

Undocumented Migration And Human Rights: Possible Futures

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Migrants waiting for the right moment near one of the border's international bridges.

In Mexico, the human rights defense discourse has historically been a means for denouncing repression and the abuse of power. In the specific case of migration, human rights allow us to point to the mistreatment of those who exercise their right to leave their country of origin in search of a better life or simply to join their families. This is important, but an analysis of human rights and international migration should not be limited to denunciations. Monitoring human rights can also be the parameter for building possible futures in this complex global phenomenon. In this article, I will lay out some reflections that may make it possible to trace those fu-

tures, not from a legal perspective, but rather from a socio-political, international perspective. On this basis, we will be able to develop the proposal of a possible future that at the Center for Research on North America (CISAN) we call universal citizenship.

FIRST REFLECTION

The dynamics of globalization that reproduce socio-economic inequality and establish transnational socio-cultural dynamics are also prompting unprecedented movement of individuals.

Recent international migrations and their interconnections are the product of the dynamics of globalization since

they take place outside the exchanges between systems traditionally considered classic like those between Mexico and the United States, Italy and Argentina and the United Kingdom and Australia. Today, accelerated migratory flows are directed equally at Europe, South America, the Asian Pacific and North America from different points of origin. With globalization of migration also come phenomena which had not occurred since 1945 or even during the golden years of the welfare state (the 1950s and 1960s) like the growing feminization of migration and the transnationalization of decision-making with regard to migratory policy.¹

The globalization dynamics that push individuals and entire families to emi-

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grate can be of different kinds (economic or demographic, for example), but there are two human rights-related ones: the political-economic and the socio-cultural. First of all, it has been shown that free trade leads to increased migration because of the big differences in wages and income, for example, among NAFTA trade partners. When slower economies are exposed to the pressure of competition, the agricultural sector tends to collapse, leading to an exodus from rural towns to urban centers or from poor countries to rich ones, so that massive migration may continue even if economic conditions do not change.²

While free trade systematically threatens poor countries' productive chains, the division of labor in economic globalization demands both skilled and unskilled foreign labor. In fact, for Castles, globalization includes differentiated migration regimes in which elites and highly skilled individuals are pushed into greater mobility while unskilled workers and the persecuted are excluded. This hierarchy of the right to migrate may be seen as a kind of "transnational racism" in which certain individuals can go where they like while others are controlled by discourses that range from discrimination for religious reasons (like the one that segregates people by linking them to Islamic fundamentalism), to open criminalization, like the one that links certain groups with terrorism. Still others are pushed into illegal migration.³

More generally, international migration is the product of the unequal North-South exchange pointed out by Bauman and Castles.⁴ Economic globalization, which Castles understands as "a differentiated process of inclusion and exclusion of particular regions and social groups in World market rela-

FUNDAMENTAL LEGAL INSTRUMENTS FOR THE DEFENSE OF HUMAN RIGHTS

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention for the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families

tions," has led to great insecurity and human inequality that affects the countries of the South to the extent that local economic elites are created, and those of the North given that their workers feel that their survival is threatened.⁵

In addition to the economic inequality created by the dynamics of global production and trade, the policies linked to this kind of an economy, which systematically favor the rich countries, force many people to abandon their places of origin. One of these dynamics is the construction of supposed development projects that are really nothing more than infrastructure at the service of the economic elites and Western tourism, like airports, dams, highways, luxury apartment complexes, theme parks, golf courses, spas, hotels, etc. According to the World Bank, these activities expel more than 10 million people a year from their homes. In addition, others leave their communities because of pollution, natural disasters caused by the deterioration of the environment and industrial disasters.⁶ Another factor that forces many people to leave their countries is trafficking in human beings for exploitation. Hundreds of

women and children in the former Soviet republics and the former Yugoslavia are sold or enslaved for the prostitution industry and other forms of sexual exploitation in war zones or important cities in the rich countries. In addition, the North's economic interests (oil, diamonds, weapons sales, the control of drug trafficking) play a key role in prolonging internal wars that force people to leave their countries.

As Castles says, in this complex relationship between North and South, "the distinction between forced migration and economic migration is becoming blurred as a result" since "many migrants and asylum seekers have multiple reasons for mobility and it is impossible to completely separate economic and human rights motivations which is a challenge to the neat categories that bureaucracies seek to impose"⁷ In fact, forced migration is an integral part of North-South unequal relations, as described above. However, this kind of migration is delineated with very limited criteria in the 1951 Convention on Refugees, which defines refugees as individuals forced to leave their countries of origin due to political persecution.⁸

FUNDAMENTAL HUMAN RIGHTS

- The right to life
- The right to not be tortured
- The right to not be subjected to forced labor or slavery
- The right to medical care
- The right to decent housing
- The right to a family life
- The right to a minimal subsistence
- The right to fair working conditions
- The right to join a union
- The right to social security linked to one's employment
- The right of children to have a name and identity
- The right to education
- The right to freedom from arbitrary arrest
- The right to access to justice
- The right to not be collectively expelled

In the second place, as I mentioned above, people emigrate not only for economic, but also socio-cultural reasons. Castles points out that economic and political globalization, with its local, national and regional consequences, has brought with it rapid social transformations that have become fundamental factors in the growth and diversification of migration. One of these changes is the construction of social networks and transnational communities established even after the economic factor changes, that in turn sustain themselves based on other processes linked to globalization, such as technology and culture.⁹ People also emigrate because their entire families may be in another country or because it is a tradition in a given community to do so at some time in one's life. As a result, social dynamics change both in the country of origin and in the destination country. People also emigrate just because they want to: the promotion in the media of an unbridled consumer culture and publicity about the economic prosperity of the peoples of the

West, as well as the availability of information about migratory routes and job opportunities are big incentives to migrate to the countries of the North.¹⁰

Whether because of economic, social or cultural changes, migration is on the rise and with it the infrastructure that facilitates it. As Castles points out, there is an entire web of social relations that make up "globalization from below," in which networks of immigrant communities and ethnic minorities facilitate their countrymen and women migrating and swiftly becoming part of these communities' dynamics. In fact, some expressions of these networks are institutional and justify the emergence of a "migration industry," which includes *polleros* (people smugglers) and transnational job pools, as well as travel agents, bank transfers and real estate trades.¹¹ The migration industry is possible due to the great demand for labor and strong immigration controls in the North.¹²

As we saw, international migration has structural as well as individual and social causes. The importance of pin-

pointing them is not to see how it can be stopped: it really is irreversible since socio-cultural dynamics would continue even if the economic ones were eliminated. What is really important about pinpointing the causes of migration is seeing who fosters and how they foster the inequality that causes it in order to control its intensity, analyzing what makes one's home country stop being an option. Human rights may be a tool for understanding this.

SECOND REFLECTION

The socio-economic inequality caused by the dynamics of globalization imposes obligations on states with regard to human rights in both sending and destination countries.

From a human rights perspective, the dynamics that push people to leave their home countries do not come about by chance; they are the result of political and economic decisions that violate human rights so systematically that thousands of people are forced to emigrate, like what happens with Mexican peasants who cannot subsist working the land here and must become day laborers in the United States where they have no rights and are far away from their support networks. To make up for this, destination countries (including the United States, but also Mexico, both accessories to these policies) must change their policies to comply with the international human rights legislation they have committed to, even if they have not ratified the specific treaties because there is a moral obligation even if there is not a strictly legal one.

The Declaration on Social Progress and Development, the Universal Declaration on the Eradication of Hunger

and Malnutrition, the Declaration on the Right to Development and the Millennium Declaration establish not only international cooperation but also states' shared responsibility to guarantee the development of countries, particularly poor countries.¹³ This international responsibility includes, but is not limited to, economic assistance; it implies establishing a world economic order that guarantees human rights, peace and the preservation of the environment, but that also eliminates poverty and the risk of war. Among these responsibilities are explicitly mentioned the establishment of a fair international trade regime and state control over each country's economic and social policies without outside interference. These are the obligations of the international community for guaranteeing development, but human rights legislation also imposes obligations directly on individuals. The consequences of globalization for humanity and the still weighty role of the state in fostering them impose an ethical obligation on states to guarantee people who emigrate for economic and political reasons a minimum of rights, regardless of their nationality. This includes Mexico, which accuses the United States of violating Mexicans' human rights while our country does the same, since its immigration policy toward Central Americans coming across the southern border is just as repressive and exploitative—or even more so—than that of the United States.

The Platform for International Cooperation on Undocumented Migration (PICUM) recently published a list of the documents imposing these obligations on states and the specific rights derived therein, which all individuals should enjoy regardless of their migratory sta-

tus.¹⁴ The PICUM reminds readers that international human rights legislation sets rules, whether by custom or treaty, based on which individuals can claim certain legitimate rights in states' ethical commitment to human dignity and the international community. Although dozens of treaties exist, there are a group of fundamental instruments and those that states must comply with based on these commitments (see box, p. 73). Rights follow from these instruments, rights that everyone must enjoy regardless of their migratory status (see box, p. 74).

While international human rights legislation recognizes that the state may reserve the exercise of certain rights for its citizens (fundamentally social, cultural and political rights), it is also the case, as was mentioned in the second reflection, that the exploitation by rich nations of the poor ones creates certain moral responsibilities for them. In this sense, to the extent that the rich nations maintain a *status quo* in which the inequality between them and the poor nations is not only created but accentuated, their obligation to recognize migrants' rights takes on a moral character since in many cases people would not have to leave their places of origin if agricultural production there had not disappeared thanks to subsidies that rich countries give their local farmers, or if Coca-Cola had not monopolized the water supply or arms sales

had not sparked a civil war. If states accept that the dynamics of globalization transform local production and trade and consumption rules, they must also accept that international migration is another important consequence and that therefore, they are obligated to see cultural diversity as a final, positive result. The creation of transnational communities and the resulting cultural diversity demand the recognition of rights that allow migrants to live according to their multiple cultural specificities, but also to negotiate and lobby for their group interests, particularly when they confront exploitation, generalized xenophobia and systematic discrimination in areas like employment and access to justice, education and health care. To deal with the socio-cultural dynamics of international migration, cultural rights must be recognized, and perhaps even the catalogue of minority rights suggested by Rainer Bauböck, expert in citizenship and migration (see box this page).¹⁵

THIRD REFLECTION

Human rights are guarantees vis-à-vis the power structure and therefore states cannot be expected to guarantee them without a struggle.

A fundamental part of the quest to uphold these rights is social organiza-

CATALOGUE OF MINORITY RIGHTS SUGGESTED BY RAINER BAUBÖCK

- The right to freedom of conscience, economic initiative, religion, association and assembly for political, religious, cultural and labor activities
- The right to individual and collective protection against discrimination
- The right to non-electoral political representation, such as consultative committees

tion and political lobbying, both by immigrants' organizations and by individuals, both in receiving countries like the United States and Canada, and in sending countries like Mexico, where the government is jointly responsible for these policies that, on the one hand, force people to leave, and on the other, strengthen the national economic elites that are part of the structural problem.

As Castles observes, migrants are not isolated individuals reacting to market stimuli and bureaucratic rules, but social beings trying to attain something better for themselves, their families and their communities, actively forging the migratory process. Migratory movements, once begun, become self-perpetuating social processes.¹⁶

ONE POSSIBLE FUTURE:
UNIVERSAL CITIZENSHIP

Based on these reflections, at CISAN we propose people begin to think and promote a kind of citizenship that answers to this complex human rights problem. As researchers Aleinikoff and Klusmeyer say, citizenship is not merely a form of belonging, but also an important agency through which fundamental principles of what is fair and just in a polis are institutionalized and guaranteed.¹⁷

Universal citizenship is parallel to national citizenship, as in the case of Europe. That is, it does not make the migrant part of a nation, but it does give him/her the minimum guarantees to be able to live with dignity, express the cultural identities that he/she needs and advocate his/her own rights. To this effect, there would be a minimum list of rights whose aim would be to maintain the dignity states have promised to protect. This would not constitute

a great burden for the welfare state given that it involves a minimum that would only be broadened out if immigrants took on national citizenship. The adjective "universal" does not allude to its scope, but to its link to universal human rights, those declared and systematized by the UN, the product of socio-political struggles and which, in the language of public international law, are known as the "universal system" of human rights.

In our view, universal human rights are understood differently from commonly established human rights (those we have by virtue of simple being human beings), which make up a passive subject who waits for them to be recognized and for them to be given to him/her. The idea of universal citizenship implies conceiving of the subject as a participant in the construction of his/her rights; he/she does not wait for them to be given, but rather demands them, and, by doing so, constructs them in accordance with his/her needs and not those of whoever gives them.

We understand human rights as political, legal constructions that can be used by people who suffer from exclusion and violence to give meaning to their experience. When the excluded use human rights for these purposes, they become a discourse that gives meaning to human suffering and provides those who demand them with the tools they need to oppose the causes of that suffering (mainly socio-economic inequalities and discrimination) and the forms of coercion used to maintain the *status quo* (like violence and repression).

This concept of human rights linked to the construction of a new kind of citizenship would bring with it the edification of a possible future in the hands

of a citizenry forged "from below," from the struggle to claim their rights in the face of injustice, but also in the face of the social and cultural transformations of our time. ■■■

NOTES

- ¹ S. Castles and M.J. Miller, *La era de la migración. Movimientos internacionales de población en el mundo moderno* (Mexico City: UAZ/INM/Segob/Porrúa, 2004).
- ² J.F. Hollifield, "The Politics of International Migration. How Can We Bring the State Back In?" C. Brettell and J.F. Hollifield, eds., *Migration Theory: Talking across Disciplines* (New York: Routledge, 2000).
- ³ S. Castles, "Twenty-First-Century Migration as a Challenge to Sociology," *Journal of Ethnic and Migration Studies* no. 33, 2007, p. 360.
- ⁴ *Ibid.* and Z. Bauman and P. Hermida Lazcano, *Vidas desperdiciadas: la modernidad y sus parias* (Barcelona: Paidós, 2005).
- ⁵ Castles, *op. cit.*
- ⁶ S. Castles, "Towards a Sociology of Forced Migration and Social Transformation," *Sociology* no. 37, 2003, pp. 13-34.
- ⁷ *Ibid.*, p. 17.
- ⁸ *Ibid.*
- ⁹ S. Castles and A. Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (Basingstoke: Macmillan, 2000); S. Castles, *Ethnicity and Globalization: From Migrant Worker to Transnational Citizen* (London: Sage, 2000); S. Castles, "Towards a Sociology"; and S. Castles, "Twenty-First-Century Migration," pp. 351-371.
- ¹⁰ Castles, "Twenty-First-Century Migration."
- ¹¹ *Ibid.*
- ¹² Castles, "Towards a Sociology."
- ¹³ United Nations, ed., *Human Rights. A Compilation of International Instruments* (New York: UN, 2002).
- ¹⁴ Platform for International Cooperation on Undocumented Migrants, *Undocumented Migrants Have Rights. An Overview of the International Human Rights Framework* (Brussels: PICUM, 2007).
- ¹⁵ R. Bauböck, "Cultural Minority Rights for Immigrants," *International Migration Review* no. 30, 1996, pp. 203-250.
- ¹⁶ S. Castles, "Factores que hacen y deshacen las políticas migratorias," *Repensando las migraciones. Nuevas perspectivas teóricas y empíricas* (Mexico City: INM/UAZ/Porrúa, 2006), p. 42.
- ¹⁷ T.A. Aleinikoff and D.B. Klusmeyer, *Citizenship Policies for an Age of Migration* (Washington, D.C.: Carnegie Endowment for International Peace/Migration Policy Institute/Brookings Institution Press, 2002), p. 1.