
**PRECARIOUS IMMIGRATION STATUS AND
CITIZENSHIP RIGHTS: A HUMAN RIGHTS
FRAMEWORK FOR INTERNATIONAL
SOCIAL WORK**

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Introduction

Although it is now well known that migration can enhance the lives of those who migrate, it can also increase vulnerabilities. Certain categories of people, including undocumented migrants, victims of trafficking, temporary workers, seasonal workers, domestic workers, and asylum seekers, are more vulnerable than others due to the precarious nature of their immigration status. Precarious meaning that they do not know if they will be allowed to stay or not in the country, if they will be given permanent residency status, if they can envisage settling in the host country for the long term as citizens endowed with the same rights that should be accorded to all, regardless of immigration status. These migrants fall into a category of people that have been relegated to the margins not only of social and immigration policies and of social participation in host polities, they are also denied full citizenship rights.

A human rights framework is emerging internationally as a theoretical framework in various disciplines. We argue that the time is propitious for social work to advance in the development of a human rights framework when working with all categories of migrants. Focus of analysis should be on understanding the root causes of migration beyond the traditional push-pull factors; understanding the configuration of the incorporation regime of any given state and developing an analysis of the impact of policies and practices of the regime on these populations. Understanding exclusionary processes and the situation of persons with a precarious immigration status is fundamental not only to grasp the situation they find themselves in but also to develop remedial policies and practices that need to be put in place to protect their rights.

The argument presented in this paper is that the precarious nature of immigration status experienced by various categories of migrants in different parts of the world (Al-Qdah & Lacroix, 2010; Brigham & Lacroix, 2006; Lacroix & Sabbah, 2007; Oxman-Martinez, Lacroix & Hanley, 2005) is defined by universal processes of social exclusion that are a direct result of immigration and social policies and, at an individual level, characterized by anxiety and uncertainty.

In the first part of this paper we briefly contextualise the global migration context and focus on exclusionary processes that have a particular impact on those categories of migrants said to be in an “irregular migration” situation. We then turn to citizenship rights, how these rights are defined in international instruments, and how the latter constitutes a framework for practice in social work.

Global migration context

According to the United Nations Population Division, the number of in-

ternational migrants has more than doubled since 1975 and currently would reach an estimated 214 million. (ICHR 2010). People around the world are on the move. They leave their countries because of poverty, lack of opportunities, environmental degradation, or they are forced out by war and ethnic conflict. Since the 1980s, immigration to Northern countries has been increasing, and countries built on immigration, such as Canada, the United States and Australia, have increased their immigration intake to maintain their demographics and develop their economies. While “official immigration” levels have been on the rise, another phenomenon has also been gaining momentum: an increase in the number of people crossing international borders outside formal, regularised migration channels (Betts 2010).

Migrants who do not formally apply to immigrate and take it upon themselves to migrate are deemed undesirable by various nation states and fall under the label of what has been termed “irregular movements.” These are the asylum seekers, the “undocumented,” the “illegals,” the “sans-papiers” (see Goldring/Berinstein/Bernhard 2007; Fassin 2011). It is believed that one in every five migrants living in the United States and Europe entered clandestinely or overstayed a visa (ICHRP 2010). 30 to 40 million are said to be “irregular” or “undocumented,” 1.9-3.8 million are estimated to be within the European Union, and some 10.3 million are estimated to be in the United States.

Exclusionary processes: Discourses on irregular migration

Since the late 1980s and particularly after the events of 9/11, policy discourse and practices have focused on restricting movements of individuals who have not followed official channels (Bigo, 1998; 2005), leading to the policing of borders (Fassin, 2011) in an on-going effort to preserve economic and social stability within what has been called “Fortress Europe” (Albrecht, 2002). The discourse on “irregular migration” has focused on the “politics of insecurity” (Huymans 2000) leading to the “migration-security nexus” where migration is perceived as a threat to the stability and welfare of European and other Western states. Discursive constructions of migrants as threats to security and stability increase fear and anxiety within the EU population and “take away these people’s protection” (Zhyznomirska 2006: 51).

Saux (2007) argues that this official discourse leads to blaming the migrants for their situation. Migrants are collectively designated as the enemy of a respectable society, and their conduct is seen as harmful or threatening to the values, interests, and perhaps, indeed, the very existence of that society. The dichotomy of “us” (good, decent, respectable folk) vs. “them” (deviants, undesirables, outsiders) leads to what Sales (2002) has referred to as “deserving or undeserving” migrants. Migrants therefore become the target of increasingly restrictive immigration practices, including detention, deportation, and denial of access to basic services such as health care, social services, and housing, all of which test the international human rights regime.

Practices: Criminalisation and scapegoating of irregular migration

Within the post-9/11 context, official discourse often addresses irregular migration as a phenomenon linked to international criminal activities including drug trafficking, money laundering, and terrorism. The discourse also links irregular migration and migrant smuggling, leading to restricted access to legitimate legal processes such as the refugee determination process (Zhyznomirska 2006), all the while obscuring real political and economic conditions in the sending countries. To exemplify this, we point to the arrival of a boatload of Tamils arriving in Canada on August 10, 2010. The conservative media and the conservative government of Stephen Harper alleged that smugglers and terrorists were on board the ship (McRobie, 2010), negating any discussion on the political and social situation in Sri Lanka. The event was the impetus for drastic changes in the Immigration and Refugee legislation in Canada and the introduction of an anti-smuggling bill that has been denounced by refugee advocates as anti-refugee.

Policies criminalise irregular entry, which “increases the vulnerability of migrants to abuse and exploitation” (ICHRP 2010: 1). Criminal law becomes the framework in which migration is controlled, leaving fewer responsibilities for the protection of non-citizens (ICHRP 2010). The “Fortress Europe” image preys on the public’s fears and invokes a security threat that, in turn, feeds the xenophobic sentiments that legitimize more punitive law enforcement measures. Securitisation and militarisation can be seen at the US-Mexican border, within Spain’s SIVE (Sistema Integrado de Vigilancia Exterior), the detention camp in Libya financed by Italy (Carter/Merrill 2007) and more recently in various areas of Greece following the crisis in Libya.

While there is increasing securitisation, criminalisation of “irregular” migration movements and militarisation of borders within the EU, a new discourse is emerging through a human rights framework that includes agreements signed by various governments recognizing the rights of all migrants. For social work practice this translates into a social justice framework in which individuals, groups, and communities are ensured access to full citizenship rights at the social, economic, and political levels (see Ife/Fiske 2006). These rights include, among others, dignity of life, access to health and social services and education, access to safe and secure housing.

Citizenship, human rights, and transnational migration

Concern over the protection needs of migrants has been growing over the last few years, as “shocking images of migrants in distress have been increasingly evident in the media” (Betts 2010: 212) and as issues related to human rights violations put into question long standing positions by many stakeholders that have basically ignored the needs of those who make up these “irregular movements”. This has led to international organizations such as the UN and the United Nations High Commissioner for Refugees (UNHCR) to become more active in defining a framework to address those needs. Much of the impetus for ensuring

human rights and an adequate standard of living for all has come from the UN's Millennium Development Goals, which aim to eliminate poverty worldwide by 2015. The United Nations High Commissioner for Refugees (UNHCR) for decades focused on refugees and asylum seekers as the main groups involved in irregular movements; it now argues that there is a need to move beyond these groups to ensure the protection of all migrants. The International Catholic Migration Commission (ICMC) is at the forefront of growing NGO activism to ensure that irregular migrants have access to human rights, while the International Organisation for Migration (IOM) "has increasingly highlighted the way in which a number of its projects contribute to the protection of vulnerable irregular migrants" (Betts 2010: 213-214). In 2009, the International Labour Conference adopted the International Labour Organisation Global Jobs Pact, which was endorsed in the same year by the United Nations Economic and Social Council as well as the G20 (Behrendt 2010). They agreed on a "Social Protection Floor," which aims at providing minimal access to essential services and income security for all. This includes the right to social security (Art. 22 of the UN Declaration of Human Rights), the right to medical care and social services (Art. 25), and the right to education (Art. 26) (Behrendt 2010: 162).

Intervention in social work

Various governments have signed a framework of human rights agreements recognizing the rights of migrants of all categories. This framework has given grassroots groups, policy groups, research groups, and all stakeholders the impetus to move the human rights agenda forward for all migrants throughout the world. It also opens up the possibility for new policy initiatives and practices in social work. A social justice framework, based on a critical analysis of how incorporation regimes intervene with all categories of persons and an understanding of the impact of various policies and programs on migrants, leads to new areas of advocacy. As Cemlyn (2008a: 158) argues, "Denial of rights involves substantive policy areas and socio-political exclusion" that can only be remedied through policy changes. At an individual level this also means securing access to housing, education, health and social services and advocacy for individual rights; empowerment through education and information and community work with all stakeholders, facilitating citizen participation in the debates.

"New social rights are advocated from an international and holistic notion of human rights" (Suárez-Navaz 1997) and can operate at legal, political, and moral levels and they are increasingly used by oppressed minorities, and dependent on sustained political and legal organization and resources (Cemlyn 2008b). Human rights offer a powerful moral, theoretical, and practical framework (Ife/Fiske 2006) for social work research and practice internationally. As Cemlyn states, "human rights practice is not a separate departure but builds on long-standing values and theoretical frameworks related to emancipatory social work and anti-oppressive practice" (2008b: 223). She goes on to say that: "A human

rights perspective in social work includes many of these elements: structural critique aiming for liberation from diverse oppressions; involvement and leadership by oppressed people; and a reflective and dialogical approach that links personal and collective change." A critical human rights framework should be "built on other emancipatory perspectives". (Cemlyn (2008a: 55)

Ife and Fiske (2006) outline seven categories of human rights: survival, civil/political, cultural, economic, social, environmental, and spiritual. These categories are detailed in the three generations of human rights and are useful in exploring and analysing the situation of undocumented migrants as well as the core elements of citizenship rights, i.e., full participation in the social, economic, cultural, and political spheres of the host polity. Referring to these categories, it is possible to analyse the structural elements that impede access to full citizenship rights and to examine the international standards that address various needs.

The nature of a migrant's status will define their access to services, their place in the host society, their capacity as social actors, and their access to full citizenship rights. Policy debates and practices, however, rarely address the situation of people living with a precarious immigration status as their stay is often taken to be of a temporary nature. However, many may stay in the long term. Different countries will have special programmes in place, for example, to regularize immigration status and allow undocumented persons or others such as asylum seekers, the right to stay and have access to permanent residency. In Canada, for example, changes in the immigration law have given women victims of trafficking or abuse while working as domestic workers the right to stay on humanitarian grounds. They may have been in the country for several years living with a precarious immigration status and not have had access to any services that would facilitate their integration process. Close to 50% of asylum seekers in Canada are recognized as Convention refugees, which means they will become permanent residents and eligible for citizenship. As such, it is important to consider the long term impact of the precarious nature of the status if indeed, in the long term, people are allowed to stay in the host country.

Studies from different parts of the world have concluded that immigration and refugee policies are seriously lacking in terms of assisting integration and that incorporation regimes need to do more to facilitate access to full citizenship rights. A number of structural issues, directly linked to policy, have been documented by international research on asylum seekers as central to the asylum experience. From our studies with other populations, we have concluded that these issues are also salient in the situation of other populations living with a precarious status. We argue that these they constitute a framework for the analysis of gaps within the incorporation regime that can be acted upon through advocacy and changes in policy to facilitate integration and focus on those areas that have been identified by international instruments as fundamental human rights, providing a framework for social work practice.

1. Length of time waiting for status: For asylum seekers, the refugee determination process has been documented as being difficult in most Western countries and constitutes a major barrier to the integration process because the status is temporary and impedes long-term planning and maintains the population on the margins of society (Drozdek et al. 2003; Mestheneos/Ioannidi 1999; ECRE 1999; Lacroix 2004, 2006; Rousseau et al. 2002; Tribe 1999). Waiting for status for years on end has been documented in Canada as constituting cruel and unusual treatment (ICCR, 1990). This has led researchers to conclude that the asylum-seeking process and living with a precarious immigration status should be taken into account as part of the integration process and as a component in the evaluation of integration policies (Lacroix 2010; Mestheneos/Ioannidi 2002; ECRE 1999). Living without a permanent status has an impact on mental distress (IOM 2008; Lacroix 2004, 2006; Lindencrona et al. 2008; Wondwosen et al. 2006). Although the debate continues as to the long-term impact of trauma on refugees, a consensus seems to be emerging from different parts of the world that the waiting period may be a factor in mental disorders. (See Procter 2005, 2006; Schweitzer et al. 2006).

2. The reception phase: The first contact with immigration or state officials; issues related to detention, how people are greeted, how people are treated when they arrive, the services they are entitled to, uncertainty of status, initial contact with the host society.

3. Family separations: Is also an effect of immigration policy and contribute to a process of on-going marginalization that can degenerate into serious psychological trauma, depression, family breakdown, integration difficulties, and financial struggles. Family separations have also been documented as weighing heavy on caregivers, women who work as domestics through government programmes, mail order brides, and temporary farm workers. Length of family separations have been documented in Canada as constituting harsh and unusual treatment, contravening the International Covenant on Political and Civil Rights.

4. Access to work: Employment has been shown to be a core element of integration and social cohesion. The erosion of the welfare state under neoliberal restructuring of economic and social policy has resulted in the deterioration of socio-economic conditions for immigrants having arrived in the past couple of decades (Shields 2003); poor socio-economic indicators are associated with greater difficulty in successful integration and with increased social exclusion of newcomers. Limited access to work; underemployment (Beiser/Feng-Hou 2001); and lack of recognition of professional credentials have been identified as major elements impeding the integration process of refugees and immigrants (Aldridge/Waddington 2001; Austin/Este 2001 Krahn et al. 2000; Li 2001). The inability to work, or access to restricted areas of work, forces asylum seekers to ask for social welfare (Lacroix 2000; Bloch/Schuster 2002; Marr/Siklos 2001); domestic workers in Canada, even if they are in an abusive situation, must either stay with the family where they work or find another family that will afford

them a contract. In the long-term this creates economic marginalization, lack of opportunities for participating in the labour market (Kazemipur/Halli 2001) and on-going exclusion.

5. *Access to affordable, adequate, and secure housing* has also been raised as an element related to integration (Rose/Ray 2002; Danso/Grant 2000). Not having adequate housing undermines other rights. Because of the connection of housing to health, employment, educational attainment, security, social networks, and other social factors, lack of access to appropriate housing can be an important barrier to integration. Safe and affordable housing was one of the main needs expressed in our study on trafficking of women and children in Canada (Oxman-Martinez/Lacroix/Hanley, 2005).

6. *Negative media portrayal* of asylum seekers and other vulnerable categories of migrants also contributes to their on-going marginalization. Negative attitudes and perceptions have been generated by the media (Pickering 2001), especially in light of post-9/11 concerns for national security (van Selm 2003), terrorism (Hugo 2002; Simmons 2002; Aiken 2000), and border security (Adelman 2002). Media images and discourse on the subject are increasingly linked to an increase in racism (Cheran 2001; Kundnani 2001; Richmond 2001; Beiser et al. 2001).

Thus, to summarize, issues related to legal status, employment difficulties, lack of access to appropriate health and social services, and the role of women in the family are the major concerns expressed by asylum seekers in studies from various countries including Canada (Lacroix 2004, 2006, 2009; Beiser 2006), Australia (Humpage/Marston 2005), Finland (Valtonen 2004), Italy (Korać 2003), and Sweden (Lindencrona et al. 2008). These same elements have also been reported to be salient in the experiences of other categories of migrants who live with a precarious status and all are related to fundamental human rights.

Conclusion

As social workers understand that exclusionary processes are linked to immigration status they will be better equipped to assist those who are living with a precarious status by advocating for remedial policies and developing practices that protect the rights of vulnerable migrants. The on-going movement of vulnerable categories of migrants into various nation states continues to be one of the most important contemporary issues facing national governments and supranational entities. With increased control, securitisation, and militarisation of borders, migrants who manage to avoid border controls find themselves in "irregular migration" situations, are faced with ever-increasing racism and exclusionary practices, and are excluded from working, studying, or envisaging long-term incorporation into the host polity. What happens to those living with a precarious immigration status in one part of the world has repercussions in other parts: hardship created by family separations, the cost of family remittances, insecurity, xenophobia, racism and issues related to home and belonging.

While research in the area of immigration has focused on integration and related aspects including language training, employment, and social integration, the argument presented in this paper is that research, practice, and discussions related to all categories of international migrants should take into account the experiences of migrants living with a precarious immigration status and that the focus of analysis should be on understanding the root causes of migration beyond the traditional push-pull factors and include the configuration of the incorporation regime of any given state; and the impact of the policies and practices of the regime on these populations. Analyzing the different factors in an isolated manner only serves to fragment any hope of a coherent and complete analysis of the situation of all categories of migrants in movement today.

As the ICHRP (2010: vii) report states “government policies should make this their point of departure: people move. The question then becomes: what values do societies wish to advance?” This is our primary concern in terms of action and intervention within international social work practice with migrants of all categories. As Bourdieu (1993) reveals, exclusion is a process created by a number of forces that lead marginalized groups to suffer in isolation with very little hope of becoming full citizens. Some of these forces are outlined here. People in movement, refugees, asylum seekers, the “undocumented,” and all those with a precarious immigration status cannot be marginalised indefinitely.

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