The Rights of Female Migrants in Latin America – the International-National Nexus from a regional perspective

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Introduction

In the past 60 years, following the adoption of the Universal Declaration on Human Rights in 1948, we have witnessed a worldwide growth in national human rights institutions and policies. In addition to the Universal Declaration on Human Rights, various conventions have been put in place to address issues of poverty, economic deprivation, social exclusion, and particularly the rights of visible minorities, women, children and political prisoners. The rights of migrants have been recently added to the list of vulnerable groups in need of protection by international law. It is generally recognized that migrants, particularly when undocumented, have been marginalized, abused and exploited. Yet, international norms regarding migrants, spelled out in the International Convention on the Rights of Migrant Workers and Members of their Families (hereafter ICRMW)

1, have not received wide acceptance, particularly among major migrant receiving countries. Furthermore, those countries which have ratified the Convention have not always put in place the mechanisms required to protect these vulnerable individuals from various forms of abuse. Our comparative project examines female migrants in five countries – Chile, Argentina, Costa Rica, Mexico and the Dominican Republic. Among them, three – Chile, Argentina and Mexico – have ratified the ICRMW, and the other two have not. But even in Chile, Argentina and Mexico, migrants’ rights are not always protected in practice2. In order to expand, claim and exercise these rights, specific action is required on the part of migrants and their advocates. We explore specific initiatives that have been employed to advance the rights of migrants in general and migrant women in particular.

Processes involved in the negotiation, acceptance, and implementation of human rights principles have been addressed by a number of researchers. Scholars representing sociological neo-institutionalism (such as Cole, 2005; Frank et al., 2007; Hafner-Burton and Tsutsui, 2005; Meyer, 2000, 2007; Meyer et al., 1997; Tsutsui and Wotipka, 2004) have drawn attention to the socialization of nation-states into cultural values of the so-called ‘world society’, although they do not always specify how this socialization is achieved (Koenig, 2008). Risse and Sikkink (1999) outline three types of socialization mechanisms, one of which is the process of institutionalization and habitualization addressed by ‘world society’ scholars. Among the other two are: first, forced imposition of norms, strategic bargaining, and instrumental adaptation and second, argumentative

1 In addition there are two ‘older’ migrant worker specific ILO conventions (no. 97 from 1949 and no. 143 from 1975).
2 It has to be noted that the disjunction between “rights on paper” and “rights in practice” is not unique to the ICRMW but as we are specifically interested in the rights of migrant workers, we focus on the lack of implementation in the context of this Convention only.
discourse and moral persuasion (also see Risse, 1999). They argue that the adoption of international human rights norms and principles depends on arguing and moral persuasion, particularly when transnational advocacy networks engage in activism against violations of human rights (Keck and Sikkink, 1998; Risse, 1999; Risse and Sikkink, 1999). In the project as a whole,3 we contribute to this scholarship by drawing attention to various actors at multiple sites involved in the negotiation of human rights by examining the extent to which domestic non-governmental organizations (NGOs) as well as regional and international organizations employ moral persuasion to advance migrants’ rights. But for the specific component covered in this paper – that is the role of international organizations and their relationship with governments – we have to look at a different type of literature deriving mostly from political science, especially the work by Barnett and Finnemore (2004) on international organizations as active participants in the international system and not just as the passive subjects of state power as they are treated in mainstream IR scholarship.

In this paper, we focus on the role of international organizations in four countries – Chile, Argentina, Mexico and Costa Rica4 – in pro-migrant advocacy. We discuss the extent to which international organizations engage with the issue of migrant rights and the problems faced by migrants in general and female migrants in particular - and ultimately call for change.

Intra-regional migration dynamics and migrant rights issues in Latin America5

Many migrants, in particular economic migrants, are living in countries which are considered more developed than their country of birth or previous residence. The migration trend towards high income countries is said to be rising; but this does not mean however, that all migratory flows are in fact directed from the global South to the global North (Hujo and Piper 2007; Castles and Wise 2008). Higher and middle income countries outside of the traditional settler countries in the West, such as the so-called migration poles like Mexico, have also attracted large numbers of migrants. These current migration patterns are not only a reflection of economic variations at the global level, but also at the regional level. South-South or cross border migration flows6 are more likely to involve poorer, less educated migrants as costs are considerably lower when migrating regionally. South-South or cross-border migration is also the traditional context for temporary or circular migration movements of seasonal workers in agriculture.

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3 The project “Advancing the Rights of Female Migrants: Case Studies of Chile, Argentina, Costa Rica, Mexico, and the Dominican Republic” has been funded by the International Development and Research Council of Canada. It involves research teams in each of these five countries, in addition to the two co-authors of this paper.

4 The fifth country – the Dominican Republic – is not included in this paper since no research has been conducted there yet.

5 The first part of this section draws heavily on Hujo and Piper (forthcoming).

6 Immediate cross-border flows and international migration can be distinguished on the basis of the first often involving pendular migration and also peoples of similar or the same ethno-cultural and linguistic background. Hence the significance, and control, of the political border is of different nature than when migration occurs to destinations further afield – or when border crossing involves countries at two very different levels of development, such as between Mexico and the US.
or mining, which are common in many developing regions such as Central America. Argentina is among those countries which have only recently become economically stronger and/or politically more open, thus leading to decreased out-migration of their own citizens but subsequently attracting higher levels of incoming migration.

Regarding the socio-demographic patterns of migration, the empirical evidence from several Latin American economies shows that emigrants from this part of the world, the vast majority of whom (87 percent) move to the North (Ratha and Shaw 2007), share three socio-demographic characteristics which resonate with migrant profiles elsewhere: 1) a high participation of female emigration, 2) a concentration of migratory flows in the most productive working-age groups of immigrants and emigrants, and 3) a higher level of education among emigrants compared to their fellow citizens who do not emigrate (Solimano 2008). The question is whether socio-demographic characteristics differ for migrants choosing developing countries as their destination. The answer seems to be yes, as in general, studies indicate that the percentage of lower skilled migrants within intra-regional migration is significantly higher than that of skilled workers or professionals, highlighting a strong difference between North-South and South-South migration’s socio-economic characteristics. Martine et al. (2000) further emphasize this contrast, citing a study on the educational level of Nicaraguan migrants in Costa Rica, which is lower than that of Nicaraguan migrants in the US.

Digging deeper into the motivating factors for intra-regional migration in Latin America, Durand and Massey (forthcoming) identify three different patterns: 1) border migration, which is characterized by temporary moves of short distance to engage in seasonal harvest work; 2) ethnic migration, which refers to movements of indigenous peoples within their ancestral territories being divided by national borders; and finally, 3) city-directed migration of professional and unskilled workers, with professionals being attracted by countries that offer higher salaries (Mexico, Chile, Argentina) or specific opportunities (e.g. Venezuela during the oil boom), and lower skilled workers being employed in domestic and care services, construction, and petty trade.

As with inter-regional migration, social networks and cultural similarities are also important variables in explaining intra-regional migration flows. Additionally, geographical proximity provides another explanatory factor in the case of migration within regions. In the Southern Cone for example, Argentina and Chile, with income per capita levels above $10,000, attract people from lower income per capita countries such as Bolivia, Paraguay and Ecuador (all below $5,000). Following the aftermath of the financial crisis in 1999 though, Ecuador has since attracted migrants from its neighbour Peru (Boccagni 2008). In Central America, major South-South migration flows take place from Nicaragua to Costa Rica, from Haiti to the Dominican Republic and from Guatemala, Honduras and other Central American countries to Mexico which in turn may be a step to getting into the US or Canada, highlighting the importance of proximity in migration flows. However, while these countries share common borders and a common language there are still significant differences in development levels and per capita

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7 The latter, urban-to-city migration, is partly related to restructuring of the agricultural ‘sector’ due to policies by another type of international organizations, the IFIs (international financial organizations). The link between this and international organizations’ human rights work would also be interesting to explore in more detail which, however, goes beyond the scope of this paper.
income between them. Yet, Rojas and Angeles (2008) observed in the case of Mexico, migration scholarship has largely ignored these regional proximity flows.

**Female migration**

The global and regional processes of migration are paralleled by the increasing participation of women in various migration streams, a phenomenon commonly referred to as “feminization of migration”. This trend towards greater participation of women in most, if not all, migration streams is a reflection of gendered demand structures (for example in the service sector and domestic work) in destination countries and the rising problem of male un- or under-employment in origin countries which pushes women to enter the labour market of paid work either at home or abroad (Piper 2008).

Recent research has indicated that women constitute approximately one-half of the 190 million population of global migrants; that female migration in Latin America has increased significantly in the last several decades; and that throughout the world female migrants have experienced various forms of abuse in the labour force such as de-skilling, sexual harassment, racism, violation of contract terms, underpayment, and violation of national/provincial labour legislation provisions (UNFPA 2006). Consequently, migration scholars have become critical of approaches to migration that ignore gender issues. Indeed, much of the current scholarly work has been directed towards the understanding of migration as a gendered process, which has meant for example, assessing gender relations in settlement patterns; the re-articulation of gender identities and family roles; the gendering of the labour market; and individual and group’s agency, among others (Piper 2008; Asis 2004; Carling 2005; Kofman 2004; Andall 2003; Fouron and Glick-Schiller, 2001; Hondagneu-Sotelo, 1994, 2001; Mahler and Pessar, 2001; Pedraza, 1991; Pessar, 1995, 1999; Salazar-Parrenas, 2001; Sassen, 1998).

While research on female migration has been increasing, it is marked by several limitations. Empirically, most research on migration in general, and female migration in particular, focuses on North-bound migration (Hujo and Piper 2007). Research on intra-regional migration is relatively underdeveloped. Second, by comparison to Asia, and even the Middle East and Africa, research on Latin American intra-regional migration is particularly scant. Furthermore, greater attention to gender processes in the study of migration within Latin America is needed. At the conceptual level, there is very little research on migrants’ knowledge of their rights or political activism by or on behalf of (female) migrant workers that makes it possible for migrants to claim their rights.

In the last few decades, intra-regional migration in general, and the migration of women in particular have been on the rise in the four countries under study. According to the 2002 Census Data, Chile had more than one-hundred thousand migrants. Among

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8 For a collection of recent country studies of determinants of international migration in Latin American and the Caribbean, see Solimano (2008).

9 The remainder of this section is drawn from the proposal for funding written jointly by the team members. We would like to acknowledge the contribution of Claudia Mora and Carolina Stefoni for their section on Chile, Carlos Sandoval for his section on Costa Rica, Mario Santillo for his section on Argentina, and Martha Rojas, Hugo Angeles, and Carmen Fernandez for their section on Mexico.
them, 26% were from Argentina, 21% from Peru, 6% from Bolivia, and 5% from Ecuador. The Peruvian migration in particular, which has increased more than 300% in the last few years, has been of great interest to academics and policy makers (Martínez 2003; Stefoni, 2003). While the Peruvian migration is not new in Chile, since the 1990s, its characteristics have changed. Unlike pre-1990s migrants, current-day Peruvians are predominantly women who come to seek jobs in Santiago, mainly as domestic workers.

According to the 2001 Argentinean Census data, there were more than a quarter-million Bolivians residing in Argentina, although the Bolivian Embassy in Argentina claimed that the number might have been as high as 1 million. The Bolivian migration to Argentina has long roots (Marshall and Orlansky 1980, 1983; Ardaya 1978). Bolivian men have worked predominantly in agriculture, construction, small commerce and services, women have come to work in small commerce and services, as domestic workers and in the informal economy (Ardaya 1978). In Buenos Aires, most Bolivian men are concentrated in construction while a high percentage of women are employed as domestic workers, in the garment industry, or in industrial jobs in general (Ardaya 1978; Benencia 1992 & 1997; Bastia 2007).

According to the 2000 National Census, there were almost three hundred thousand foreign-born people in Costa Rica, more than three-quarters of whom were from Nicaragua. Nicaraguans constitute six percent of the Costa Rican population. They have immigrated to Costa Rica at different times and under different socio-economic and political circumstances. While some came to Costa Rica in search of better paying jobs, others fled their country due to political conflicts, natural disasters, and economic crises. The age of Nicaraguan immigrants range predominantly between 20 and 40, although at least 29 percent among them are less than 20 years old (Loría 2002:28). Women constitute slightly more than half among the Nicaraguan immigrants and about 53.3% of the women are found in urban areas (Castro, forthcoming). Most Nicaraguans came to Costa Rica in the 1990s. Since 1999 the number of Nicaraguans coming to Costa Rica seems to be declining as a result of an increasing migration of Nicaraguan to other Central America countries, such as El Salvador (Barquero and Vargas 2004). Although there are no reliable statistics, it is estimated that between 25 and 30 percent of Nicaraguans in Costa Rica are undocumented.

While the exact number and characteristics of undocumented Guatemalan and other migrants in Mexico are also unknown, we can learn about the gender and country of original composition of this migrant population from the detention statistics. According to the official Mexican statistics, the number of detentions of undocumented migrants went up from 168,765 in 2000 to 240,269 in 2005, although it decreased to 182,705 people in 2006. Generally, around 15% of all detained migrants are women. Among them, Guatemalan migrants constitute 46% in 2006; Hondurans -32%, and Salvadorans – 15%. Together migrants from these three countries constitute 93% of all the detentions carried out of Mexican immigration authorities.

Most detentions of undocumented migrants are carried out in the state of Chiapas (50% in 2006) and other Southern Mexican states, such as Tabasco (13%), Veracruz (9%) y Oaxaca (3%). But the number of detentions has also increased in some central and northern Mexican states through which Central American migrants travel to the United States. In addition, some Guatemalan workers (mostly men) receive legal work permits from the National Institute of Migration to work in agriculture in Chiapas. Interestingly,
the number of legal permits issued by the National Institute of Migration has decreased in the last few years from 70,626 in 2000 to only 40,244 in 2006.

In all of these countries, migrants are denied economic and social rights: their housing conditions are substandard; their work is precarious; they are often denied health care services; at times they find it difficult to register their children for school; they are disparaged by the host population, and if undocumented, they face harassment by the immigration authorities. The entire project, comprised of teams from seven countries, examines initiatives undertaken by national non-governmental organizations and grassroots activists, as well as international and regional organizations to advance the social and economic rights of migrants in five countries. The rest of the paper examines the role played by the international human rights regime and international migrants’ rights organizations in enhancing migrants’ rights in four countries: Chile, Argentina, Mexico and Costa Rica.

**The Institutionalization of International Human Rights Standards**

Despite the growing scholarship on human rights, the processes through which the norms and principles prescribed by these conventions are adopted and institutionalized in national settings have not been sufficiently addressed in the scholarly literature (Gordon and Berkovitch, 2007). Building on sociological neo-institutionalism, some scholars emphasize the cultural embeddedness of nation-states in the so-called ‘world society’ and argue that global norms have been disseminated through cultural and associational processes. These worldwide models, it is further argued, inspire local action, local institutions and national policies in virtually all of the domains, such as family life, religious practices, business interactions, political decisions, education, and health (Frank et al., 2007; Hafner-Burton and Tsutsui, 2005; Meyer, 2000; Meyer et al., 1997; Tsutsui and Wotipka, 2004). Yet, world society scholars do not always specify how nation-states are socialized into these global norms. While some proponents of this approach suggest that the human rights principles are disseminated at world public fora and thus the states that are linked to international governmental organizations and/or participate in international meetings or conferences are the ones that are most likely to adopt them (Boli and Thomas, 1997, 1999); other scholars working within this paradigm (e.g. Cole, 2000) contend that these norms are communicated through diffuse (less structured) normative mechanisms, although the exact nature of these mechanisms is not discussed.

Moving beyond this approach, Risse and Sikkink (1999) have outlined two additional forms of socialization processes. The first type of socialization process describes the instrumental adaptation to pressures from domestic and international actors. This type refers to the situation in which governments accused of human rights violations yield to pressures by making tactical concessions in order to receive foreign aid or have international sanctions lifted or undermine internal dissent. The second type refers to argumentative moral discourses and processes of communication, argumentation, and

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10 In addition to the five countries in the Latin American and Caribbean region, Canada and the UK are represented by virtue of the project coordinators (the authors of this paper).
persuasion linked to these discourses. They further suggest domestic and transnational actors use a mix of instrumental and argumentative rationalities to impact upon the human rights performance of specific states (Risse and Sikkink, 1999). They further propose a five-stage ‘spiral model’ to explain how nation-states engaged in human rights violations adopt change, including: repression and activation of opposition; denial of human rights abuses; tactical concessions; ‘prescriptive status’; and finally, rule-consistent behavior. They suggest that instrumental and argumentative rationality, communicated by domestic and transnational actors, play a variable role at different stages of this ‘spiral’ (Risse and Sikkink, 1999).

Even when national laws and international conventions, declarations and institutions set standards for migrants’ rights, neither the interpretation of the eligibility nor the exercise of rights are automatic. Some scholars view rights as a negotiated relationship associated with historic and current struggles for the expansion and extension of rights (Lister 1997; Jelin 2005). The process is more complicated when international norms are not accepted by all nation-states. Migrants’ rights (particularly undocumented migrants) are a case in point: while advocated by some nation-states, they are denied by others. The role played by migrant rights advocates in interpreting, negotiating, and applying human rights norms are of paramount importance (Basok 2009; Grugel and Piper 2007). In the project as a whole we examine how migrants themselves and their advocates (NGOs and grassroots activists) negotiate migrants’ rights.

In this paper, we focus on the role played by international organizations in this process. In this specific context, the above literature has serious limitations as it relates to the national level (that is, states) only. Mainstream IR scholars, by focusing on states, have in fact largely overlooked the agency and autonomy of international organizations who - despite having states as constituents – do emerge in the study by Barnett and Finnemore (2004) as “autonomous actors”. This is based on the authors’ argument of IOs having evolved into bureaucracies and acquire authority based on expert knowledge (which can, however, be also seen as “overspecialization”) which underlies their power. This bureaucratic culture can then both resist or introduce change. In other words, their arguments is that IOs can be understood as independent actors, not simply as agents of states, based on their bureaucratic machinery allowing them to tackle issues beyond the regulation of interstate relations. As we shall see, however, the policy field of migration constitutes an area where IOs seem to be less independent than in other contexts.

**Institutionalized Mechanisms for Promoting and Claiming Migrants’ Rights**

Despite the importance migration has reached in global policy today, there is no comprehensive international legal framework governing cross-border movement of people and as a result, and related to this, no one single UN agency whose exclusive mandate is international migration. Rather, the present state of affairs is such that there

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11 The argument of specific “policy fields” determining how open, or inclusive, IOs are in terms of consulting other actors in policy making processes has been made by Steffek (forthcoming) in relation to the extent to which non-state actor participation varies not only across different international organizations but also within them.
are various UN agencies whose competences include migration issues by focusing on migrants in their separate roles as workers, women, or non-citizens – but rarely in the entirety of these roles.

Within the UN’s current structure, it is the Internaitonal Organization of Labour (ILO) and the Office of the High Commission for Human Rights (OHCHR) which are the main standard setting agencies with regard to migrants – as workers (ILO) or non-citizens (OHCHR). The ICRM (was passed by the General Assembly in 1990, is the only migrant worker specific instrument by the UN. It only came into force in 2003 after a Global Campaign to boost its ratification was launched in 1998. Until fairly recently, no relevant institutions within the UN had made any efforts to promote this Convention. Until 1996 it was even difficult to simply obtain a copy of the actual text. It was largely due to NGOs that knowledge about this Convention has spread and that its content has been translated into local vernaculars. After finally reaching the minimum number of ratifications in 2003, the Committee on Migrant Workers (the treaty body) was set up. The treaty body system of the OHCHR allows the NGO community to submit ‘shadow reports’ to provide an alternative view to the one given by governments. The submission of individual complaints to the Committee on Migrant Workers is also possible – but only under ‘certain circumstances’ and it is unclear at this moment in time what these are (as this is untested ground). In this sense, the Migrant Committee offers a direct avenue for complaints voiced through civil society organizations.

In addition to the treaty bodies, the UN has another system by which it monitors specific types (or target groups) of human rights: country-specific or thematic Special Rapporteurs. The mandate for the Special Rapporteur on the Human Rights of Migrants was created in 1999 and extended for a further three years in 2005 by the Commission on Human Rights, requesting the Special Rapporteur to “examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants”. To this end, the main functions of the Rapporteur include the gathering of information from all relevant sources; the formulation of appropriate recommendations; the promotion of the effective application of relevant international norms and standards; and the recommendation of actions and measures. In practical terms, this can be done in a number of ways, such as ‘fact-finding missions’, i.e. country visits (for which the Rapporteur, however, needs the invitation of the government in question); participation in conferences and meetings relating to the human rights of migrants; the preparation of an annual report to the Commission on Human Rights. The budget for these activities is very small, however, and as a result the number of country visits is very limited. Civil society organizations are an important source of information for these rapporteurs.

12 The Campaign Steering Committee included 16 leading international bodies on human rights, labour, migration, and church organizations. For more detail see Global campaign website at :www.migrantsrights.org.

13 See The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat, ICMC and December18, 2007 (updated version of the original study produced in 2004), which can be downloaded from http://www.december18.net/web/general/start.php.

14 For more information, see http://www.ohchr.org/english/issues/migration/rapporteur/ from where the annual reports can be downloaded (accessed 17 November 2006).
The ILO has historically always included the protection of migrants as workers in its overall mandate, and all of its fundamental core standards as well as its conventions relate to migrant workers. Its first migrant-specific convention dates back to 1949 and its second to 1975. The ILO was also the main technical advisor to the UN during the drafting process of the ICRMW. To address rights violations, the ILO offers a complaint mechanism based on Article 22 and 23 of its constitution, according to which State Parties are obliged to submit reports on the implementation of the eight fundamental conventions (and every five years on other conventions, to which the two migrant worker-specific conventions belong). The violation of one of the core labour standards, the Freedom of Association, is the only issue on the basis of which a complaint can be filed even when the perpetrating country has not ratified the relevant convention\(^{15}\). Given its tripartite structure, comprised of governments, employer and workers’ organizations (that is, trade unions), migrant worker-related concerns and complaints can be channelled through trade unions. This means that NGOs have no direct access to this mechanism but have to seek the support of trade unions which are generally not in favour of the formal inclusion of NGOs into the ILO governing structure (Grugel and Piper 2007; Waterman 2005). Unions’ attempts to organize and assist migrant workers seem to be too recent a policy change to have resulted in much concrete usage of the ILO’s mechanism (but see footnote 11).

In terms of representation, what is also clear is that generally speaking unions represent only a minority of workers (that is, full-time unionized employees in the formal labour market) set within a national labour model based on closed economies (Standing 2008). In the era of global economic restructuring and an international division of labour linked to a complex system of outsourcing and sub-contracting, traditional forms of organizing are fraught with difficulties, relating not only to the oppression of trade unionism in many countries but also to changes in the nature of the production process and the transnationalization of labour markets due to international migration (Piper forthcoming). This leaves the majority of workers, many of whom women, beyond the reach of the official trade union movement, and women workers were often compelled, or resorted, to organizing themselves outside the union framework (Hale 2004).

From among all international human rights instruments, the migrant worker specific conventions (ILO conventions no. 97, 143 and the ICRM) have the lowest ratification rate in the developed as well as developing world, and recent studies have pointed to the largely political reasons for this: the little promotional activity by the UN itself,\(^{16}\) and the obstacles to the ratification in key regions of migration (Piper and Iredale, 2003; and Pécoud and de Guchteneire, 2004). The general reluctance to ratify and implement these migrant specific instruments is, on the other hand, paralleled by an increasing interest in combating trafficking and smuggling. This is reflected in the relative success of the 2000 United Nations Convention Against Transnational Organized Crime, also called Palermo Convention, and its two protocols (in terms of the speed with which it came into force). This convention focuses on the criminal aspects of cross-border migration and is more concerned with national security and border control rather

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\(^{15}\) As in the case of Korea and the complaint submitted by the Korean national trade union centre (ADD).

\(^{16}\) This is according to a study entitled The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat, carried out by two NGOs, the ICMC and December 18, in 2007 (see above footnote 6).
than the right-based protection of trafficked victims. Thus, human rights issues are clearly sidelined in this document (Gallagher 2001).

A more detailed analysis of the influence and standing of such organizations as the ILO vis-à-vis others would be insightful but goes beyond the scope of this paper. Another type of study that would be useful is of the kind conducted by Barnett and Finnemore on international organization’s authority, autonomy and power with specific reference to the ILO (as their study focuses on other international organizations) to find out exactly why “global governance of migration” is such a sensitive area. Suffice it to say that the ILO also has a difficult stance in that it has to compete with the International Organization of Migration (IOM) in the field of migration. Many western governments in fact support the IOM more than the ILO, wishing to reduce the ILO’s mandate for migrant workers. The reason for governments’ preference of the IOM is precisely related to it not being a norm and standard setting international organization and not involving social partners in any direct manner. The IOM constitutes an inter-governmental organization which has no normative framework for the protection of migrants’ rights (Human Rights Watch 2003). Related to the fact of not having a formal mandate to monitor human rights abuses or to protect the rights of migrants is that IOM has no effective accountability mechanisms to answer criticism with regard to its practices and their impact on human rights.

This does not mean, however, that general policy statements of the IOM have not included the mention of rights. Official IOM policy does state that despite the absence of a formal mandate, the IOM “recognizes its responsibility to ensure that when providing assistance to migrants, its activities must obtain full respect for the rights of the individuals…and must not diminish the human rights of others” (IOM 2002, quoted in Human Rights Watch 2003:2). In fact, the IOM set up a migration law department in 2000 (CHECK). Also, the IOM took on the chairmanship of the Steering Committee for the Global Campaign for Ratification of the ICRM in 2003. Moreover, efforts by certain regional offices in promoting the ICRMW and migrants’ rights (such as in Colombo and Dhaka) have to be acknowledged and the commitment by certain individuals should not be discredited by a general critique of the IOM’s overall organizational stance and policy. Nonetheless, it is the ‘constituents’, i.e. especially the governments of the highly developed countries, which support the IOM more than the ILO when it comes to migrant workers. This is also evident in terms of funding: northern governments provide a large amount of money for IOM activities, some of which appear to obstruct the rights of the very people the IOM is supposed to assist. The area of international migration, therefore, seems to contradict Barnett and Finnemore’s findings on the autonomy of international organizations by highlighting the important role of states (as the crucial constituents of international organization) and the fact that the principle of state sovereignty leads to the rights of states to dominate over the rights of migrants (Grugel and Piper 2007).

Regional mechanisms

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17 Guy Standing’s recent article (2008) has provided an overall critique of the ILO but not with specific focus on its ‘migration work’.
Apart from multilateral agreements, regional processes offer additional mechanisms or steps toward achieving a global policy agenda which aims to maximize the benefits of migration and protective standards for migrant workers. At this current stage of the debate on global governance of migration, states are often intimidated by what they seem to perceive as open-ended undertakings which compromise their sovereignty in the migration area. Therefore, regional agreements could be seen as less threatening and thus a more effective avenue to go about the advancement of a rights agenda. Globally, there are differences with regard to the current level or degree of institutionalisation of regional structures, with the EU having the most developed common approach to migration (with regard to intra-European mobility but to a lesser degree with regard to new incoming migration), followed by NAFTA and Mercosur, the African Union and the least advanced is ASEAN (Grugel and Piper 2007).

Regional human rights bodies also play an important role in consolidating a rights-based approach to migration. The most progressive example here is the Inter-American Human Rights system which offers mechanisms for investigating and promoting human rights in the Americas. On a normative level, the Inter-American Court and the Inter-American Commission on Human Rights have broken new ground in international human rights law by asserting that migrants must fully enjoy the rights of non-discrimination and equality in the host country where they reside and work. More importantly, the Court holds that “all migrants, undocumented and documented alike, are covered by the principles of equality and equal protection” (Satterthwaite 2005).

Although the court leaves untouched the sovereign right of states to limit certain political rights to nationals, it is absolutely clear on the issue of labour rights which “necessarily arise from the circumstances of being a worker, understood in the broadest sense” (ibid.). In other words, once a migrant enters an employment relationship, the migrant is first and foremost to be treated as a worker, regardless of his/her migration status (which has so far always been the first role or status a migrant has been judged by).

Furthermore, the Inter-American Commission on Human Rights has created one of the most flexible mechanisms to advance the promotion of human rights: that of special rapporteurships referring to “mandates filled by individuals who are designated to investigate and report on specific thematic human rights concerns” (Satterthwaite 2005). Currently, there are seven issue areas for which rapporteurships have been established and among these are the rights of migrant workers and their families. The reports of this regional rapporteur, together with those of the UN Special Rapporteur, have well documented the failure of restrictive policies to halt irregular migration, the negative consequences of fortified borders in creating opportunities for trafficking and smuggling, leading to increasingly dangerous journeys and a rise in migrant deaths. They also record the rampant rights violations migrant workers are subjected to. In addition to the rapporteurship, the Inter-American Human rights system offers further strategies to promote the rights of migrant workers which include: general interest hearings, petitions alleging to human rights violations, and on-site visits (Satterthwaite 2005).
International Organizations and International Norms at the National Level

This section is based on a preliminary analysis of 40 interviews conducted with representatives of international organizations and national governments in Argentina, Chile, Costa Rica, and Mexico. Our objective was to explore to what extent perspectives, discourses and ideas on migrants’ rights, advocated by international organizations at the global level, are reproduced in the work of regional offices of these international organizations. Furthermore, we were interested to see if there were tensions between national interests and concerns and human rights perspectives and if these tensions existed, how they have been played out at the national level.

National level

It is important to point out that of the four countries analyzed in this paper, only Costa Rica has not signed the International Convention on migrant workers. Its most recent Immigration Law (2006) has been criticized by different activists and NGOs, and revisions are being contemplated in the Legislative Assembly. Yet, Costa Rica does recognize that migrants - even undocumented migrants - have some rights. In this country undocumented migrants have access to some basic health services (emergency and primary health services) and their children can attend schools (although in some cases lack of documents precludes children from using these services). Furthermore, several amnesty programs have permitted undocumented Nicaraguan migrants to legalize their status.

By contrast to Costa Rica, Chile and Mexico have ratified the ICRMW although until now there have been no immigration laws in these two countries. In the Chilean case, it is important to recognize that there is a migration policy that makes it possible for undocumented migrants to legalize their status and that pregnant women and children have full access to national health services. In the Mexican case, the decriminalization of undocumented migrants has been an important recent development. Finally, Argentina has ratified the Convention and the Immigration Law introduced in 2005 has made it possible for Latin American migrants to legalize their status. Furthermore, undocumented migrants have full access to public health and their children have access to education.

Despite these improvements in the legislative framework, migrants in these countries continue to experience numerous problems. Peruvians in Chile, Bolivians in Argentina, Nicaraguans in Costa Rica, and Central Americans in Mexico continue to be marginalized by the host society; they are exploited in the labour force; have high levels of poverty, and in some cases, they are victims of abuse by the police and immigration authorities. Even though Chile, Argentina and Costa Rica have made it possible for undocumented migrants to legalize their status, in reality there are numerous obstacles (such as lack of required documents and high costs, among others) that make it impossible for them to receive it.

In sum, even though in the last few years we have seen significant improvements in legal frameworks for migrants (especially in Chile and Argentina), there have been no sufficiently developed mechanisms to ensure that migrants claim and exercise their rights.
rights. The question that we explore in this paper is the role of international organizations in advocating for migrants’ rights among those nation-states that do not recognize migrants as rights-bearing subjects and insuring that migrants’ rights are not only recognized on paper but are claimed and exercised.

**International /regional level**

First it is important to note that although the ILO has contributed to the discourse of migrants’ rights as human rights at the international or global policy making level, in none of the four countries under study does the ILO actively participate in migration matters. Despite the fact that there is an ILO office in each of these countries, there are no officials working on migration issues within them. The ILO does not participate in national fora on migration in these countries; nor does it offer any specific programs for migrants or collaborate with other non-governmental organizations assisting migrants.

Similarly to the ILO, UNIFEM (UN Women’s Fund) has not played an important role in the migrants’ rights area, despite the fact that there is a strong need to develop initiatives to address migration issues from a gender perspective against the backdrop of the emergence of a “global care economy” (the only exception are programs related to the trafficking of women which include assistance to women and children, as will be discussed below).

The IOM and UNICEF (United Nation’s Children’s Fund) have played the most important role in the migration field in each of the four countries. Not only do these organizations provide funding for NGOs assisting migrants, they also offer training and technical support to government officials, and the IOM also provides some funding for out-sourced research (conducted by academics). In addition, these organizations have developed their own programs and projects to assist migrants.

The issue of trafficking, as already stated, occupies the central place on the agendas of both international agencies and national governments. The IOM and UNICEF have played an important role in setting up programs to assist the victims of trafficking, including psychological services and repatriation assistance. These organizations have collaborated with such diverse national departments and institutions as: the National Service for Minors in Chile, the National Directorate of Criminal Investigation and the Office of Assistance for Victims of Crime in the Attorney General's Office in Argentina, the National Human Rights Commission, the National Institute of Women, the National Migration Institute and the Special Prosecutor on Violence against Women and Trafficking in Mexico, and the House of Rights and the General Directorate of Immigration and Migration in Costa Rica, just to name a few examples.

In sum, international organizations have contributed to the promotion and protection of migrants’ rights in two important ways: they have provided assistance to victims of trafficking and have supported government programs and NGO projects aimed at improving the living conditions of migrants (in areas such as physical and mental health, education, and domestic violence).

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18 By contrast, in Asia both the ILO and UNIFEM have played an active role in protecting female migrants’ rights through programming and working with local NGOs. See Grugel and Piper 2007 for more detail. At this stage, we have no clear explanation as to the regional differences.
However, these actions are usually limited to the areas of financial support, technical training or advice in formulating policies. At the same time, these international organizations do not engage in advocacy for migrants’ rights. They do not attempt to pressure national governments to extend certain rights to migrants and/or provide stronger protections for their rights. Respectful of the national sovereignty, these organizations avoid antagonizing national governments and, instead, they prefer to focus on specific basic needs of migrant populations. A quote from a government official, interviewed in this study clearly demonstrates the collaborative relationship between national governments and international organizations.

We work very much hand in hand. They are very respectful of the state and our role as a government. But precisely because of our limited resources and especially in the field of migration, we depend on them. Their support is mainly financial, and much of it is non-refundable cooperation. But we also participate in fora together. We invite each other and promote academic discussions of these issues. It is very enjoyable to work with these institutions.

The international human rights framework indirectly influences domestic policies. The countries analyzed here have ratified several international human rights instruments that have guided the work of institutions such as the above mentioned Human Rights Commission in Mexico, and the National Economic, Social and Cultural Committee on National Ethnic Minorities (attached to the Human Rights Secretariat of the Nation) and the Observatory of Bolivians in Argentina, in addition to the Ombudsperson’s Office in Costa Rica. Both the Centre and the Office receive complaints about abuses and harassment experienced by migrants, lack of access to justice and health services, and labour rights violations, and make recommendations to government agencies involved. Furthermore, we could also note the influence that in some cases the ILO standards have had on the work of the various Ministries of Labour.

The Convention on the Rights of Children and the UN Declaration against Violence against Women also deserve a special mention. In Mexico, the first instrument has guided the work of the National Coordinator for Education for Migrant Workers’ Children and the Ministry of Education, while in Chile it has influenced policies adopted by the National Service for Minors and the Ministry of Health. As for the second instrument, we can cite initiatives carried out by the Special Prosecutor on Violence against Women and Trafficking, and by the Directorate of Women in Mexico and the program called TODAS (All Women) of the City of Buenos Aires in Argentina.

Within the context of international law, international agencies could assume a more decisive role in the formulation of discourses and initiatives to improve the working and living conditions of migrant. However, they do not seem to have the mandate to enforce international treaties; nor do they assume such a role on their own initiative. The need to maintain friendly relations with the governments within the context of state sovereignty guaranteed by the Westphalia model of nation-states, limits their ability to promote policies and initiatives to address the human rights of migrants.

Conclusion
At this stage of our research project which explores promotional initiatives by international organizations of various kinds, we have restricted our discussion to the role of UN agencies as well as the only international organization specialized in migration, the IOM. Despite the increasing significance of intra-regional migration and the presence of women in these migratory flows, it is astonishing to note that the UN is almost absent (except for UNICEF) from ‘migration policy work ‘in general and ‘migrant rights work’ in specific. The only international body present and active is an intergovernmental organisation, the IOM, whose mandate does not officially include the safeguarding of human rights. As noted in the literature on gendered migration, it is unfortunate that the focus of the only two active international organizations, the IOM and UNICEF, is on trafficking with its limited focus and application of the migrant experience to the sex industries. This reflects observations made by other scholars working on human rights about acceptability of the human rights discourse in the case of certain vulnerable groups as opposed to others – and children as well as victims of trafficking are among those subject to public sympathy.

The problem with the trafficking framework, however, is that it does not give much room to the protection of female migrants’ rights, especially their rights as workers. Thus, the issue of migrant rights’ in their role of workers in the many sectors where they are represented, and the specific vulnerability of women as workers, is thus neglected. The silence of UN agencies and the IOM on the matter of migrant workers’ rights has most likely to do with the highly sensitive – and highly politicized – nature of economic migration and the link to economic and social rights which have historically been far more marginalized than political and civil rights (Grugel and Piper 2007). This gap needs filling – and international NGOs as well as national advocacy organizations have a huge role to play in ‘moral persuasion’ via the ratcheting up of their advocacy initiatives.

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