

15 Migrants' Citizenship and Rights: Limits and Potential for NGOs' Advocacy in Chile

Claudia Mora and Jeff Handmaker¹

Abstract

In this chapter we address the structural and institutional constraints faced by *non-governmental organizations* (NGOs) assisting Peruvian migrants in Chile to advocate for migrants' rights. We argue that these constraints have provoked reactive rather than proactive strategic responses by NGOs in their promotion of migrants' rights. In addition, the unchallenged acceptance of a traditional notion of citizenship has placed Chilean NGOs as short-term service providers rather than as long-term advocates. We propose that a conscious recognition of the possibilities opened up by international legal regimes to confront nation-states' regulation of migrants' rights offers a pragmatic approach to navigating such limits.

Keywords: citizenship, liminal legality, migrant advocacy, rights translation, stratification.

15.1 Introduction

The Southern Cone of Latin America has undergone significant shifts in the migration of people during the last few decades. The direction of movement has traditionally been south to north, in particular to North America and Europe. However, the movement of people to countries in the global North has given way to an increasingly intraregional south-south migration. This diversification of flows has not only followed economic and political crises, but has also resulted from border containment policies in the north, weighing on migration's costs and the length and purpose of the entire migration project.

Migration to neighbouring countries demands lower monetary and time investments, given the proximity to migrants' countries of origin and flexible entry requirements. Today, more than ten per cent of Latin American migration happens within the region (Martinez 2011). As in other parts of the world experiencing similar dynamics, the rapid increase in intraregional migration has been accompanied by migrants' social exclusion and structural constraints on their ability to claim rights, taking place on two levels: first, based on the territorially based normative regimes in the country of destination; and second, related to migrants' location in social hierarchies of gender, race, and social class, which constitutes differentiated notions and exercise of rights, in both the countries of origin and of destination.

In this chapter, we focus on a case study of Peruvian migration to Chile in order to assess the conditions forging civil society organizations' capacity to respond to these challenges in their promotion of migrants' rights. We explore the incongruence of nation-state rights' addressing globally based justice issues pertaining to the movement of people around the globe, and the possibilities for advocacy on behalf of migrants by civil society organizations. In the case of Chile, an increase in Peruvian migrants has not changed the policy framework in a way that supports broader protection of migrants' rights, and the advo-

1 Dr. Claudia Mora is a faculty member of the Department of Sociology at Universidad Alberto Hurtado, Chile. Dr. Jeff Handmaker is a senior lecturer in Law, Human Rights and Development at the International Institute of Social Studies, Erasmus University, The Netherlands and Honorary Senior Research Fellow in the School of Law, University of the Witwatersrand, South Africa. The authors would like to thank Hugo Sir for his invaluable help as research assistant. Correspondence can be e-mailed to cmora@uahurtado.cl and handmaker@iss.nl. Funding for this research was provided by IDRC, Canada, Grant number 104785-006 and FONDECYT, Chile, Grant number 1100793.

cacy response of civic organizations has been correspondingly limited. This has left the growing Peruvian migrant population with a *liminal* legal status (Menjívar 2006), including restricted access to social services and almost no participation in the public sphere.

Peruvians in Chile form a distinct flow of migrants. They amount to 138,000 according to the Immigration Department of Chile, and this number has continued to grow since the 1990s. Migrants from Peru consist, by and large, of predominantly labour migrants travelling on an individual basis, at least in their initial stages of migration. Peruvian migrants are mostly women (sixty per cent according to the last 2002 census), which is in part explained by the fewer resources required for intraregional migration, and the proximity of the country of origin that permits the continued fulfilment of gender responsibilities with family and community in Peru.

While they average over ten years of education, Peruvians are concentrated in precarious, low-paid, low-status occupations in Chile, largely due to prejudice and stereotypes held by employers and society at large (Mora 2009, 2011). Most migrants are recruited through informal channels to work in domestic service and construction work, in conditions that do not substantially alleviate their economic and social marginalization. The effects of these conditions on migrants' awareness and the exercising of their rights have been explored elsewhere (Mora/Piper 2011). Our research has drawn attention to the relevance of social stratification and its influence on notions and claims of rights, linking migrants' understanding and practice to a combination of their social and cultural capital, the length of their stay in the host society, and their understanding of rights vis-à-vis their country of origin and destination (Mora/Piper 2011).

In this chapter, we will address the structural and institutional constraints faced by *non-governmental organizations* (NGOs) assisting Peruvian migrants in Chile to advocate for migrants' rights. We will argue that these constraints have provoked NGOs' reactive rather than proactive strategic response to advocacy. We propose that a conscious recognition of the possibilities opened up by international legal regimes to confront nation-states' regulation of migrants' rights offers a pragmatic approach to navigating such limits and to translating entitlements into a locally relevant context (Merry 2006a, 2006b).

We will begin by assessing the implicitly prescribed notion of citizenship that defines the category 'migrant', which precludes the recognition of certain rights. We will argue that the boundaries of citizen-

ship set by the nation-state not only contradict the realities of migration, but that the unquestioned acceptance of this bounded notion by civic actors, and particularly NGOs, is a significant obstacle to social advocacy for migrants. NGOs are, broadly speaking, not a network capable of safeguarding the human rights of peoples (Ong 2006). However, their unquestioned acceptance of such a limited definition of citizenship has resulted in NGOs' intensifying their position as service-providers to migrants, rather than as representatives of migrants in legal and social processes that define social belonging and economic distribution (Fraser 2003). This has consequently restricted the scope of their activities and their potential as advocates. Furthermore, this positioning of NGOs as service-providers rather than critical advocates has confirmed the Chilean state's approach to individual responsibility and autonomy in the resolution of migrants' needs and demands. This becomes particularly relevant in the case of Peruvian migration to Chile, which involves a great number of women. Women migrants are mostly segregated into care work, a low-status position in the occupational hierarchy, which tends to reproduce their social and economic marginalization in Chile. In addition, Peruvian migrants' life conditions and trajectories are shaped by their limited access to social resources on the grounds that they 'lack citizenship' and experience liminal legality (Mora 2008, 2009).

Our critique of traditional notions of citizenship espoused by Chilean NGOs is intended to shed light on alternative models of representation that would broaden the service approach of NGOs to one of informed advocacy for the rights of migrants. In reaching these findings, we draw on research carried out in Santiago de Chile between 2008 and 2009 and on interviews with thirty-five key informants from organizations which provide at least one service to immigrants, in order to explore the constraints placed on NGOs should they ultimately fulfil a more prominent advocacy role.

15.2 Citizenship in a Globalized World

Migration poses many challenges to traditional notions of citizenship - understood as the bond between individuals, their rights and responsibilities, and a nation-state - since the growing scale of people's movement around the globe confronts people's claims to universal citizenship with the actual boundaries of citizens' inclusion within a nation's frontiers. The

breadth of contemporary migration draws attention to at least three aspects of this challenge. First, to the unyielding hold of the nation-state on the political system, which narrowly defines the parameters of inclusion. Second, to the need for recasting membership of a political community as an issue of social justice. And third, to the possibilities for a redefinition of citizenship's emerging out of clashes between different levels of regulatory regimes. These three aspects help us explore some of the contradictions of citizenship in a globalized world.

15.2.1 The Restrictiveness of Citizens' Inclusion

Citizenship can be a mark of belonging as well as of exclusion. It warrants entitlement to social benefits to all those considered part of the political community by birth, by ancestry, or by ascription through a formal procedure established by the state. In contrast, the category of *migrant* is possible only to the extent that it is conceived as the *other* in relation to the category of citizen. Non-citizens, generally, lack membership of the political community. It is this negation that signals the impervious hold of the nation-state on the political system, in that it defines the limits of access to social rights and entitlements. This power of the nation-state has clearly diminished in other spheres, most notably in economic activities and regulations, but not in the definition of membership (Halfmann 1998).

Even though citizenship has been thought of as a neutral political space, unmarked by social stratification, this idea of universalism contained in a homogeneous community of citizens has served to obscure material differences and inequalities among nationals and migrants alike (Barber 2006). Indeed, the concept of social inclusion professed by the notion of citizenship disregards the material and symbolic differences among nationals by gender and class, and it also determines the particular forms of exclusion faced by immigrants as non-members of a political community and 'aliens' to the distribution of social benefits.

The conventional distinction between citizens and non-citizens is becoming increasingly contested in a globalized and conflict-ridden world, involving large and often sudden movements of people. Related to these developments, in terms of human rights law, and especially with regard to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) which Chile ratified on 21 March 2005, is the fact that migrants are entitled to demand social benefits, includ-

ing access to health² and education³. A core objective of the 1990 Convention provides that migrant workers should be guaranteed decent work conditions. Article 70 of the Convention states that:

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

These entitlements provided by the 1990 Convention form part of a social dimension of citizenship, guaranteeing as a minimum the opportunity to live a 'dignified life' according to the means and capacities in the host society. In this context, the reinforcement by international regimes of the protection of migrants' basic rights acquires great relevance.

The intensity and speed of people's movement have therefore exceeded the boundaries of citizenship, which has been recast as not the sole path to the recognition of membership. In a highly mobile world, immigrants do not always become, or even want to become, citizens of a nation-state. Indeed, for many migrants, citizenship status is less relevant than their entitlement to social services such as health, education, and welfare benefits (Basok 2004). This means that, to migrants, formal political recognition may be secondary to the legitimacy of social rights provided by the international regime of human rights, of rights located in the individual rather than in the nation-state.

Migrants' experiences and demands are shaped by interactions between different types of agents and institutions, framed by conflicting norms and symbols, and within a structural context. This is why different stages of migration may intensify the relevance of migrants' access to social services or to formal recognition (Basok 2004; Mora/Piper 2011). And, to fully understand the relevance of different degrees of migrants' entitlements, and the way they are constructed through interaction, it is necessary to also consider citizenship as a process (Nakano Glenn 2011). This means that practices of citizenship are shaped by different forms of social hierarchies which unevenly position migrants in relation to entitlements and their exercise of rights (Basok 2004). Hence, to go beyond paper rights, or 'law in the books', which may be accorded by formal citizenship, migrants must

2 Provided for in articles 25(1)(a), 28, 43(1)(a), 45(1)(e) and 70 of the Convention.

3 Provided for in articles 30, 45(1)(a) and 45(4).

be able to formulate claims to these rights in terms of the 'living law' (Hertogh 2009), and such claims are likely to be precluded by forms of social exclusion of gender, class, and race.

As we have argued elsewhere, there are key factors triggering migrants' sense of entitlement: the nature of their legal (i.e. documented or undocumented) status; the length of migrants' stay in the country of destination; migrants' human and social capital, which provide the resources for consciousness and claims; and their understanding of rights compared to their country of origin (Basok 2004; Mora/Piper 2011). A processual approach allows one to correlate different stages of migration with changing grievances and notions of rights, as well as the centrality of access to formal citizenship. For example, the first stage of migration is often governed by migrants' search of employment. Hence, it is likely that, even if conscious of their rights, migrants' need for a job may take precedence over other grievances and demands. Migrants may fear losing their job if they claim labour rights or fear stigmatization as 'problem workers', which would not only affect their situation as family providers, but that of the network of migrants often involved in their labour recruitment, 'contaminating' the network for future referrals (Mora/Piper 2011). Recently arrived migrants are, on the whole, more socially vulnerable compared with experienced migrants. In this first stage of migration, consciousness of needs and a capacity to formulate demands for social services may be more relevant than acquiring formal citizenship.

This differentiated position does not mean migrants' experiences are similar in every stage of migration. The notion of 'migrants' also suffers from the dangers of essentialization, given that people's possession of economic, social, and cultural capital marks different paths and experiences of migration. As Sassen (1998) notes, there are two different circuits of people's movement. Firstly, there are highly skilled professionals who more closely resemble the relatively free movement of capital, and for whom citizenship may be irrelevant and/or an accessible resource. Secondly, there are migrant workers in search of better economic and life chances through marginal and often precarious work. This second group is subject to increasing constraints of movement and while relevant, their membership in a political and/or economic community is equally elusive. We deal with the second group, for whom human dignity and access to basic services constitute an aspiration in their first migratory stage.

15.2.2 Rights and Social Justice Beyond Formal Citizenship

Related to the perceived, albeit contested importance of citizenship status for migrants, there has also been an increasing questioning of the very concept as anachronistic and surpassed by actual developments in the international arena. In this vein, Yasemin Soysal (1997), for example, has argued that the notion of citizenship assumes rights and identities presaged by the boundaries of the nation-state, without taking into account that the public sphere is constituted transnationally and hence that claims emerge 'within' and 'beyond' the nation-state (Soysal 1997: 510–511). In this regard, Fraser (2009) proposes to go beyond conceptualizing justice as pertaining to all those affected nationally or transnationally, to a notion where it pertains to all those subjected to the same governance structure.

Human rights and international law, including specifically articles 23 and 24 of the Universal Declaration of Human Rights (1948); article 5(e)(i) of the Convention on the Elimination of All Forms of Racial Discrimination (1965); the broad protection afforded by the Convention on the Rights of the Child (1989); and especially the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), as well as various Conventions passed under the auspices of the International Labour Organization, potentially provide a broad normative basis for the advancement of migrants' rights in the countries and societies in which they settle. Claims based on human rights are not tied to a territory but located in individuals. Hence, states are less able to arbitrarily deny rights to non-citizens. This form of individualized citizenship captures the aspirations of millions of migrants who, while not citizens of a nation-state, invoke universal norms to claim or advocate for the recognition of their basic social rights. In practical terms, citizenship is surpassed by the contestation of global regimes placing claims of rights beyond the boundaries of the nation-state.

The limits of nation-state citizenship in a globalized world are that this conventional notion of citizenship has ceased to explain the relations between the state and the political community, precisely because, as Soysal (1997) argues, the public sphere is constituted within and beyond the boundaries of the state. The persistence of the state's hold on the political sphere with its corresponding normative framework of what is distributed and to whom has made migration and membership in a political community

pivotal to an issue of social justice that is not always territorially based. Indeed, as Fraser (2003) has argued, the effects of such framework are mediated by non-territorial and extra-territorial forces. That is, in answering the questions of *what*, *whom*, and *how* the distribution of resources is accomplished, the framework for justice needs to be rethought to include post-Westphalian principles (Fraser 2003).

At the same time, a stumbling block on the path to social justice is a definition of belonging using territorial parameters for a process where they are irrelevant. A critical assessment of citizenship and of the limits of a territorially bound justice frame allows one to explore an understanding of different facets of the vulnerability and social exclusion on the grounds of gender, race, and class confronted by the majority of labour migrants. In this scenario, civil society and especially NGOs assisting migrants have the potential to connect different political levels. These include the level within and beyond a nation-state and interrelated regulatory regimes and the level of different social actors within the nation-state. Civil society organizations are key agents in the representation of migrants' interests and in the promotion of measures that advance the recognition of migrants, such as the gathering and dissemination of information to migrants; advocacy, particularly for the most vulnerable; legal aid services; lobbying for legal change; and education on immigrant rights (Battistella 1993; Klaaren/Dugard/Handmaker 2011). More importantly, a willingness among organizations to question a territorially based frame of justice can help facilitate their bridging role between migrants and the society in countries of destination, which in turn enhances their advocacy for migrants' interests.

15.2.3 Clashes between Different Regulatory Regimes

Regulating who may enter and remain within a country has conventionally been one of the principal features of a state's exercise of territorial sovereignty in terms of well-established principles of international law. More importantly, "the right to leave and the right to enter a country are not symmetrically protected" (Cornelisse 2010: 175). This principle of territorial sovereignty in international law has, however, been seriously undermined as different legal systems and social normative structures, both national and international, coexist within nation-states, leading to theoretical and actual clashes that have the potential to either limit or advance a person's social protection.

In this plurality of legal systems, a national law may, for example, prescribe that no one of a particular nationality be entitled to health care, whereas a health care clinic financed by the municipal government may observe a policy of opening its doors to anyone, regardless of legal residential status. Clashes also arise between different national laws. For example, a country's immigration law may forbid the possibility of a long-term migrant guest-worker being joined by her family members, while the same country's constitution may extend to *all* the right to enjoy one's family life.

Migration policy regimes that emanate from multi-lateral systems often clash with a state's national (im)migration law system. In the case of a treaty, the juridical implications of these clashes are explicitly negotiated and agreed in terms of another international law principle, *pacta sunt servanda*.⁴ At the global level, multi-lateral policies aimed at restricting the movement of people across borders may contradict policy regimes aimed at the protection of migrants.

In terms of global protective measures, the *International Labour Organization* (ILO) oversaw the development and ratification of a comprehensive *Migrant Workers Convention* (1990), which came into force in 2002. While the treaty has been ratified by large numbers of states from which migrant workers originate, virtually none of the *host* states where migrant workers obtain employment have ratified the treaty and the Convention is therefore not binding in these countries. As mentioned earlier, Chile is an exception, having ratified the Convention on 21 March 2005. A state's ratification of an international treaty designed to protect an individual raises the possibility of individuals, either on their own or via an intermediary organization, making a direct or indirect claim against a state (Handmaker 2009: 32). For example, NGOs in Chile could raise issues of concern with the Committee on the Rights of Migrant Workers, which was established in terms of article 72(1) of the 1990 Convention. The Committee in fact reviewed Chile in its 15th Session in September 2011. Among its conclusions, the Committee expressed concern "about reports on the existence of discriminatory attitudes and social stigmatization of migrant workers and members of their families" in Chile (Committee on Migrant Workers 2011).

4 Meaning: "agreements must be kept". This refers to the collective, binding effect of treaties on all contracting states, against whom claims may be brought by migrants and/or representative organizations.

As an inherently global issue, governments and multilateral organizations have been encouraged to harmonize or codify many different efforts to regulate transnational migration. Consultative policy processes have sought a middle ground between the different levels and types of regulatory regimes, according due attention to state security concerns as well as promoting the humane treatment of migrants.

In the course of these efforts at global codification, states have tended to privilege and indeed encourage people to migrate for study purposes as well as to take up key jobs in certain employment sectors. International organizations and NGOs have meanwhile sought to promote and protect the rights of refugees as an *exceptional* category of migrant. Consequently, this category of migrants, together with *knowledge* migrants, has benefited more from these regimes in terms of their level of legal protection and social acceptance (Handmaker 2011). Labour migrants are, in this sense, the category most likely to benefit from an active role being taken by civil society organizations, and their strategic use of international versus national norms in the promotion of migrants' rights and entitlements.

15.2.4 Civic capacity to hold states accountable

The capacity of civic actors to promote and, sometimes, impose state accountability for meeting national and international legal obligations has been shaped by concomitant global, regional, and national legal frameworks. With the introduction of human rights instruments at the international and, by extension, regional level, the legal scope for advocating individual and group rights at the national level has been enhanced. As illustrated earlier, treaty-based rights, such as those provided by the Convention on Migrant Workers and Their Families, may not only be directly enforceable through a relevant international treaty body or international tribunal, but also through a state's national court system, depending on whether or not a state's domestic legal system regards a treaty as self-executing. Legal remedies in direct relation to the Convention may be difficult, although migrants would still be able to make claims through the state's labour law, insisting on the enforceability of the Migrant Workers Convention (Satterthwaite 2005: 63).

Ignatieff (1999) has referred to these developments as components of a human rights 'revolution' with juridical, enforcement, and advocacy dimensions; as part of a human rights 'spiral' (Risse/Ropp/Sikkink 1999); or as the product of a 'curious grape-

vine of interests' in which non-state actors, NGOs, have played a key role (Korey 2003). As participants in international legal and political processes, individuals and civic organizations have played key roles, from the framing of juridical standards to human rights enforcement and the expanding of public consciousness about migrants' rights, and these have shifted the relationship between civic actors and the state (Handmaker 2009: 57).

15.2.5 Civic Actors as Translators

Civic actors also fulfil a crucial role in mediating the translation of international legal norms into local contexts. The role of these translators can be a powerful force in reinforcing social justice claims through other, non-legal means (Abel 1995, Merry 2006b). In order to be effective translators, civic actors must possess a 'double consciousness' of the content of international law and the circumstances and institutions through which it is enforced, as well as the local or national context in which international norms find expression (Merry 2006a, 2006b). NGOs are situated at a place where they can be brokers or 'translators' of human rights and social justice claims: a bridge between the human rights world, activists, and migrants (Merry 2006a, 2006b).

15.3 Migrant NGOs in Chile: From Service Providers to Potential Advocates

The vulnerability characterizing most labour migration means it is decisive that organizations lobby for their interests, considering that migrants have limited structures of representation. In this section, we will examine the role migrant NGOs have played as civic actors and in the challenging of social, cultural, legal, and political contexts in which they operate. In the case of Chile, migrant organizations have not taken a strong advocacy role, and services provided tend to be specific and uncoordinated with other organizations or services. Some of these organizations are sponsored by the Catholic Church and function as shelters for recently arrived migrants as well as placement agencies for domestic service work. Some are affiliated to universities in Santiago and provide basic legal and psychological services. There are also organizations that focus on the 'cultural integration' of Peruvian migrants, and a few other organizations, born out of the political exile of Peruvians under former

president Fujimori, which provide legal and financial assistance to the community.

We suggest that these organizations are limited by structural and organizational constraints to become agents of social justice for migrants, and especially women migrants, in Chile. Some of these barriers are institutionally based, while others are outcomes of an insufficient normative framework (political, social, and juridical), precluding the development of an active role by civic society agents. Organizational and normative constraints compel NGOs' tactical or reactive approach to social demands, which in turn impedes the capitalization of NGOs' achievements; the accumulation of institutional knowledge; and the establishment of NGOs as relevant actors in the promotion of migrants' rights.

New forms of citizen participation are, no doubt, promoted by Chilean civil society organizations. Their work in providing immigrants with basic tools to navigate and understand novel structures, institutions, and experiences in a receiving society that is often hostile reveals an understanding of their potential role as advocates, grounded in deep beliefs in humans' right to have rights. However, Chilean organizations have not been able to represent migrants' interests and promote their full access to social and political rights and have rather targeted migrant women in their reproductive role, focusing on the provision of necessary though unrelated services insufficient to broaden the sense of belonging and entitlement in the new society. Certainly, the provision of services is fundamental on immigrants' arrival in Chile; however, organizations fall short in their support of needs emerging along a wider trajectory, and often fail to incorporate the knowledge and empowerment migrants are likely to accumulate over time.

In addition, a lack of understanding of migration as a process that is also transnational has limited services to migrants' arrival, in some ways naturalizing conditions that may not reflect migrants' needs over time. In our research into organizations in Santiago, we found that most pay sole attention to individual and care-related needs, rather than taking on an advocacy role in demanding the advancement of collective rights. Perhaps a more important form of naturalization of immigrants is organizations' unchallenged reproduction of the labour segregation of Peruvian migrants in Chile. Migrant civil society organizations in Chile tend to foster the inclusion of Peruvian migrants, especially women, in their gendered role. Many provide services tailored to women as the fam-

ily care-taker, and workshops to prepare them for domestic work (Mora/Piper 2011).

We have argued elsewhere (Mora/Piper 2011) that migrants differ in the relevance they attribute to rights, and that their evaluation shifts with their migratory experience and with their acquired capital (social and cultural), widening the scope of rights claims as these features increase. Hence, migrants' involvement with NGOs is limited, partly because their notions of rights are tied to improving their conditions of employment, using NGOs' legal services, or securing access to medical attention and education for their children. This does not, however, mean that organizations are silent on the collective harnessing of rights; rather their work is just beginning to focus on migrants' access to legal information as well as to information on housing, employment, and educational rights. Nevertheless, the dominant perspective that has resulted is one that naturalizes the positioning of Peruvian migrants, and of women in particular. Consequently the promotion of rights has translated mostly into information workshops on labour law and the filing of migrants' visa applications, or on the know-how of domestic service, reinforcing the low status of migrant women.

15.4 Chilean NGOs' Possibilities for Agency

As mentioned, many migrant organizations have emerged in the last decade in Santiago, a number of them sponsored by the Catholic Church, others under the auspices of universities, such as legal aid and psychological clinics, and a few volunteer-based political and cultural organizations. However, there are a number of barriers preventing a strategic approach to advocacy, limiting the development of practices that would allow civic agents to consolidate a sphere of action and to capitalize on their achievements. The first stumbling block for NGOs is the absence of continuous funding. The majority of these organizations rely exclusively on volunteers and short-term funds. The consequences of this financial uncertainty are negative and widely felt, ranging from charging migrants for services to employee and volunteer rotation. The effects of this unmanaged risk prevent the accumulation of organizational knowledge and, in the long run, the achievement of long-term goals.

A second issue, arising from the above, is that Chilean organizations tend to offer only services requested by migrants. Hence, their goals are defined in

a reactive fashion, narrowly limited to the particular demands for services made by migrants. Most do not include a questioning of the denial of citizenship status to migrants, but rather naturalize the restrictive legal, institutional, and structural limits of the Chilean state, where 'help' is provided to 'aliens'. The networks established among NGOs are scarce too, and for this reason they are rarely able to capture an agenda beyond pressing demands to incorporate planning for broader citizenship and rights claims.

But perhaps the most compelling barrier faced by civil society organizations is the rigid legal framework of the Chilean nation-state. Current immigration law dates back to the dictatorship the country endured from 1973 until 1990. The focus of the national juridical regime is on national security threatened by migration, rather than on taking into account the reality of increasing migration flows and the need for recognition of migrants' rights. NGOs have worked under this normative framework with its limited focus on assimilation rather than fostering an understanding of migratory flows as part of an all-encompassing transnational dynamic.

Given that many barriers to advocacy emerge from nationally based structural constraints, including a migration law that cannot address citizenship and rights, it is only opposition by international regimes that can open the possibilities for a recognition of migrants' rights and for NGOs' legitimation as advocates. The capacity of civic actors to promote and sometimes impose state accountability for meeting national and international legal obligations has been shaped by the introduction of human rights instruments at the international level. By extension, the legal scope for advocating individual and group rights at the national level has been enhanced. Treaty-based rights are not only directly enforceable through a relevant international treaty body or international tribunal, but also through a state's national court system. To advocate migrants' rights in Chile by way of legal—and social—mobilization would represent a significant departure from their current service orientation.

15.5 Conclusions

Dignity and social esteem are integral parts of social justice that often elude Peruvian migrants in Chile, whose share in the distribution of social benefits is often exiguous due to their lower status in Chilean hierarchies of gender, class, and the racial othering taking place in day-to-day interactions, as well as by Chilean

institutions. Peruvian migrants' life chances are diminished by gender roles and stereotypes. Peruvian women tend to show a circular pattern of migration when care at origin is involved, affecting their labour trajectory and benefits. Gender stereotypes also direct migrants into a highly segregated labour market, where 'domestic servant' and 'Peruvian immigrant' are becoming symbolically interchangeable. The intersection of migrants' class and gender, and their perception as a racial other – elaborated on the basis of national origin – also contribute to migrants' lack of recognition, and hence, of social justice in Chile. This is why NGOs are central to the promotion of social respect of migrants.

NGOs' potential to advocate for migrants' rights in Chile through legal and social mobilization would represent a significant departure from their current service orientation. Advocacy is a confrontational expression of civic agency that is, generally speaking, more limited in scope than cooperative interactions, such as helping the government cope with implementation challenges, but also potentially more effective in widening the understanding of who counts as a subject of rights (Fraser 2003). NGOs are best positioned to contribute to an effective transnational public sphere that would permit the demand of rights within and beyond the nation-state (Fraser 2003). However, in the case of Chilean NGOs, organizational barriers – such as limited funding, short-term goals and activities, and the absence of networks – and structural barriers – such as a dated, national-security-inspired legislation – erode the potential of Chilean NGOs to articulate different levels of legal regimes, to advocate for a notion of citizenship that is not territorially based, and to act as brokers or 'translators' between international human rights regimes and local migrants' demands.

Here, we have suggested the need for civic actors' appropriation of a social space that will allow them to anticipate and manoeuvre power relations—the idea of strategy proposed by de Certeau (2000). And planning, as an effect of the accumulation of NGOs' knowledge and observation, is preceded by a consciousness of the field, its possibilities, and the actors and positions involved. Only then will Chilean NGOs be able to challenge narrowly defined notions of membership and entitlement, especially given the breath of migratory flows and the potential for legitimation in international regimes. For this, civic actors must also understand the potential to mobilize migrants' rights in Chile. They have an inherent *capacity* to hold states accountable to their national and inter-

national legal obligations through legal and social mobilization strategies, and civic actors can fulfil a central role in the *translation* of international rules in local legal contexts.

Our research shows that while Peruvian migrants do use NGOs' services at different times, they mostly rely on informal networks and sources of knowledge,

which suggests that the limits to organizations' advocacy have indeed prevented this role beyond basic assistance to migrants. Civic actors can be a powerful force in the advancement of migrants' rights in Chile, but the necessary conscious recognition of these possibilities is contingent upon their own strategic, rather than reactive, positioning.

References

- Abel, Richard, 1995: *Politics By Other Means: Law in the Struggle Against Apartheid, 1980-1994* (New York: Routledge).
- Barber, Pauline Gardiner, 2006: "Locating Gendered Subjects in Vocabularies of Citizenship", in: Tastsoglou, Evangelia; Dobrowolsky, Alexandria (Eds.) *Women, Migration and Citizenship* (Aldershot, Ashgate): 61-84.
- Basok, Tanya, 2004: "Post-national Citizenship, Social Exclusion and Migrants Rights: Mexican Seasonal Workers in Canada", in: *Citizenship Studies*, 8, 1: 47-64.
- Battistella, Graziano, 1993: "The Human Rights of Migrant Workers: Agenda for NGOs", in: *International Migration Review*, 27, 1: 191-201.
- Committee on Migrant Workers, 2011: "Concluding Observations", Heard at the 15th Session, 12-23 September 2011, CMW/C/CHL/CO/1.
- Convention on the Elimination of All Forms of Racial Discrimination, 1965: Passed by the UN General Assembly on 21 December 1965, in: *UN Treaty Series*, 660: 195.
- Convention on the Rights of the Child, 1989: Passed by the UN General Assembly on 20 November 1989, *UN Treaty Series*, 1577: 3.
- Cornelisse, Galina, 2010: *Immigration detention and human rights: rethinking territorial Sovereignty* (Leiden: Martinus Nijhoff).
- De Certeau, Michel, 2000: *La Invención de lo Cotidiano: I. Artes de Hacer* (Mexico City: Universidad Iberoamericana).
- Fraser, Nancy, 2003: "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation", in: Fraser, Nancy and Honneth, Axel (Eds.) *Redistribution or Recognition: A Political - Philosophical Exchange* (London: Verso): 7-109.
- Fraser, Nancy, 2009: "Who Counts? Dilemmas of Justice in a Postwestphalian World", in: *Antipode*, 41: 281-297.
- Halfmann, Jost, 1998: "Citizenship Universalism, Migration and the Risks of Exclusion", in: *The British Journal of Sociology*, 49, 4: 513-533.
- Hertogh, Marc, 2009: *Living Law: Reconsidering Eugen Ehrlich* (Oxford: Hart).
- Handmaker, Jeff, 2009: *Advocating for Accountability: Civic-state Interactions to Protect Refugees in South Africa* (Antwerp: Intersentia).
- Handmaker, Jeff, 2011: "State security and the mantra of irregular migration", Paper for the Conference on Irrelevant, Advisors or Decision-Makers? The Role of 'Experts' in International Decision-Making, Rotterdam, 24-26 June.
- Ignatieff, Michael, 1999: *Whose Universal Values? The Crisis in Human Rights* (Amsterdam: Stichting Praemium Erasmianum).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990: Passed by the UN General Assembly on 18 December 1990, A/RES/45/158.
- Klaaren, Jonathan; Dugard, Jackie; Handmaker, Jeff (Eds.), 2011: *South African Journal on Human Rights* (Special Issue on Public Interest Litigation), 27, 1.
- Korey, William (Ed.), 2003: *NGOs and the Universal Declaration of Human Rights: 'a curious grapevine'* (New York; Basingstoke: Palgrave Macmillan).
- Martinez Pizarro, Jorge (Ed.), 2011: *Migración internacional en América Latina y el Caribe Nuevas tendencias, nuevos enfoques* (Santiago de Chile: CEPAL).
- Menjívar, Cecilia, 2006: "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States", in: *American Journal of Sociology*, 111, 4: 999-1037.
- Merry, Sally Engle, 2006a: "Transnational Human Rights and Local Activism: Mapping the Middle", in: *American Anthropologist*, 108, 1: 38-51.
- Merry, Sally Engle, 2006b: *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press).
- Mora, Claudia, 2008: "The Peruvian community in Chile as a response to discrimination and exclusion", in: *Peace Review*, 20, 3: 339-347.
- Mora, Claudia, 2009: "Estratificación Social y Migración Intrarregional: Algunas Caracterizaciones de la Experiencia Migratoria en Latinoamérica", in: *Revista Univesum*, 24, 1: 128-143.
- Mora, Claudia, 2011: "Global Inequalities - Local Hierarchies. Peruvian Migrants' Labour Niches and Occupational Mobility in Chile", in: Boike Rehbein, (Ed.) *Globalization and Inequality in Emerging Societies* (New York: Palgrave Macmillan): 256-269.
- Mora, Claudia and Piper, Nicola, 2011 "Notions of Rights and Entitlements Among Peruvian Female Workers in Chile", in: *Diversities*, 13, 1: 5-18.
- Nakano Glenn, Evelyn, 2011: "Constructing Citizenship: Exclusion, Subordination, and Resistance", in: *American Sociological Review*, 76, 1: 1-24.
- Ong, Aihwa, 2006: *Experiments with Freedom: Milieus of the Human* (Oxford: Oxford University Press).

- Risse, Thomas; Ropp, Stephen; Sikink, Kathryn, 1999: *The Power Of Human Rights: International Norms and Domestic Change* (New York: Cambridge University Press).
- Sassen, Saskia, 1998: *Globalization and Its Discontents: Essays on the New Mobility of People and Money* (New York: New Press).
- Satterthwaite, Margaret, 2005: "Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers", in: *Yale Human Rights and Development Law Journal*, 8: 1-66.
- Soysal, Yasemin, 1997: "Changing Parameters of Citizenship and Claims-making: Organized Islam in European Public Spheres", in: *Theory and Society*, 26: 509-527.
- Universal Declaration of Human Rights, 1948: Passed by the UN General Assembly on 10 December 1948, 217 A (III).

Open Access. This chapter is distributed under the terms of the Creative Commons Attribution Non-commercial License, which permits any noncommercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited.