

Labour law, human rights issues and migration

Jessie Williams

Institute of Policy Studies

School of Government, Victoria University of
Wellington

http://ips.ac.nz/events/Ongoing_research/LowSkillMigration.html

HUMAN RIGHTS
AND LABOUR LAW
FRAMEWORK:

International
Regional
Domestic

INTERNATIONAL
CRIMINAL LAW

TRADE
AGREEMENTS
GATT

SLIDING SCALE
OF RIGHTS:

Citizens
Regular migrants
permanent
temporary
Irregular migrants

ENFORCEMENT

International
Regional
Government
Courts
Employers
Unions

TEMPORARY
MIGRANT WORKERS:

Undocumented
Truly seasonal jobs
Permanent jobs
With a probationary
component

“LOW SKILL” WORK:

Involving products
Involving people





Human Rights

- United Nations Declaration of Human Rights 1948 (UDHR);
- International Covenant on Civil and Political Rights 1966 (ICCPR);
- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)

- Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD);
- Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW);
- Convention against Torture 1984
- UN Convention on the Rights of the Child 1989 (UNCROC)

- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (MWC)*

International Labour Law

- International Labour Organization (ILO)
 - No 97 on Migration for Employment 1949
 - nationals and *regular migrants*
 - No 143 on Migrant Workers (Supplementary Provisions) 1975
 - *irregular* migration
 - ILO Declaration on Fundamental Principles and Rights at Work 1998
- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990
- ILO Declaration on Fundamental Rights and Principles at Work 1998
- Eight core ILO conventions
- Possible Domestic Workers Convention...



Regional

- Asia Pacific is the only region of the world without any formal inter-governmental human rights mechanism
- Pacific Islands Forum: Labour mobility is regarded as a key mechanism for regional integration and for enhancing the development potentials of countries in this region

Sliding scale of rights

- *Human rights are alienable, universal and indivisible...BUT NOT ABSOLUTE.*
- Rhetoric: Human rights and labour rights are applicable to all without any distinctions based on nationality
- Reality: Tension between state sovereignty, political acceptability and the rights of migrants
- Distinctions between:
 - CITIZENS
 - REGULAR MIGRANTS
 - Permanent or working to residence
 - Temporary
 - IREGULAR MIGRANTS

Temporary migrant schemes for “low skilled” work

- Treatment clouded by previous experience (Bracero program 1942 – 1964, Gastarbeiter programme 1955-1973)
- “Triple win”
- There are broadly four types of temporary migrant worker positions:
 - 1. Undocumented workers
 - 2. For truly seasonal jobs
 - 3. For permanent jobs
 - 4. Ones that have a probationary component
- Factors that increase the vulnerability of migrants.

Enforcement of rights

- Gap in international architecture
- No single agency having a comprehensive mandate
- Lack of MWC ratification
- Soft options remain such as the 2006 ILO adopted *non binding* Multilateral Framework on Labour Migration
- State responsibility v employer reasonability
- Democratic host countries have a poor record of enforcing laws



Domestic work in NZ

- Three “c’s” –
cleaning, cooking
and caring
- The workplace as
the private home
 (“ageing in place”)
- Work involving
people not products
- Perception of work



Home worker



ERA 2000, s 5 –

- (a) means a person who is engaged, employed, or contracted by any other person (in the course of that other person's trade or business) to do work for that other person in a dwellinghouse (not being work on that dwellinghouse or fixtures, fittings, or furniture in it); and
- (b) includes a person who is in substance so engaged, employed, or contracted even though the form of the contract between the parties is technically that of vendor and purchaser

Cashman v Central Regional Health Authority [1997] 1 NZLR 7 (CA)

The workplace

- The *Health and Safety in Employment Act 1992* does not apply to the occupier of a home who engages a person to do 'residential work':
 - **Residential work**, in relation to the occupier of a home, means—
 - a) Domestic work done or to be done in the home; or
 - b) Work done or to be done in respect of the home, —by a person employed or engaged by the occupier solely to do work of one or both of those kinds in relation to the home
- Isolated, potentially dangerous, can be site of vulnerability
- My house is my castle underpinning to the law...
- Inspections? Labour, health and safety, union access.
- Exemption in Human Rights Act

(borrowed from United for Foreign Domestic Workers Rights)



Issues for future expansion:

- The legal framework is not the whole picture
- Domestic (perhaps regional) framework will need to develop
- Issues are pertinent now in light of Domestic Worker Convention
- Responsible regulation
- Pathway to permanent residency
- People should not be traded as mere labour