the private sector made Russia very attractive for the citizens of former Soviet republics. Growing privatized service sectors in Russia created millions of jobs that citizens and legal residents of Russia refused to fill.^x The economic development of the Russian Federation has largely benefitted from the migration inflow, as it addressed the issues created by an aging population and labour shortages.

As a result of the increase in migrant inflow into Russia, the labour market segmented into two subsections. The first segment consisted of the jobs for the citizens and the legal residents; undocumented or irregular migrants were not able to apply or get hired for this category of jobs. These jobs offered regular hours, standard wages and some sort of social and health benefits, even though social and medical protection in Russia was also facing its own challenges. The second segment generally consisted of physically demanding jobs that did not provide regular hours, standard payments or any social or health benefits. Very low wages, unsafe working conditions, long hours and physically-challenging tasks characterized this subsection of the labour market, making it unappealing to Russian citizens and permanent residents. Migrants were

¹ Starting December 31, 1999

usually prepared to work hard and risk their health and well-being to provide for their families.

Because of history as part of the Soviet Union, over seventy years of tight intercultural and intergovernmental relationships and CIS citizens' familiarity with the Russian language, they have enjoyed the benefit of conversant cultural space while they are in Russia. Furthermore, serving in the Soviet army was a requirement for every qualified man in the former Soviet Union. Fluency in Russian was mandatory in the military and men became familiar with the Russian lifestyle which were also significant 'pull' factors leading migrant workers to choose Russia as a destination. Being able to enter and join the work force without any documentation or contracts was also a 'pull' factor; however, this factor resulted in very serious problems involving irregular labour migrants.

The absence of bilateral agreements and labour contracts made irregular labour migrants vulnerable to unfair treatment, including dismissal without notice, regular non-payment of wages, seizure of their passports, forcible enslavement, sexual enslavement, disappearance and human trafficking. As free public health or social insurance have been impossible to acquire in their given situation, even emergency medical care was not guaranteed for irregular labor migrants. They could not seek legal redress because of the fear of being deported.

Given their 'illegal' status, irregular migrants sought to avoid police any way they could, running through markets or fields, or concealing themselves in unnoticeable spots to escape. This led locals and even some police officers to call them "cockroaches" and they openly showed revulsion toward them. These migrant laborers became 'easy targets' for Russian law enforcement agencies. Fear of officials was the result of unfair treatment irregular migrants received at the hands of the

police; therefore, discrimination and a corrupt system created an environment that fostered an increase in irregular labour migration. The vulnerability of irregular labour migrants, having had no security or protection from the host country, had also created opportunities for criminal groups. Irregular work migrants became a target for exploitation, discrimination, enslavement, and human-trafficking over the last ten years. Disappearances of male and female irregular labour migrants often went unnoticed.

By the same token, many cases of disappearance and death of migrants often did not get any attention from either law enforcement or the local media. The migration policy under the control of the federal government and nationalities policy controlled by the regional governments created discrepancies in regulations. Mukomel argued that, "several problems connected with ensuring the rights of migrants and the regulation of migration flows in the regions cannot be resolved solely at the federal level, without taking specific regional characteristics into account."^{xi} It is understandable that without having transformed the relationship between federal and regional governments and without having increased cooperation between the levels of government.

Lack of mechanisms to legalize the Migrants

Following the fall of the Soviet Union, Russia suffered from a virtually non-existent migration policy. Russia was not prepared for the rapid increase in the inflow of returning Russians and labour migrants from the former Soviet republics. The main problem with migration issues came from the government structure and the development of a migration policy in the Russian Federation. In *Ethnic and Migration Policy in the 2000s viewed in the Context of Relations between the Federal Center and the Regions*, Vladimir Mukomel argued that the

federal government having had control over migration while regions were given responsibility for regulating the nationalities policy led to various discrepancies and contradictions in the system. Often, when issues of migrant groups were brought to the regional governments, those governments had no tools to deal with the situation. Therefore, legal accountability for the rights of migrant groups got lost between two main parts of the government.

The complexity of administration processes and difficulties in obtaining legal registration and work permits discouraged migrants from seeking legal work and living in Russia.^{xii} The migrants who legally entered Russia became illegal after three days of being in the country. The reason was the Three Day Rule,^{xiii} which required migrants to register as temporary residents within three days of entry (Federal Law No.110 FZ, "On the Legal Status of Foreign Citizens in the Russian Federation," and Federal law No. 109, "On Recording the Migration of Foreign Nationals and Stateless Persons").^{xiv} According to this policy, a person who entered Russia needed to find a place to live and then, accompanied by the Russian citizen who owned their residence, to register for temporary residency. If granted, the registration would have given the resident 90 days, approximately three months, of legal residence.^{xv} Finding such a place owned by a Russian citizen who was willing to help with the registration process was virtually impossible for work migrants. The requirements of the registration law were very problematic. Instead of eliminating 'illegal migration,' this migration policy had a reverse effect: "illegal migration grew as well as corruption and abuse."^{xvi} Therefore, the Russian government intentionally situated the labour migrants in a position to fail and to lose their legal status.

After these major changes in government structure in 2001 and 2005, the migration policy moved under federal jurisdiction, but this new configuration took an enormous toll on the regional government of the Russian Federation. Liberalizing migration and refocusing on attracting skilled immigrants became the new priorities of the Federal Government.

At the beginning of 2006, the complexity of the migration process and the importance of simplifying migratory regulation became apparent. The Russian government implemented new federal laws 109 and 110 to ease the legalization process for labour migrants who had legally entered Russia's borders. As Tetruashvily pointed out, "under the new laws, labor migrants could register under a host, an employer, or other intermediary employment agencies within three days of their arrival. In addition, it became unnecessary for the address under which the migrant registered to be his or her actual address."^{xvii} Although three million more migrants were able to register and over 700,000 foreigners received work permits, it was a small number compared to the millions of irregular migrants living in Russia at that time.^{xviii}

The requirement to register within three days remained in effect and continued to create further challenges for labour migrants. As a result, there was an increase in the number of instances of falsifying documents and corruption, because it remained almost impossible for most labour migrants to find a job or a Russian citizen willing to house them and help them to register.^{xix} In cases when the migrant could not register within three days, they had to pay employers or intermediary personnel to make a deal with corrupt officials to get stamped registration forms, not all of which were necessarily legally registered. Often the migrant was unaware whether his or her

registration was falsified. With false registration documents, the migrant faced further legal challenges during police or security screenings.^{xx}

In April, 2007 Russian authorities passed another law aimed at reducing the number of foreigners in markets and retail stores. International media interpreted it as the Russian government's attempt to calm xenophobic actions. Russian television and media often repeated the words of the top Russian officials: "Russia will further fight against illegal labour immigration."^{xxi} According to Laruelle, after 2007, Russia tried to improve bilateral and multilateral agreements. He stated that "in Central Asia, Uzbekistan has refused to recognize the scale of migratory phenomenon and its major economic role. Consequently, this country has not tried to reach any diplomatic agreements with Russia on the issue."^{xxii} Besides enacting new laws to manage migration better, the Russian government became aware of the significance of reforming the system. It was a long-term project and the outcomes were not entirely predictable. Both the institutional structure and its instruments had to be reconsidered.

The Direction of the Migration Policy improvement

Despite academic and non-academic contributions, the debate around irregular labour migration remains puzzling and inadequate. In particular, protecting rights of irregular labour migrants is very challenging. To create appropriate migration policies, the consequences of irregular labour migration and effects of this type of migration on economic efficiency, national identity, competition in the labour market and the rights of citizens in relation to those of irregular labour migrants, must be considered. Labour migration, especially irregular migration, is common in many states around the world, yet it requires country specific resolutions. Policy

makers have to consider everything about the situation in both the sending and receiving states. The consideration of geopolitical, economic and demographic interests of the receiving state when designing a migration policy is very important. The inflow of labour migrants should be balanced against the decline in population, growth of the economy and, most importantly, to the needs of the labour market.

The main concern of this paper is not the magnitude of labour migration but how to protect the rights of irregular labour migrants. Therefore, its focus is on what kind of basic rights irregular labour migrants have in Russia, whether their basic rights to life, liberty and security are guaranteed, how these rights are recognized and the way to improve Russian migration policy to protect migrants.

Often labour migration is measured in the same way in which the flow of capital or goods is measured. Ruhs and Chang argue that "while analytically convenient, such analysis of labour immigration misses the critical point that cross-border movements of people are accompanied by the granting of rights (however minimal) to the new entrants."^{xxiii} Bilateral and multilateral agreements between states to protect the basic rights of each-others' citizens is the most meaningful way of dealing with irregular migration. The effective protection of rights of one state's citizens abroad is only possible if the state itself offers a degree of protection to noncitizen labour migrants within its own borders. Therefore, fighting against irregular migration by legalizing the status of migrants, providing oversight of their work and living conditions and protecting them from unfair law enforcement agencies is the only way to promote their basic rights: the rights to life, liberty and security. In other words, labour migrants at least have to have emergency medical service, freedom from unfair

treatment and security from criminal conduct (e.g. human trafficking, enslavement) that specifically targets these types of migrants.

To be clear, this paper does not advocate for extending the rights of irregular labour migrants to where it will conflict with the rights of citizens or other legal residents. For example, emergency medical health is not the same as free public health, which may affect the value of the rights of the citizens.^{xxiv} As Ruhs and Chang stress, rather than insisting on a very comprehensive set of rights for migrant workers, we must focus on a list of core rights for migrant workers which are transparent, monitored and effectively enforced.^{xxv}

Perhaps the next question should be how these rights can be effectively enforced. Encouraging and requiring governments to provide registration and work permits to those irregular migrants already in the work force would benefit both the government, through increased revenues, and labour migrants, because migrants with proper registration have some freedom from unfair treatment, and are less likely to try to live and work in hiding, and are at less risk of being targeted by criminal groups. They would also pay taxes and contribute to the revenue of the state. Registering them will enable the government to protect their basic rights, regularize their work hours and impose safe working conditions.

Ruhs and Chang claim that preventing irregular labour migration by intensive border control and a strict law enforcement approach to migration was experimented with many times by many states, proving to be unsuccessful.^{xxvi} However, visa entry followed by increased skilled, unskilled and temporary worker programs may reduce the magnitude of irregular migration with minimal impact on the labour market and existing irregular labour migrants. Sending

countries should enter into bilateral agreements with popular destination countries.

Conclusion

Irregular labour migration is a complex phenomenon. Deep political and social conditions in both sending and receiving states create the atmosphere for such migration. Increasing irregular migration is often the outcome of economic crisis and unemployment in sending states. Unfit policies, corruption and administrative barriers to legalizing labour migrants are also some of the contributing issues in the case of irregular migration. The purely law enforcement approach to migration these states adopted to try to fix the problems, without considering the deep roots and underlying causes of this phenomenon, have proven unsuccessful. Although the resolution to the irregular labour migration question is very country specific, both essential human rights and mild law enforcement approaches together can effectively improve the situation.

In the short term, migrant-receiving states like Russia must reduce irregular migration by regularizing or legalizing migration in order to protect the basic human rights of irregular labour migrants; informed immigration, simplified registration and work permit processes that are accessible and affordable to migrant workers are the most significant steps forward.

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