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Securing and Insuring Livelihoods: Migrant Workers and Protection Gaps



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Jenna Hennebry

Executive summary

Around the globe, weak or declining public social protection and insurance systems¹ contribute to migration. Many migrants leave developing countries in response to gaps in social security and protection systems (lack of unemployment and medical insurance, pensions, parental and disability benefits, childcare, etc.), yet their labour offsets such gaps in developed countries (e.g. insufficient parental leaves and childcare systems leave families with limited affordable options).

For many, migration is a resilience strategy, with many individuals migrating in search of more secure livelihoods. However, upon arrival in countries of destination, migrant workers continue to face poor levels of social protection and access to social security systems (e.g. unemployment insurance, parental benefits), as well as poor access to medical insurance and compensation systems (e.g. disability, long term care, survivor's benefits).² This cycle has enduring consequences for migrant workers and their families.

Offloading social protection

Social protections can be understood as an “institutionalized response to social and economic problems”³ which promote equality of opportunity in employment, education and well-being by improving welfare and decreasing dis-welfare among the disadvantaged.⁴ In the absence of social protections, many have chosen to migrate for work in order to provide for their family's welfare. Many developing states have begun to rely on migrant remittances to offset citizen's social protection gaps, in effect offloading state social protection responsibilities onto migrants.

By the 1990s a shift towards neoliberal capitalist governance caused the erosion of welfare states internationally, and the global economic crisis of 2007-2008 has resulted in the continuous global decline of social protection systems. Since 2010, social protection budgets worldwide have been cut despite mounting and consistent need for public assistance⁵. Such cuts adversely impact women, who devote on average 2.5 more time on unpaid care and domestic work than men, and this negatively impacts women's ability to dedicate their time to education and paid labour outside of the home.⁶

1 Devereux, S., & Sabates-Wheeler, R. (2004). Transformative Social Protection (No. Working Paper 232). Brighton. Retrieved from <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/4071/Wp232.pdf?sequence=1>

2 Hennebry, J. (2014). Falling through the cracks? Migrant workers and the Global Social Protection Floor. *Global Social Policy*, 14(3), 369-388.

3 Beland, D. 2010. What is Social Policy? Understanding the Welfare State. Malden: Polity Press.

4 Aspalter, C. 2008. “The Welfare State in Cross-Cultural Perspective.” *International Social Work* 51 (6): 777–789; Esping-Andersen, G. 1990. *The Three Worlds of Welfare Capitalism*. Cambridge: Polity Press; Esping-Andersen, G. 1999. *Social Foundations of Postindustrial Economies*. Oxford: Oxford University Press. Esping-Andersen 1990, 1999).

5 Ortiz, I., Cummins, M., Capaldo, J., & Karunanethy, K. (2015). *The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries* (No. 53). Geneva.

6 Women, U. N. (2015). *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (No. id: 7688).

Shrinking welfare states and demographic change have created care gaps,⁷ declining funding for pensions, employment and disability insurance, with privatization and shifting policies affecting eligibility for benefits and creating hierarchies of access. Employers and states in high-income countries have reacted to this changing landscape by seeking workers who will not, or cannot claim benefits, leading to a rise in labour contractualization and temporalization.

Further, with raising wages and status for workers in the care sector (both private and public) not on the agenda of most governments or employers, migrant workers become attractive alternatives.⁸ Overall, with diminished full-time, permanent positions with benefits, across a range of sectors, the ideal worker has been recast as someone who is temporary, replaceable, least expensive and the least able to claim rights and social protections. In this economic model, migrant workers are ideal workers, whose precarity and temporality is structured into contemporary versions of guest worker programs.⁹

The cycle of poor social protection is further compounded by global care chains¹⁰ where the burden of care falls squarely on women in the Global South. “As we go down the chain, the value ascribed to the labour decreases and often becomes unpaid at the end of the chain.”¹¹ Women migrant workers (WMWs) fill essential care jobs in the global north which provide an alternative to state sponsored social protection, and increases the size and availability of the work force in countries of destination. For example, in Europe, WMWs are highly concentrated in very few occupations: 42% of them working in three sectors alone: the care/domestic sector in private households (residential care and home care), care in hospitals, and cleaning activities.¹² In this respect, migrant labour has offset the care gap in popular migrant destination countries.¹³

Additionally, migrants contribute to the tax base that finances social insurance systems in high-income countries. Indeed, migrants in OECD countries contribute more in taxes and social contributions than they receive in individual benefits.¹⁴ Many destination countries turn to immigration to “bring in care providers but also to replenish their labor forces and keep revenues flowing into pay-as-you-go pension funds.”¹⁵

Falling through the cracks

Insecure livelihoods for migrant workers often start in countries of origin. In the case of Nepal, a weak social protection system provides a minimal old age/survivor allowance, while pensions are only available to civil servants, government employees and formal sector employees able to voluntarily contribute. Few initiatives in countries of origin are directly aimed at improving protections for migrants, especially families of undocumented migrants abroad. Sometimes such initiatives fail in enabling national portability, internal mobility and a guaranteed access to healthcare. In some cases, Conditional Cash Transfer (CCT) programs have been initiated, such as Brazil’s *Bolsa Familia* or Mexico’s *Oportunidades*, which typically exclude those

7 Daly, M., 2011. What adult worker model? a critical look at recent social policy reform in Europe from a gender and family perspective. *Social Politics* 18 (1), pp. 1-23.

8 Martin, P. A need for migrant labour? UK-US Comparisons. In Ruhs, M. and B. Anderson, eds.(2010). *Who needs migrant workers? Labour Shortages, Immigration, and Public Policy*. Oxford University Press. 295-321.

9 McLaughlin, J., & Hennebry, J. (2013). Pathways to precarity: structural vulnerabilities and lived consequences for migrant farmworkers in Canada. *Producing and negotiating non-citizenship: precarious legal status in Canada*, 175-195.

10 Hochschild, A., 2003. *The managed heart: commercialization of human feeling*. 20th anniversary ed. Berkeley: University of California Press.

11 Yeates, N. (2005) Global care chains, a critical introduction, *Global Migration Perspectives*, No. 44.

12 Farris, S. R. (2015). Migrants’ regular army of labour: Gender dimensions of the impact of the global economic crisis on migrant labor in Western Europe. *Sociological Review*, 63(1), 121–143. <http://doi.org/10.1111/1467-954X.12185>

13 The Migration Observatory. (2011). *Social Care for Older People and Demand for Migrant Workers*. Oxford: University of Oxford. Retrieved from www.migrationobservatory.ox.ac.uk/resources/primers/social-care-for-older-people-and-demand-for-migrant-workers/; Buchan, J., & Sochalski, J. (2004). The migration of nurses: trends and policies. *Bulletin of the World Health Organization*, 82(8), 587-594.

14 Liebig, T., & Mo, J. (2013). The fiscal impact of immigration in OECD countries. *International Migration Outlook 2013*, 125-189.

15 Badasu, D. & Michel, S. (2015). On a collision course: Millennium development goals and mothers’ migration. In Zahra Meghani (Ed.), *Women Migrant Workers: Ethical, Political and Legal Problems*. New York: Routledge.

households with income sources from migrant workers abroad. This lack of access to social protections, coupled with gender discrimination and inequality are major drivers of migration for women.

In countries of destination, migrant workers are often excluded from social protection systems designed for citizens, and migrant workers are especially vulnerable to economic shocks, unemployment and poverty, as “they often do not enjoy the same rights and protection as nationals”.¹⁶

Due to residency requirements or migration status, migrant workers often face barriers in accessing unemployment insurance, parental and sick leaves, as well as disability insurance, pensions and other benefits, even though they may pay into these systems.

At the same time they risk losing entitlement to any existent social security benefits in their countries of origin due to extended periods living abroad.¹⁷ Further, even if eligibility requirements are met, migrant workers will likely face constraints in the portability of these rights across borders (ie. accessing long-term disability when returned to countries of origin), which is particularly problematic for seasonal or temporary migrant workers”.¹⁸ In Canada, migrant workers under the Seasonal Agricultural Worker Program (SAWP) cannot claim unemployment or sick leave benefits for which they pay premiums because they must leave the country when no longer working.¹⁹

Although most major countries of destination have laws in place establishing minimum wages, hours worked and workplace conditions, many migrant workers continue to be contracted and employed informally or only partially covered by such laws, particularly those in the care and agriculture sectors.²⁰ In some cases states have provided access to alternative voluntary social security schemes (sometimes private, for profit insurance systems) that enable all workers (including undocumented workers) to “opt in” for coverage. For example, government of Thailand, implemented voluntary health insurance scheme for documented and undocumented migrants, however for the system to protect migrant workers rights it must be “firewalled” to enable all workers to access unemployment insurance and pension schemes without fear of reprisals from employers or of deportation.

The dominant framing of labour migration as “an informal form of social protection for households left behind”,²¹ is particularly problematic. Dependency on remittances does not mean greater social security, but rather heightened precarity and vulnerability to periods of insecurity since migrant workers’ jobs are not secure, they face barriers accessing essential services and social protections, and they can be denied pay, fired or exploited without much recourse.²² This heightens dependency on remittances and increases the likelihood that migrant families will experience periods of poverty or insecurity when transfers fluctuate or halt from family members working abroad.

Dependency of remittances as a form of informal social protection, further entrenches migrant precarity into the employment relationship intrinsic to contemporary versions of guest workers programs or managed migration programs. For example, many managed labour migration programs tie migrant workers’ residency permits to employers whose written consent is required for workers to change employers, access medical

16 Awad, I (2009) *The Global Economic Crisis and Migrant Workers: Impact and Response*. Geneva: International Labour Organization. Available at: http://ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_126183.pdf (accessed 10 June 2017).

17 Hennebry, J. (2014).

18 Holzmann, et al. 2005: 50.

19 In 2012, the federal government eliminated access to paternity, maternity and compassionate benefits for temporary workers not present in the country (the maximum stay in Canada under the SAWP is 8 months) and without a valid social insurance number.

20 Hennebry, J., Grass, W., & McLaughlin, J. (2016). *Women migrant workers’ journey through the margins: Labour, migration and trafficking*. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Retrieved from www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins.

21 Bachelet M (2011) *Social Protection Floor for a Fair and Inclusive Globalisation*. Geneva: International Labour Organization. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_165750.pdf (accessed 18 June 2013).

22 Sabates-Wheeler, R., & Devereux, S. (2007). Social protection for transformation. *IDS bulletin*, 38(3), 23-28.

services or insurance, etc. In Gulf countries, such as Saudi Arabia, visa sponsors (employers) provide health insurance for recruited migrant workers. Employers abuse this power to confiscate passports, withhold wages and force migrants to perform unsafe work on exploitative terms.²³ In many cases, employers “simply withdraw the visa and the work permit if the employee falls sick so the employee then must return to her home country.

Bilateral labour agreements (BLAs) or memoranda of understanding (MOUs), like the Canadian SAWP, typically set parameters for managing the movement of workers in given sectors between specific countries, however they tend to neglect elements of social protection and rights. There are more than 317 BLAs in force²⁴ and rarely do these discuss social protection measures. In other cases, Bilateral agreements (BLAs) are implemented to enable pension sharing or portability of social security and health insurance schemes across borders. However, rarely do BLAs integrate both labour migration with social security. And when they do, these tend to favour high-skilled labour migration, and limit low-skilled workers with lack of access to permanent residence status that would enable them full access to protection schemes. Moreover, there are more North-South than South-South agreements, with the majority among high-income countries,²⁵ such as between the United States and Canada, have social security arrangements with each other to facilitate the portability of pensions, and ensure contributions to their respective tax base.

Yet, bilateral agreements provide one potential policy instrument to enhance rights frameworks and address social security gaps for migrant workers.²⁶ This may be particularly important for women migrant workers who are concentrated in domestic and low paid occupations, which are plagued by labour and social protection gaps with little recourse, complaint or enforcement mechanisms.²⁷ The 2013 Saudi Arabia-Philippines BLA outlines parameters for paid leave, and provides some reference to social protections.²⁸ However, MOUs and BLAs cannot by themselves “secure and insure” migrant livelihoods. Even in cases where countries engage in shared responsibility through MOUs and BLAs, these are unenforceable in the absence of national legislation aligned with international human rights law (IHRL) ensuring migrant rights to social security and insurance, and resources dedicated to monitoring and enforcing multi or bilateral agreements.²⁹

Overall, the path forward will necessitate the recognition that economic migration happens “less because of personal motivation of the person that migrates and more because of the asymmetries among countries.”³⁰ Labour migration, particularly circular or temporary migration, is not designed to enable employers to secure a temporary, flexible workforce in place of permanent workers, nor is it a long term solution to persistent social protection gaps.

23 Human Rights Watch. (2015). World Report 2015: Saudi Arabia.

24 Hennebry, J. L., Grass, W., Williams, G., Williams, K., Chikanda, A., Walton-Roberts, M., & Crush, J. (2015). *Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence*. Waterloo; See: ILO (2015); Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review www.ilo.org/global/topics/labour-migration/publications/WCMS_385582/lang-en/index.htm

25 ILO (2015). Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review/ Report prepared for the Labour Migration Branch / Piyasiri Wickramasekara; International Labour Office – Geneva: ILO, 2015, 64 p.

26 ILO, 2015.

27 International Labour Office (ILO), & Labour Migration Branch. (2016a). *Gender sensitivity in labour migration-related agreements and MOUs*. Geneva: ILO.

28 ILO, 2016a.

29 Hennebry, et. al, 2016; ILO, 2016.

30 Ceriani-Cernadas, P. (2016). Language as a migration policy tool: Critical remarks on the concept of “economic migrant” and how it leads to human rights violations. *The Sur File on Migration and Human Rights*, 13(23), 97–111. Retrieved from <http://sur.conectas.org/wp-content/uploads/2016/09/8-sur-23-ingles-pablo-ceriani-cernadas.pdf>

Recommendations: Closing the social protection gap for migrant workers

The Global Compact on Migration must ensure the following with respect to migrant workers regardless of categorization or status:

1. Ratify and enforce international conventions and treaties relevant to social protection. These instruments³¹ that make up international human rights law (IHRL), must be incorporated into law and policy in countries of destination and origin.³²
 - 1.1. Enhance collaborative efforts among Committees and Treaty Bodies to enable communication and checks and balances using conventions and other instruments.³³
2. Enhance data collection to provide information on contributions of migrant workers to pension and employment insurance systems, as well as establish accurate and consistent definitions and measurement approaches. Such data can enhance efforts at challenging negative perceptions about migrants, and strengthen evidence-based social policy reform.³⁴
3. The SDGs offer valuable insight for how policy makers might improve social protections in countries of destination while recognizing the impacts of gendered migration streams and sectors:
 - 3.1. Following SDG 1.3., establish minimum social protection floors that include migrant populations (across both low and high-income countries), along with monitoring and enforcement.³⁵
 - 3.2. Following SDG 5.4,³⁶ mainstream practices of recognizing the value of unpaid care into labour, health insurance, pension, parental benefits and unemployment policies across countries of origin, transit and destination.³⁷
 - 3.3. Recognize the contributions of migrant labour of the global south in filling the social protection gaps, and ensure that their labour rights are protected, promote safe and secure working environments for all workers, including migrant workers, in particular women migrants (goal 8.8³⁸).

31 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as further elaborated in General Recommendations No. 26 (2008) on women migrant workers; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), as further elaborated in General Comments No. 1 (2011) on Migrant Domestic Workers and No. 2 (2013) on the rights of migrant workers in an irregular situation; International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (1966); ILO's international labour standards including conventions of general application as well as those that contain specific provisions on migrant workers including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143) and, more recently, the ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and the attending Domestic Workers Recommendation, 2011 (No. 201); The international Covenant on Economic, Social, and Cultural Rights (ICESCR).

32 See also recommendation 5.6 from: UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva. www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration

33 For example, in 2016 UN Women facilitated a collaborative effort between CEDAW and ICRMW committees, to strengthen gender-responsiveness within the LOIPR of the ICRMW, and similarly to enhance language pertaining to women migrant workers in CEDAW with references to ICRMW. Such efforts will strengthen accountabilities to existing frameworks, using those more widely ratified instruments (such as CEDAW or ICERD) to address issues pertaining to migrant workers.

34 See Rec. 1.5. in UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

35 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.

36 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate.

37 See for more detail recommendation 5.13: UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

38 Protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment.

- 3.4. Recognize the role that migrant remittances play in helping families cope with insufficient social security in countries of origin, and reduce transaction costs of migrant remittances to less than 3 per cent (goal 10c³⁹).
4. Establish bilateral labour migration agreements (BLAs) consistent with international labour and human rights law that clearly identify and set the standard of access to social protections as part the agreement (i.e. embed social security clauses into labour migration agreements). Include enforcement and monitoring mechanisms, and provide sufficient information to migrant workers about their rights to standards of social protection, as well as how to access these protections.⁴⁰
 - 4.1. Create mechanisms to enhance the commensurability of existing bilateral social security agreements and labour migration agreements to ensure migrant workers are covered under these systems.
 - 4.2. Establish bilateral social security agreements between countries of origin and destination (that directly reference BLAs where relevant) to enhance access for migrant workers.
5. Enhance social protection portability schemes that ensure that social protections into which migrants have paid in destination countries, can be accessed and claimed in origin countries by workers and their families. In particular, create policy instruments and programs that specifically address this population and ensure eligibility (e.g. into pension plan, parental benefits, or employment insurance systems) in countries of destination, and policies and programs to support migrant workers in countries of origin to access systems and disbursements from abroad regardless of migration status;⁴¹ and this should be the case for all benefits. This requires an incredible amount of cooperation between states to make benefits portable.
 - 5.1. Establish or involve regional organizations, intergovernmental meetings and consular services to organize and administer this type of transnational transfer of national benefits to migrant workers, so that the challenges of navigating claim systems or receiving transfers from abroad are mitigated.
6. Facilitate access to permanent residency and family reunification for migrant workers in low-skill employment. This addresses challenges of demographic change (e.g. stagnated birthrates and aging populations), increases the productive workforce in countries of destination, and lessens the burden of care on women in countries of origin. It may assist with migration development nexus since evidence suggests that diaspora communities continue to remit to their networks in countries of origin – this would be a more positive gain when care burdens are not downloaded.⁴²

39 By 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%.

40 See Rec. 5.1. and 5.5 in UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva.

41 i.e. ensuring that undocumented, temporary and permanent migrants have equal access to such systems in policy and practice.

42 www.weforum.org/agenda/2015/06/why-countries-should-make-the-most-of-their-diasporas/



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Dr. Hennebry's research portfolio includes comparative studies of migration policy and foreign worker programs with an emphasis on migrant rights and health, migration industries, non-state migration mediation, transnational families, and the role of remittances in development. Recent work examines the role of bilateral labour mobility agreements in protecting migrant rights and social protections, non-state actors and an expanding migration industry in foreign worker programs, and shifting regimes of labour migration governance worldwide (e.g. www.mappingmigration.com and www.migrantworkerhealth.ca).

Dr. Hennebry is currently working with UN Women to provide key analytical and methodological support to the UN Women's project on Promoting and Protecting Women Migrant Worker's Labour and Human Rights. She is also working with the World Bank on the KNOMAD project, KNOMAD draws on experts from all parts of the world to synthesize existing knowledge and generate new knowledge for use by policy makers in sending and receiving countries.