

Working Paper 2016-11

Redefining a Rights-Based Approach in the Context of Temporary Labour Migration in Asia

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Addressing Multiple Forms of Migrant Precarity:
Beyond “Management” of Migration to an Integrated
Rights-Based Approach

September 2016



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Addressing Multiple Forms of Migrant Precarity: Beyond “Management” of Migration to an Integrated Rights-Based Approach

This paper is part of a Working Paper series that synthesizes research that was presented at a workshop convened by UNRISD and members of the World Universities Network (WUN) in Geneva in September 2015.

At the workshop, researchers from an international consortium presented new empirical research findings from Asia, Africa and America from a recently concluded study of migrant precarity. The research project focused on intraregional migration, looking in particular at the linkages between migration and social protection from a rights perspective. It considered policies and practice related to three key groups of migrants: unaccompanied children, refugees and labour migrants.

For further information on the workshop visit <http://www.unrisd.org/migrant-precarity-workshop>.

The main workshop discussions were summarized in an UNRISD Event Brief, which is available at www.unrisd.org/eb3.

Series Editors: Katja Hujo and Nicola Piper

Working Papers on Addressing Multiple Forms of Migrant Precarity: Beyond “Management” of Migration to an Integrated Rights-Based Approach

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Acronyms

ASEAN	Association of Southeast Asian Nations
DESA	Department of Economic and Social Affairs
EU	European Union
GDP	Gross domestic product
ILO	International Labour Organization
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
NGO	Non-governmental organization
OWWA	Overseas Workers Welfare Administration
POEA	Philippines Overseas Employment Administration
SDG	Sustainable Development Goals
TF-AMW	Task Force on ASEAN Migrant Workers
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Acknowledgements

The authors would like to acknowledge the funding source that supported the research leading to this publication: The Faculty of Arts and Social Sciences' Faculty Collaborative Research Scheme 2015–2016, University of Sydney. Nicola Piper was supported by the European Union's Seventh Framework Programme (FP7/2007–2013)'s Marie Curie Actions under REA grant agreement no. 609400 during the final stage of this publication project.

Summary

This paper analyses the implications of the dominant framework that has so far guided migration policy in Asia and shaped intra-Asian migration patterns and dynamics. It identifies institutional gaps that hamper the realization of migrants' human and labour rights in East, Southeast, South and West Asia. The key argument advanced is that the dominant project of migration governance continues to fail in several key areas, reflected in decent work deficits in relation to labour rights, the nature of employment opportunities and lacking social protection at all stages of the migration process. The authors find that these manifestations of precarity are related to forces of structural inequalities that operate throughout the global (and regional) economy, institutional incapacity and lacking integration of labour governance within migration governance. They propose that migration governance will only deliver on its commitment to "benefit all" if it is grounded in a holistic understanding of the concept of precarity that takes account of its spatial, protracted and temporal foundations.

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Introduction

The main purpose of this paper is to argue for the centrality of a rights-based approach to the governance of labour migration and to highlight institutional gaps that hamper the pursuit of realizing such an approach. Our argument in favour of a comprehensive rights-based approach is based on the serious protection gaps that exist in the dominant framework guiding migration policy at the global level, and as reflected in the dominant policy doctrine on the employment of foreign workers.¹ Empirically, this paper relates this discussion to intra-Asian migration patterns and dynamics. More precisely, we confine our discussion to four sub-regions: East, Southeast, South and West Asia.

Asia is home to millions of migrant workers who move within the Asian region and who labour largely under temporary, employer-tied contracts or in an undocumented or irregular manner. As Braga (2016: 151) has observed, “precariousness is actually *constituent* of the wage relation,” and this is especially so when workers are recruited into the global labour market (see also Rosewarne 2016). Where the right to permanent settlement is denied (which is commonly so, especially in Asia where temporary contract migration is the dominant of, and only form for, legal migration), legal precarity becomes the defining marker in framing employment opportunities in this labour market. Under such conditions, Asian workers are subjected to a gamut of labour rights violations, ranging from situations of forced labour and trafficking, to child labour as well as other, more common, forms of precarious employment. Migrant precarity is thus primarily linked to a specific regulatory framework of migration, one that becomes institutionalized in the structuring of the labour market as one founded on labour market segregation and in the absence of protective labour regulations (Randolph 2014). Given the feminization of work and poverty, gender issues are part and parcel of those labour forms, especially in the context of global production and reproduction chains, characterized by the relentless search for low-wage and flexible sources of labour and increasing demand for care workers (Hochschild 2000).

Having achieved dramatic economic progress within a generation, Asia has become one of the most dynamic regions globally. It is the world’s most populous region, with a fast-growing labour force in some sub-regions. Given its huge diversity in terms of growth trends and income disparities across different countries, intra-regional migration will remain an important livelihood strategy.² Most governments in South and Southeast Asia, as well as West Asia, have come to actively promote outflows or inflows of migrant workers in line with the policy doctrine of leveraging migration to enhance development, entailing remittances and skill transfers for origin countries, and low-paid labour to fill jobs in sectors often shunned by the local workforce in destination countries.

To this end, administrative structures dealing with the “management” of migration have gradually been instituted in one form or another. The well-established regulatory system of the Philippines has been promoted as a model for other origin countries in South and Southeast Asia (Chavez and Piper 2015). Yet, there are huge institutional gaps regarding the protection of migrant rights on the part of both origin and destination countries. Employer-tied temporary migration schemes—buttressed by an extensive

¹ Such protection gaps are subject to numerous INGO reports such as by Human Rights Watch, Amnesty International, Verité, as well as country mission reports by the UN Special Rapporteur for the Rights of Migrants and others.² According to UN DESA (2009), from 1995 to 2000, 40 percent of the estimated migrants remained within Asia.

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web of labour market intermediaries, of private recruitment agencies and brokers—have been the standard practice in all sub-regions of Asia for decades (Wickramasekara 2005; 2011). They revolve largely around securing a steady supply of disposable workers for seasonal and temporary industry-specific (typically construction and manufacturing) and care/domestic work at the low-skill and low-wage end of the spectrum where most of the serious rights abuses occur. The Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers is a first step in the “right” direction, that is towards recognizing the contributions and protection needs of migrant workers, and it has in fact prompted a lively debate among civil society actors.³ It is, however, non-binding and therefore lacks teeth.⁴

International cooperation on migration has largely centred upon what Chi refers to as “the paradigm of ‘managed temporary labour migration’” (Chi 2008: 500). This “managed migration” discourse is linked to the renewed interest in migration’s contribution to development (the “migration-development-nexus”), placing great emphasis on the design of formal policies by which origin and destination states try to assert control over migratory flows and employment—that is, over income and profit generation as well as the securing of livelihoods through migration. This framework claims to constitute a “triple win” situation, benefiting host and source countries as well as the migrants themselves (UN 2006).

In contrast with this proposition, the “managed migration” paradigm, as we would argue, is predicated upon the devalorization of migrant labour as a mere commodity, dispossessing migrants of the human and labour rights we would normally associate with waged workers. This circumscribing of labour rights frames the entry of the majority of migrants from Asia into the global labour market as low-skilled/low-wage temporary contract workers who are subjected to highly vulnerable and exploitative situations. Precarity has become a dominant feature of the migration employment experience. But, in advocating for migrant worker rights, it is essential to not simply limit our focus to addressing what happens in employment abroad. This is so because precarity has broader foundations, or structural roots, that demand we treat precarity in a more holistic manner. Precarity is inclusive of the organic vulnerabilities that are at play throughout each stage in the migration process; it is bound up in the full spectrum of the transnational process. The seeds of precarity are sewn in workers’ countries of origin, in the lack of opportunities that enable workers to adequately meet their material and social needs at home. A lack of decent local work, alongside the dearth of employment and civil rights, often acts as a push factor that prompts workers to contemplate migrating for employment (Randolph 2014).

Precarity is also underscored by the institutional arrangements that have been established to encourage and assist labour migration because these arrangements can subordinate workers to the demands of, and indebtedness to, a whole cabal of labour brokers, money lenders and employment agents, as well as the obligations to their families in the country of origin. Precarity is further institutionalized by being embedded in an increasingly restrictive policy environment. Current policy practices heavily circumscribe, or remain intentionally silent on, protections that would otherwise

³ Chavez 2015; ASEAN 2007; TF-AMW 2009.

⁴ Comment by Foreign Minister of Indonesia on ASEAN now considering the drafting of a binding instrument on the protection of migrant workers, made at the International Conference on “Labor Migration: Who Benefits? Global Conference on Worker Rights & Shared Responsibility”, 10–12 August 2015, Bogor, Indonesia.

afford the human and labour rights of migrants,⁵ and which are otherwise well set out in existing international instruments and relate to obligations by countries of origin as well as countries of destination.⁶

The dominant project of migration governance thus continues to fail in several key areas, as reflected by decent work deficits in relation to labour rights, employment opportunities and social protection at all stages of the migration process, including the pre-migration stage and return migration. Due to forces of structural inequalities throughout the global (and regional) economy and institutional incapacity, migration governance is not matched by labour governance. Consequently, the promotion of a (labour and human) rights-based approach is crucial. This leads us to argue for a revised take on the predominant understanding of precarity, one that is writ large in the forces that make for and sustain transnational vulnerabilities.

Migration Precarity in Asia

Labour migration into the lower tiers of capitalist production and reproduction (that is, domestic and care work)—be it under circumstances of temporary contract or permanent immigration⁷—has increasingly been understood through the conceptual lens of precarity, particularly from the perspective of the migrant-receiving countries of the Global North.⁸ In this context, precarity (and related notions of the precariat and precarization) refers explicitly to a “moment” in late capitalism where the exploitation of migrant labour has become systemic, entailing generalizable conditions of uncertainty, disempowerment, vulnerability and insufficiency (Rodgers and Rodgers 1989), maintained to further segment and informalize labour markets. More specifically, it is associated with neoliberal economic reconfigurations, wherein accumulation by dispossession (Harvey 2010) has “swept away labour rights and social rights won by people’s movements during the nineteenth and twentieth centuries and guaranteed by states through social institutions and frameworks of citizenship” (Schierup et al. 2015: 2).

Yet, in the diverse contexts of Asia, this “new global norm of contingent employment, social risk and fragmented life situations—without security, protection or predictability” (Schierup et al. 2015: 2)—hardly constitutes a new state of affairs. Northern notions of precarity may not usefully extend to the limited formation of social and labour rights throughout Asia, where a different history of capitalist development (predominantly by way of colonialism) often subordinated labour to the extent of preventing the development of a Polanyian “protective counter-movement” in the first place (Bremen 2009).⁹ While accumulation by dispossession now erodes the hard-won concessions of the labour movement in the Global North, it is important to recognize that, for much of Asia and the Global South more broadly, colonial and postcolonial ideologies have historically overshadowed the exercise of individual rights, and circumscribed civil and industrial rights in general. Such rights, already nascent throughout much of Asia,

⁵ The main rights issues for migrant rights advocates revolve around the strict temporary character of migration (1 to 3 years), the lack of family unification, the involvement of private, profit-oriented recruitment agencies and the employer-tied nature of work permits which exposes migrants to great levels of dependency and abuse at the workplace.

⁶ For a full list see ILO 2006b.

⁷ Contemporary forms of permanent migration in Asia are largely confined to international spouses. Marriage between typically (but not exclusively) women from resource poorer countries in Asia to men in resource richer countries has been a steady if not rising phenomenon and been conceptualized as part of parcel of the current “care crisis” (Piper and Lee forthcoming).

⁸ Goldring and Landolt 2013; Lewis et al. 2014; Schierup et al. 2015.

⁹ On the other hand, those countries that used to have strong labour movements at some point, such as South Korea, have experienced backlashes and lost rights under extreme state oppression.

continue to be sidelined under the doctrine of neoliberalism. As much as Northern notions of formal employment have been problematically transposed on the settings of Asia, especially in South Asia, where informality is more often the norm and formality the exception, and quite frequently linked to irregular or undocumented migration, so too is precarity largely representative of existing economic realities rather than a new “moment” in capitalist relations (Sproll and Wehr 2014). Indeed, the language of precarity has until recently been conspicuously absent from much of the literature emanating from countries of the Global South (Arunatilake 2012), perhaps explained by such conditions being the norm amidst economic development (Lee and Kofman 2012).

These recognitions serve not to dismiss the importance of precarity as a concept, but rather point to the necessity of broadening its theoretical purview to better account for the majority of global movements of labour that take place within and between countries of the Global South (Hujó and Piper 2010; Breman 2009) and particularly throughout Asia (Abel and Sander 2014). In this regard, migration cannot be seen as a linear pathway *into* precarity or by which migrants *become* precarious. Rather, foreign employment demands to be understood as precarious work undertaken to mitigate *existing* conditions of precarity at home, generally structured by historical and ongoing processes of uneven development. Whether migration takes place internally from rural to urban milieus, inter-regionally between countries of comparable development, or internationally from the Global South to the Global North, the precarity of economic marginalization is itself a principle driver of migration.

Furthermore, there is limited evidence that the metamorphosis into transnational waged worker comprehensively provides salvation from this vulnerable space. The predominance of temporary contract migration leads inevitably to return migration. The promise of the “development effect” even for individual migrants does not usually materialize after just one stint abroad. Re-migration often occurs, and the suggested positive “development effect” of “circular migration” is more the manifestation of many migrants being captive to, or falling back into, the situation of precarity which they were hoping to escape (Spritzer and Piper 2014). What emerges as a result is a transnational experience of precarity that is spatio-temporally reconfigured through migration, but nonetheless remains a constant experience for migrants as workers, both at home and abroad.

Protracted Precarity

A more complex contradiction is found in the exclusionary nature of economic growth throughout much of Asia. Rampant development has occurred alongside, and contingent upon, the entrenchment of exploitative and precarious work. With the select exception of East Asian and some South East Asian economies—which have developed more inclusively under conditions of protectionism and state-driven selective industrial policy—¹⁰Asia’s recent economic development¹⁰ has largely occurred under the polarizing conditions of neoliberalism. By enshrining the “unfettered” functioning of markets, including those of human labour, there has been little policy imperative to introduce social protection measures and workplace regulations tantamount to the provision of decent work. Quite the contrary, the fictitious commodification of a low-wage and malleable labour force has been fundamental to strategies of growth and development that hinge upon economic integration among the lower tiers of global supply, labour and care chains. Precarious labour has been used as a “selling point” for

¹⁰ Examples are Japan and the “Tiger Economies”. See Chang (2006).

export economies competing to attract foreign direct investment, but also underpins more contemporaneous development pathways predicated on “exporting” cheap labour and care workers in exchange for remittances. Prevailing conditions of economic precarity experienced by marginalized segments of local labour markets—typically discriminated by class, gender or ethnicity—thus ensure the “competitiveness” of production and labour exports. Examples of such are found in the displacement of the rural poor whose traditional livelihoods have been undermined by capital-intensive production (Castles 2013), the feminization of export production and migration flows (Standing 1989; Standing 1999) and the variegated means of curtailing indecent work to ethnic minorities (Fernando 2013). Development under such circumstances is, therefore, predicated on the cultivation of a precarious workforce whose inability to access decent work locally prompts internal or international, and often overlapping (Skeldon 2006), migration into exploitative employment that nonetheless confers potential for a more predictable income. These same processes frame the recruitment of women as migrant domestic and care workers, particularly where traditional male livelihoods have been undermined and female breadwinners are increasingly the norm (Rosewarne 2014).

Increased attention is being given to the phenomenon of global supply, labour and care chains, and the concept of due diligence, both of which highlights that the key responsibility for working conditions and rights lay with employers located in the Global North. The significance of highlighting so-called South-South migration adds another layer to the issue of labour standards: attempts to stop the relentless race to the bottom for those labouring in globalising economies have been made via minimal labour standards or codes of conduct. But minimum standards are not the same as rights. The former represent a voluntaristic approach to labour standards, placing the multinational company at the centre as the main agent in the promotion of labour standards, and recruitment and placement agencies as increasingly important subsidiary agents, while the state has no enforcement role. For Elias (2010), this constitutes a highly problematic approach as it fails to acknowledge how firms and labour market intermediaries themselves play an active role in the construction of a global system of inequality in which migrants (especially female) are the key source of low-wage employment. This applies to many of the most globalized industries. Moreover, globally, the fewest workers work for companies or even in factories in the form of formal work. In the Global South informal sector work predominates, and it is spreading in the Global North also.¹¹ For the many female migrants, it is domestic work that represents a hugely important sector that falls outside the company (or conventional workplace) or the formal sector model.

In the Global South, due partly to its experience with (neo-)colonialism, any talk of labour standards is readily framed as protectionism by the Global North. According to McIntyre (2006: 6), the labour-standards-as-protectionism argument has to be contextualized with increasing South-South competition for FDI and creation of jobs. He argues that the main reason for promoting social clauses in trade agreements today is not North-South but South-South competition. “[s]mall gains achieved by some workers in Mexico are now threatened by competition from China” (McIntyre 2016: 6). The ferocious competition of the last few years, and likely in the coming decades, is between developing countries (McIntyre 2016: 6).

¹¹ The ILO (2016b: 19) estimates that informal employment as a percentage of non-agricultural employment exceeds 50 percent in half of the countries with comparable data. Full-time employment in the Northern, Southern and Western Europe region has declined in recent years, while part time and temporary employment has grown, and the share of full-time work arrangement fell by over 3 percentage points between 2007 and 2015 (ILO 2016b: 55).

This is also reflected in the “labour migration scene”: major sending countries such as Indonesia, Vietnam, the Philippines, Sri Lanka, Bangladesh and Nepal have engaged at various times in under-selling their nationals to major receiving countries in order to ensure their share of an increasingly crowded labour market for migrants. Efforts to set minimum employment standards and rights can be too easily frustrated by the measures that governments have adopted from time to time in order to enhance the international “competitive advantage” of prospective migrant workers. This has occurred, for instance, in the pre-departure training provided in Indonesia for domestic workers who are explicitly instructed to refrain from lodging complaints against employers that could lead to the premature cancellation of contracts (Piper and Rother 2012). And when governments of labour-sending countries do adopt measures to set minimum rates of remuneration and employment standards that must be agreed and stipulated in a written employment contract before a travel visa will be issued, such measures can be easily thwarted. The Philippines and Indonesian governments, for example, have mandated this requirement for domestic workers. In practice, destination countries simply expand recruitment from other source countries, or migrants desperate for paid work take to well-travelled irregular channels, engaging as undocumented workers. This applies to a large number of Filipina and Indonesian workers, which thereby further contributes to the “race to the bottom” (Rosewarne 2012).

A conceptual bridge can be made between the key modalities of precarity by understanding broad forms of existing precarity—for example un- and underemployment, insufficient social protection, poor working conditions and labour standards, seasonal employment, declining local livelihoods, chronic indebtedness—to be push factors for employment within narrower forms of precarity found in trans-border employment. This framework resonates with a resurgent strand of the migration-development literature that inverts the causal implication that migration leads to development, instead highlighting underdevelopment as a structural catalyst for temporary labour migration.¹² Integral to this perspective is an emphasis on uneven development within sending countries, specifically the declining developmental accountability of the state under neoliberalism and the interrelated “outsourcing” of development to private individuals through livelihood strategies such as temporary labour migration (Migrant Forum in Asia 2013). Temporary labour migration, in particular, has served as an appealing “safety valve” for governments of developing countries faced with high unemployment and poor terms of trade: sending workers abroad masks job shortages at home (often associated with the decline of traditional livelihoods), while amassing vital foreign exchange receipts by way of remittances. In essence, a contradiction emerges whereby existing precarization engenders increasing labour migration, the macroeconomic dividends of which in turn sustain the continuation of an exclusionary model of development with little incentive to strengthen the rights of workers at home or abroad.

The Philippines is the classic case exemplifying these dynamics and processes. Its whole political economy is shaped by decades of proactive manpower export of mostly temporary labour (O’Neil 2004). It was under President Marcos that the Philippines began to establish a system to regulate and encourage labour outflows to deal with un- and underemployment created by a stagnant economy (rooted in the lack of land reform and the political rule of a few elite clans) and a collapsing job market in the mid-1970s. Labour migration was initiated as a system which was meant to be a short-term response to domestic economic downturn which morphed into a permanent pillar of Philippine policy. Successive Philippine governments have made temporary labour migration a

¹² Delgado Wise 2009; Phillips 2009; Abreu 2012.

foreign policy priority in both bilateral and regional trade negotiations. This is an employment-driven strategy and although the securing of rights of its citizen is not absent, it is a secondary consideration. As a result of decades of experience, a comparatively sophisticated policy regime to promote and regulate labour migration has been created with firm institutions such as the Philippines Overseas Employment Administration (POEA) and Overseas Workers Welfare Administration (OWWA) in charge. Although migrant labour kept families afloat with remittances paying for education, welfare and daily consumption, a culture of dependence emerged. The ca. six billion USD of remittances sent annually, which amount to approximately 8.4 percent of the national gross domestic product (GDP), rarely translate into significant savings and sustainable job creation (O'Neil 2004). Since return migration has become the new emphasis within global governance discourse since the mid-1990s, the cycle of migration-return-remigration is a common feature of Philippine migration reality. This illustrates how precarity becomes institutionalized in the internationalization of waged work and the global labour supply chain.¹³

To better account for a holistic definition of migrant precarity, then—one that can be applied to a transnational context—it is necessary to develop a rights-based understanding of precarity within countries of origin that complements the existing legal-normative framing of precarity regarding the performance of migrant labour within destination countries (Goldring and Landolt 2013). Cast in this light, the fundamental problem is not only the insecurity and vulnerability associated with migrant labour, but the lack of opportunities, rights, security and protection at home that causes large segments of the labour force to resort to migration as a survival strategy or for aspirations for social upward mobility (for example by financing the education of the next generation).

International advocacy for migrant workers' rights and the relative ineffectiveness of emergent regulatory initiatives, such as the 1990 UN Convention, have highlighted the persistent challenges of redressing entrenched structural inequalities within global labour markets preserved by the mutual complicity of labour-sending and labour-receiving governments (Piper 2016a). Continued advocacy for migrant rights and working conditions by national and transnational civil society groups is essential in sustaining this struggle, and importantly at least as far as the emerging Global Migrant Rights Movement is concerned, it does not focus only on the situation in countries of employment. Importantly, it also addresses the need for sufficient social protection, labour rights and working conditions within sending economies, so that existing conditions of precarity can be ameliorated to the end of providing decent local work as a viable alternative to participation in temporary, employer-tied labour migration (Piper 2015).

Temporary Migration, Decent Work and Social Protection – Institutional Gaps

The literatures on global governance and global social regulation have both commented upon the fragmented institutional structure and the involvement of a plethora of institutional actors with reference to a number of policy fields (Kaasch and Martens 2015; Grugel and Piper 2007). This can lead to a number of competing and overlapping institutions, all of which have some stake in shaping policy (Deacon 2007). Migration as a policy field is affected by similar dynamics and characteristics. The complex

¹³ For an example case study, see also Salami et al. (2016) from this series.

landscape of global migration governance is comprised of normative institutions like the International Labour Organization (ILO) and intergovernmental agencies like the International Organization for Migration (IOM) whose *raison d'être* is rooted in a state-directed approach to solution finding.

The implementation of global policy is also linked to the national level. What we still know too little about is countries' institutional capacity and the political process of setting priorities to implement global policy effectively.¹⁴ In relation to resource poorer countries, it is the development literature that has for long concerned itself with “good governance”, or rather how to address the lack thereof in these countries. Missing is the establishing of a concrete link between global regulation and national institutional capacity to implement good governance, especially in the field of migration. In relation to migration policy, existing studies have investigated the operational actions of international organizations in national contexts,¹⁵ but to a lesser extent has the issue of institutional capacity on the national level been related to the realization of global goals.

It is, however, primarily at the national level where there are serious capacity constraints with regard to achieving the “managed migration” paradigm's key goal (“benefitting all”). This is particularly so with regard to many sending countries where this paradigm promotes economic development via remittances, migration-related fees and income taxes, and migrant investment in businesses, while also requiring the protection of the rights of migrants workers (Chi 2008). Sending countries, however, have limited institutional capacity to manage temporary migration accordingly due to a “lack of resources, expertise and institutional commitment to protect their citizen migrant workers and to harness economic benefits for long-term development” (Chi 2008: 511). But significantly in their case, as Chi (2008) concludes, the issue is not so much one of regulatory design but of dominant interests and priorities.

In turn, the key international player to provide technical assistance on all those matters is the ILO since it has stronger legitimacy based on its standard setting mandate and social dialogue as well as tripartite principle. But the ILO has its own institutional capacity constraints with regard to in-country presence. Its national offices tend to be understaffed and underfunded, often lacking expertise on migration since migration is not part of its core business and it struggles with incorporating informal workers and non-organized sectors into their traditional operations (Basok and Piper 2012). This stands in complete contrast to the IOM, which maintains national offices practically everywhere that are comparatively well-staffed (Basok and Piper 2012). However, unlike the ILO, the IOM does not in its mandate have the express objective of advancing migrant worker rights.¹⁶

Furthermore, the outcome of the combination of the structural disadvantage of sending countries vis-à-vis host countries, the potential of dependency on labour exports and the attendant human and social costs typically translates into competition for securing employment opportunities in the global and regional labour market which often means governments “undersell” their citizen workers. In this context, the concept of freedom of movement—which is a key aspect of the normative framework at the global level—has limited utility because “it does not support specific labour migration policies and ignores the common belief among migrants that they have no choice but to leave their

¹⁴ The term ‘state capacity’ captures this in combined form, see UNRISD (2010).

¹⁵ For the example of the IOM, see Geiger 2010; Georgi 2010; Basok and Piper 2012.

¹⁶ The IOM has 450 offices worldwide with over 9,500 staff in total. In contrast, the ILO maintains 40 field offices.

family and home” (Chi 2008: 531) in the search for employment opportunities and decent work.

Decent Work

A deficit of what the ILO terms “decent work”—understood as the availability of employment “in conditions of freedom, equity, security and human dignity” (ILO 2006a)—among labour-sending regions of the Global South has long been identified as one of the principal drivers of international labour migration (Delgado Wise 2015). An obvious paradox is that established patterns of temporary labour migration offer little, if any, reprieve to this deficit of “decency”.

What comes of this is a recognition that migrants' right to “decent work” is not limited to the conditions of foreign employment. The precarity and exploitation that characterizes the employment of migrant labour is the tip of an iceberg: easily perceived from the vantage point of knowledge production emanating from the receiving economies of the Global North, but ultimately belying the deeper structural contradictions of growth and development throughout the sending economies of Asia. The continued advocacy for the rights of migrant workers, crucial in its own right, must therefore be accompanied by a complementary articulation of economic rights that contest contemporary visions of development which are fundamentally at odds with “decent work” (Branco 2009). Failing to understand, contest and redress processes of uneven development and precarious work within sending economies preserves the structural antecedent from which reliance on temporary labour migration emerges.

What demands particular attention is the deconstruction of the economic conditions underpinning Asia's celebrated growth: the formation of reserve armies of labour and care maintained through the historical precedence of informal employment and subsequently integrated into global supply, labour and care chains as exploitable labour inputs. This has resulted, as Breman (2009) notes, in an organization of economic activity that yields “a high return to capital and excessively low return to labour” (Breman 2009: 27). These polarizing class antagonisms of Asia's uneven development cannot be sufficiently addressed by safeguarding the provisions of existing formal sector employment within sending countries, as this often serves to reinforce minority working entitlements ascribed by class and status as formal sector employment constitutes the minority of employment in many countries. Yet, as many migrant workers are in fact recruited into the formal employment sector (and since the adoption of ILO C189 on Decent Work for Domestic Workers, domestic work is, at least in theory, being transformed into formal work), the entitlements of formal sector workers are still important and need to be monitored with the view to upholding or improving labour standards. Countering this “excessively low return to labour”, however, must also be tied to broadening welfare and social protection reforms targeting the formal and informal economy and, ultimately, extending economic interventions beyond the purview of the prevailing market economy dogma.

The UN's Sustainable Development Goals (SDGs) speak to these ambitions. This is especially so since the ILO was successful in 2015 in incorporating Decent Work as a key objective in the project to target the eradication of extreme poverty and hunger.¹⁷ The SDGs may be criticized for advancing a global development project that too readily

¹⁷ The MDGs had not included decent work into their main goals but were inserted in 2007/8 under goal 1 of eradicating extreme poverty and hunger as target 1.B “Achieve full and productive employment and decent work for all, including women and young people”. Decent work had therefore begun to be recognized in international development agendas but received centre stage recognition in the SDGs.

reconciles with neoliberal globalization. However, the appeal to “decent work” in the UN’s 2030 Agenda for Sustainable Development invites consideration of the possibilities that this opens up for countering the deleterious consequences of international trade and capital markets’ liberalization and labour market deregulation (Moore et al. 2015; Schierup et al. 2014). In particular, inscribing the “decent work” ambition within this global development project draws attention to international labour migration as both a manifestation of, and a contributing factor to, underdevelopment and therefore highlights the necessity of engaging migrant worker rights as an essential objective in the pursuit of global development.

Such international fora, and most particularly the Global Forum on Migration and Development, have in theory opened up spaces for debating how best to progress the claims to advance decent work and worker rights in the context of international labour migration. Still, it has to be acknowledged that, to date, there has not been much traction in advancing this cause beyond rhetoric (Piper 2015). The issues of work standards and employment and related rights remain foremost the province of national governments, and activating state intervention is crucial to setting the conditions that generate decent employment across the economy. This will necessitate undoing the embrace of neoliberalism, which though contested in meaning and increasingly misused, has definitionally proscribed governments’ retreat from economic regulation in order to allow the unfettered operation of market logic in coordinating the supply of and demand for labour in the spheres of production and reproduction (Friedman and Friedman 2011).

One dimension of this will be to challenge the way in which neoliberal economic governance has shifted the politics of employment from labour’s right to work towards employers’ right to exploit; individuals are recruited into wage labour and expected to “sell” their labour according to market demand, while the active creation of employment or enforcement of minimum wages and conditions are frequently construed as “inefficient” or “uncompetitive” distortions of market signals. In policy terms, this has conferred ideological legitimacy to governments’ declining fiscal commitment to welfare expenditure, employment-generating investments, nationalized industries and the working poor more broadly.

A second requirement will be to reverse the withdrawal of governments in most labour-source economies from any direct involvement in recruitment and management of labour migration. The state in almost all labour migration origin countries has sanctioned the establishment and expansion of labour migration as a highly profitable industry subject to loose regulation. Based on a multi-layered institutional architecture—on labour brokers and recruitment agencies organizing the passage of individuals into the global labour force, loan sharks advancing money at usurious rates to finance migration, businesses arranging visa applications and processing employment documents, or training and negotiating offshore employment placements, money transfer agencies assisting in remitting income, and others supporting the return of workers to their homes—the “merchants of labour” have flourished in the making of the global labour and care supply chain. This is an industry working in the stead of a state bureaucracy, and alongside corrupt bureaucrats in particular, which has mushroomed with the trade in and on labour. It is an industry that profits from assisting individuals navigate their way in the comparatively unregulated international labour market, an industry that exposes, indeed is based on subjecting, migrants to a range of exploitative practices, subordinating them to the discipline of the market, and in the process

compromising what few rights these workers might have, thereby further entrenching precarity.

Towards an Integrated Rights-Based Approach to Migration – Challenges and Opportunities

Without reconceiving development as an inclusive project that confronts the false conflation of GDP growth with developmental progress, insufficient workers' rights among sending countries will reproduce the inequalities that impel migration. This risks cementing precarity as a defining feature of much of Asia's growth and a structural precedent for continued dependency on temporary labour migration and the problems it poses. This is one reason why the incorporation of the "decent work" ambition into the SDGs is so important. It places front and centre a development programme which seeks to deliver substantive social and material progress in the Global South as well as in the Global North. Embedded in this ambition are the raft of objectives that have been negotiated in the United Nations (UN) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and in the ILO migrant worker conventions, including the 2011 Domestic Worker Convention.

A merit of these conventions is that they speak directly to migrant worker rights and, in some respects, extend beyond the idea of decent work to advocate dignity in labour based on instituting a range of social protections. Importantly, while seeking to promote labour rights within the employment relation, the conventions variously address the need to secure the rights of workers across different stages of the global labour and care supply chain. Most notably, this includes the regulation of recruitment agencies, and transparency and integrity in the negotiation of employment contracts, including the provision of actual contracts. The United Nations Office on Drugs and Crime (UNODC) and the ILO are now investing more resources in exploring mechanisms that could be instituted to address the abusive and exploitative practices that are a feature of recruitment processes.¹⁸ Institutionalized social protection frameworks would also go to the issue of advancing comparable association and industrial rights to those that are available to the citizens of the host countries, and more generally protection from discrimination in employment. The conventions, if ratified and acted on, would afford migrant workers some level of protection against discrimination, extend some social security entitlements and open up some scope for familial rights.

The UN and ILO are, of course, not the only institutional vehicles that have been engaged in pursuit of migrant worker rights. The World Bank has for some time now been concerned with the inequities associated with the high cost of remitting income, and has advocated national governments do more to involve banks in the money transfer business to enhance competitive pricing to reduce income remittance costs. More recently, the IOM, with the support of the European Commission,¹⁹ and in conjunction with the International Organization of Employers, has been pressing the idea of injecting more integrity into migrant worker recruitment practices by trying to secure the support of national associations of labour recruitment agencies across South East and South Asia to sign codes of conduct that would commit them to ethical recruitment practices (Rosewarne forthcoming). The creation of an International Recruitment

¹⁸ See UNODC (2015); ILO (2014); Andrees et al. (2015) and Eurofund (2016). Interestingly, the Philippines and Indonesian governments have resourced the labour *attachés* in their embassies in destination countries to register employment agencies that home-country migrant recruitment agencies are permitted to partner in order to exclude those agencies known to participate in or countenance abusive or exploitative practices (Rosewarne 2014).

¹⁹ In this, the commission is following the lead of the Confédération Internationale des Entreprises de Travail Temporaire (the employment agency peak body).

Integrity Website by IOM envisages to provide a platform for exposing agencies that transgress ethical recruiting standards.

These recent initiatives seek to engage different participants in processes that could moderate some of the exploitative practices that are endemic in the global labour and care supply chain and which compromise migrant worker rights. The proposals aim to do what the UN and ILO conventions have failed to do, namely, secure widespread government ratifications of standards-based conventions. In some respects, the initiatives to reduce the cost of remitting income or to engage recruitment agencies in adopting codes of ethics that could improve industry practices, mirror the strategic shift in the ILO's efforts to try to get more traction in the promotion of migrant rights. This is supposed to happen through the promotion of general principles, rather than formal conventions, that point the way to enhancing employment standards rights. Yet, just as the shift in the ILO's strategic focus has had very little tangible effect, these other initiatives promise little more than what has been achieved through the auspices of the UN and the ILO.²⁰ They are instrumental in purpose, not very ambitious, entirely voluntarist, and consistent with labour market liberalization. They would do little to challenge the deeply systemic nature of the subordinate labour market status of migrant workers.

Notwithstanding the general impasse in getting governments of both labour source and labour destination countries to institute minimum standards and protection of migrant worker rights, there is mounting evidence that the lobbying and campaign efforts by migrant worker organizations, advocacy groups and human rights organizations are having some impact in prompting some governments to set some minimum conditions and rights for migrant workers. This is evident with the *exposés* of migrant worker abuses that have prodded the governments of the more significant labour source countries, and most notably the Philippines and Indonesia, to prohibit labour recruitment for some destination countries and to negotiate bilateral labour agreements as a precondition for the resumption of labour supply (Piper 2016b). No doubt they have also been moved by the realization that news of exploitative and abusive practices in some destinations engenders reputational risks which can discourage workers from seeking work in those localities, thereby eroding the potential flow of remittances from these countries. Governments have become increasingly sensitive to being criticized for their failure to act, and even the governments of some key destination countries are wary of the damage that can be done to their political standing and legitimacy when they fail to respond to calls to address abuses of migrant rights.

Initiatives pursued by one government have sometimes prompted others to follow and adopt similar measures. But as labour migration is becoming ever more pervasively an international business, more and more countries in the Global South are facing the pressure of underdevelopment— driving them to pursue labour migration as a means of reinvigorating the economy. In this setting, it is increasingly becoming evident that advancing migrant worker rights will rest on redressing the power imbalances in the global economy and refashioning the architecture that has given sway to the force of the market in ordering relations within the global economy. One piece of this architecture is the bilateral and, more importantly multilateral, free trade agreements, which have formalized compacts on the liberalization of internationalization trade and capital flows. An increasing number of these agreements have incorporated clauses to facilitate labour

²⁰ The more hands-on initiative launched by the ILO with the support of the International Finance Corporation aims to discourage employers from thinking that the viability of their businesses is contingent on employing workers on exploitative terms. The Better Work Programme aims to demonstrate that adopting fair employment standards are not anathema to sustainable business practices (Hauf 2015).

migration. Generally, however, these specify the categories and numbers of workers who are permitted to migrate, and in few instances are there provisions that explicitly prescribe employment protections and rights or minimum standards. Free trade agreements can thus contribute to the precarious position of migrant workers and have broader negative consequences for employment standards in destination countries, and this helps to explain why many labour unions have strongly opposed such agreements. But, notwithstanding the general tenor of such agreements, the possibility that they could be reoriented to incorporate positive labour provisions should not be ruled out of hand. Indeed, the ILO has begun to explore the potential, and pointed to the material advantages, of engaging labour representatives as social partners in negotiating free trade agreements (ILO 2016a). Securing a place for labour movements at the negotiating table could well provide the platform for ensuring that employment protections and labour rights, including the removal of restrictions on mobility rights, become core elements of free trade agreements. In so doing, and given that many of these agreements build upon the most recently negotiated models, once labour mobility clauses that incorporate provisions on minimum employment standards and protections are included, they present the possibility of migrant labour rights clauses being generalized (Kabeer 2004).

In pointing to the potential of more positive ways forward for advancing migrant worker rights, the necessity for addressing the asymmetries in the power relations that structure global (labour and care) supply chains becomes more obvious. Even the World Bank seems to see some merit in this, although it would represent these in terms of the economists' notion of redressing information asymmetries (World Bank 2014). Towards this end, the Bank has considered setting up a migrant workers website, taking the lead from some migrant worker organizations that have established such website platforms which provide information on employment rights and standards, and employment opportunities, as well as spaces that enable workers to identify and expose those recruitment and placement agencies and employers engaging in exploitative and/or abusive practices. Social media is invigorating migrant workers voices and just quite possibly shifting the agenda on standard setting and migrant worker rights (Thompson 2009; Chib et al. 2014).

Substantive advances, however, are contingent on engaging states, both labour-sending and labour-receiving states, to firstly commit to the full range of migrant worker rights set out in the various UN and ILO conventions, and to dedicate resources to ensuring compliance with these standards. This goes to questions of governments' will to commit and their capacity to act. The former is in many respects being increasingly fashioned by the political pressure that is being brought to bear on governments of both sending and receiving countries, although there is some considerable ground yet to be breached. Strengthening the capacity of states will require cooperative endeavour, and resource and organizational support from the Global North will play an important part in this. The European Union's (EU) support for the Colombo Process is one example of how this might be progressed,²¹ albeit the measure of the support is inadequate and the rationale for the support does not entirely accord with the ambition articulated here. The EU's support is as much, if not more, motivated by the effort to regulate and restrict irregular migrants entering Europe as it is with strengthening migrants' their social protection. Above all, meaningful progress will require cooperation among the nations of the Global South in setting standards and social protections. This has to be partnered

²¹ The Colombo Process is one of the regional consultative processes that have been taking place in Asia, supported by the IOM. They are informal, closed door meetings where major sending and receiving countries come together to discuss migration policy.

with a wholesale rejection of labour market liberalization if the drive to secure offshore employment for the citizens of each country is to avoid falling into the trap of a competitive race to the bottom and further entrenching precarity.

The tendency in the debate of labour migration governance has largely turned on engaging governments to actively embrace the relevant migrant worker conventions, but clearly the actual buy-in has been somewhat sluggish and perfunctory. Recently, this debate has been refocused, acknowledging that the power asymmetries in the global labour market have not been readily addressed by existing conventions, and probably cannot be given the lack of resources at the disposal of the state and the preoccupation with viewing labour migration as a panacea for dealing with balance of trade deficits. Taking the lead from some of the organizing endeavours of migrant worker advocacy groups, such as the Migrant Forum in Asia, and the civil society events held at the annual UN Global Forum on Migration and Development, the International Trade Union Confederation (ITUC) and the ILO have focused attention on the promise of measures that could be instituted by actively supporting migrant worker empowerment. The ITUC and ILO have, in effect, begun to question a regulatory regime that relies on states ratifying relevant migrant worker conventions and on the goodwill of employers to sign onto codes of conduct. They place little confidence in a system that relies on employers adopting ethical practices that require them to scrutinize the various stages of the recruitment and placement process to ensure that they are engaging workers who are fully-informed and unencumbered individuals who have not been drawn into forced labour. The ITUC and the ILO are making the case for adopting measures that would equip migrant worker groups with the resources that provide easily-accessible information for prospective migrant workers. The extraordinary take-up of mobile or cell phones by migrant workers has established remarkably robust channels of communication that make available details of the range of cross-border employment opportunities and experiences to enable more fully-informed decision-making with respect to the job search endeavour.

Such media platforms have become one means of tackling the issue of information asymmetries in the global labour market to counter the weaker bargaining position of workers. They provide scope for empowering migrant to pursue a more proactive role in the reshaping of the power relations that presently frame labour markets. Furthermore, the new forms of social media open up the potential for empowering workers by engaging them in efforts to document, monitor and expose the systemic anomalies, the abusive and exploitative employment practices, in the global labour market. Migrant worker interactive sites can contribute to overcoming the sense of isolation and impotence that often characterizes the experience of individual migrant workers. Supporting the development of such media forums can help develop and extend the solidarity of migrant worker communities that already exist and to create pathways for newcomers to be welcomed into these communities. They can provide a direct means of contesting the unchecked ability of employers and labour market intermediaries to exploit workers. New media platforms also afford scope for engaging new political levers by establishing forums for workers to give voice to their concerns, igniting the potential for empowering workers to mobilize and to pressure governments of both sending and destination countries to take action against employers and/or labour market intermediaries responsible for abusive or exploitative practices.

Concluding Remarks

The current project of global migration governance which is predicated on a specific policy dogma of economic liberalization but which manifests in circumscribed global labour mobility—temporary or circular, employer-tied migration—is unlikely to deliver its mantra of benefitting all, especially as regards the protection of the human and labour rights of migrants. This is evident when the nature of forces that make for migrant precarity are recognized as being broader and deeper than is generally accepted. This more holistic conception of precarity lies in the appreciation of its spatial and protracted or temporal foundations. Its spatiality is reflected in the transnational processes involved in layering precarity. Its temporality has to do with subjection to (neo-)colonialism, uneven development and the hierarchical integration into the globally networked economy. Such complex understanding of precarity is also reflected in the institutional gaps at national, regional and global level, and the product of severe institutional capacity constraints as well as the lack of political will, the resistance to acting, that reinforces migrant precarity.

It is in light of this current situation that a rights-based approach to migration governance has to confront, to repoliticize, the dominant policy doctrine and to expose its ramifications. The global migrant rights movement—a coalition of unions and migrant associations—has begun to produce a global structural analysis and as a result, to formulate coherent claims directed at the global level. We have highlighted some important institutional and organizational developments that have occurred with the pursuit of these claims. More advocacy work and political activism is required to address the issue of global redistribution, however, in order to render migration fairer (in the sense of benefitting all). A more radical engagement is called for.

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