



Title: The Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers

Authors: Judy Fudge, Professor and Lansdowne Chair in Law, Faculty of Law, University of Victoria

Contact: jafudge@uvic.ca

WP Number: 11-15

Research Question:

Do international human rights instruments specifically designed to protect migrant workers' rights have the potential to challenge the role of immigration law in producing precarious employment?

Importance:

This paper provides a taxonomy that maps the link between migrant status and precarious employment, which it uses to explore the nexus between precarious migrant status and precarious employment in the three "low-skill" streams – the Seasonal Agricultural Workers Program, the Live-in-Caregiver Program, and the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D) – in the Canadian Temporary Foreign Worker Program. After demonstrating the relationship between precarious migrant workers and precarious employment, the paper evaluates the capacity of international human rights instruments specifically designed for migrant workers to address the problem of precarious employment.

Research Findings:

The main problem with relying on the international migrant workers' rights instruments is that they defer to the principle of state sovereignty over immigration policy and accept the right of states to impose restrictions on non-national's employment rights in exchange for the privilege to enter host state territory. Although these instruments limit the duration for which a migrant worker's work authorization is tied to a specific employer to two years, this state-sanctioned subordination of migrant workers to employers creates a situation ripe for abuse.

Implications:

To break the link between precarious migrant status and precarious employment it is crucial for nation states to develop forms of restrictions on migrant workers' mobility, such as sectoral and occupational work authorizations, that are less likely to be as exploitative as authorizations that tie migrant workers to specific employers.