
SOCIAL AND ECONOMIC RIGHTS OF AFGHAN MIGRANT WORKERS IN IRAN AND MEXICAN MIGRANT WORKERS IN THE UNITED STATES: A COMPARATIVE STUDY

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INTRODUCTION

Throughout the history, people moved within regions or from one region to another within their own country, in part for economic, political, humanitarian and other reasons. For years migration has created social, economical and political challenges throughout the international community and has played a key role in reshaping our

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current world. A majority of those who migrant do so for economic reasons; seeking a better standard of life and opportunities for their families and themselves.

With the International Labor Organization placing the number of migrant workers world-wide at approximately 94 million¹, it is important more than ever to ensure the protection of this vulnerable group's rights. Migrants, often negatively classified as non-citizens, have frequently been the victims of discriminatory government measures which have directly contributed to the violation of fundamental human rights and inadequate immigration policies and practices. The rights of migrant workers can be classified into four categories: human rights, consular access, human trafficking and migrant smuggling, and other areas regulated by international agreements, for example, labor migration or irregular migration².

The US and Iran are amongst the top ten receiving countries of migrants in the World. Hence in this paper we examine the situation of Mexican migrant workers in the US and Afghan migrant workers in Iran. We have found many similarities and differences between these two host countries. On the one hand, the US has a long history of immigration from the first Spanish and European settlers to arrive on its shores to the waves of the immigration from Europe in the 19th century to immigration in the present day. US migration law dates back to over a century and is known as a world leader in accepting and integrating migrants. During different periods in US history the US has used Mexican migrant workers to fill the gaps of their labor force, this policy still continues till today. In light of this, we have found US migrant laws to be at times discriminatory and in violation of migrant's basic human rights and in contrary to the United States' own federal laws. On the other hand, immigration to Iran, most notably by Afghans, can be traced back to at least the end of the 19th and early 20th century with the migration of Shia Hazaras, an ethnic and religious

minority resulting in the rise of Sunni Pashtuns in Afghanistan.

In Chapter One, we take a closer look at both countries migration laws in regards to migrant workers economic rights. While in Chapter Three, labor and employment rights of Afghan migrant workers in Iran and Mexican migrant workers in the US are discussed, in Chapter Four, social rights of Afghan migrant workers in Iran and Mexican migrant workers in the US are discussed along with freedom of movement. It is important to emphasize that the discussion on the definition of migrant workers, the history of the Afghan and Mexican migrant workers in Iran and the United States respectively as well as early migrant legislation, policies and management in these two countries are out of the subject of this article.

CHAPTER ONE: ECONOMIC RIGHTS OF AFGHAN MIGRANT WORKERS IN IRAN AND MEXICAN MIGRANT WORKERS IN THE UNITED STATES

Economic rights similar to all other human rights also apply to migrant workers. Migrant workers are entitled to resources necessary for leading an adequate standard of life. To achieve this they must have equal access to work in suitable work conditions and receive a favorable remuneration that will help them and their families live in dignity and free from need. It is the inherent instinct of every human being to provide for themselves and their families which can be best achieved through employment.

Employment with a reasonable remuneration is not enough to allow for the enjoyment of an adequate standard of life, rather a migrant worker must be able to dispose of his wealth in anyway necessary to properly secure this right.

On another note, migrant workers, especially skilled or highly educated workers, should be able to purchase property for business,

free from discrimination. Self-employment allows migrant workers a better opportunity to provide a standard level of life for themselves and their families.

In freely disposing of their wealth and resources, migrant workers should be allowed to financial institution to facilitate money remittances to their families residing outside of the country of employment.

I. PROPERTY RIGHTS OF MIGRANT WORKERS

In defining property, Black's Law Dictionary states that "[i]n the strict legal sense, [property is] an aggregate of rights which are guaranteed and protected by the government" and that the term property "includes not only ownership and possession but also the right of use and enjoyment for lawful purposes."³

It is the belief of some that property rights too often take precedence over human rights, with the result that people are treated unequally and have unequal opportunities.⁴ Migrant workers similar to native of host countries should be allowed to secure housing and buildings for business either by purchasing or renting them.

A. AFGHANS MIGRANT WORKERS PROPERTY RIGHTS IN IRAN

In general all foreign citizens in Iran are subject to the various laws and regulations of Iran, except in cases where there is clear legal exclusion.⁵ Immoveable property of foreign nationals are also subject to Iranian law⁶ and are legally protected against any infringement on their property and established rights and are also entitled to refer to the courts⁷ and seek justice, or a redress of grievances.

However, the policy of Iran is to prevent the economic dominance of a foreigner. Therefore, it has laid down certain restrictions in foreign ownership of property with the most important being acquisition of permission of the government. Foreign nationals may

own or lease real property but are restricted to the acquisition of property for the sole purposes of residency, business or industrial use and may not own agricultural lands. Although it should be noted, this provision is reciprocal⁸ and will not be enforced unless the country of the foreigner in question has similar laws concerning foreign ownership of property.

A further restriction in foreign ownership of real property in Iran is a residency condition. A foreign citizen is required to be a legal resident in Iran in order to own property however; exceptions may be made to foreigners who travel regularly to Iran for tourism and seasonal recreation.⁹ In addition, this residency conditions limits the duration of ownership of a foreigner. Should the foreign national decide to terminate their residency in Iran, they are obliged to transfer their property, within six months of their departure to an Iranian citizen or to another foreigner possessing a license for ownership; otherwise the local registration office will sell the property by adjudication.

In this official transactions, Afghans informally purchase homes and instead of registering their transaction with the Government Property Registration Office and receiving a deed of ownership (deed). Afghan nationals negotiate with the owner of the property and obtain a deed of title (*Gholnamei*) for the property. This type of transaction does not include material security and are entered into in good faith.

B. MEXICAN MIGRANT WORKERS PROPERTY RIGHTS IN THE UNITED STATES

The Fifth Amendment of the United States Constitution states that, “No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

There are no regulations that prevent a non-resident and /or non-citizen from holding property in the United States, also the US places no restrictions on foreigners concerning the ownership of real estate, except where national security is at stake.¹⁰

It is not uncommon for Mexican migrant workers to own homes in the US, at times they do so with the help of US bank home loans.

However, a foreigner's right to own property may be limited by various federal and state statues that restrict the ability of a foreigner to acquire or dispose of certain real estate or to make testamentary dispositions to foreigners from countries that prohibit similar dispositions to United States citizens.¹¹

Ownership of property in the United States is not free and is accompanied with certain responsibilities, for example estate taxes and gift taxes.¹²

Usually, the first 60,000\$ in assets owned by a non-domiciliary will exempt from United States estate taxes.¹³ However, if the decedent at his death passes his assets¹⁴ directly or into a qualified trust or by other arrangement to a surviving spouse, who is a United States citizen, the United States will not impose its estate tax on such assets at the death of the first spouse. If the surviving spouse is not a United States citizen, the decedent can achieve the same result by transferring his assets during his lifetime or at his death to as a qualified domestic trust¹⁵ for the benefit of surviving spouse.

The United States taxes gifts of property from one individual to another.¹⁶ Migrant worker domiciliaries are taxed on gifts of all property whenever situated but similar to estate tax law, non-domiciliaries are only taxed on gifts of United States situs property.¹⁷ However, there are exceptions and individuals can make certain gifts without incurring gift taxes.

II. TRADE RIGHTS OF MIGRANT WORKERS

Migrant workers do not only occupy jobs but when allowed and capable they create jobs in the country of employment,. They help to contribute to the economic growth of the host country by bring capital and skills to a number of industries and occupations.

Trade rights help to guarantee migrant workers a better opportunity for employment with suitable work conditions and a favorable income to support a dignified level of life for themselves and their families. Though most migrant workers are low skilled they should not be restricted to low level occupations and should be allowed equal opportunities in self-employment and high level occupations.

A. AFGHAN MIGRANT WORKERS TRADE RIGHTS IN IRAN

Article 81 of Iran's constitution forbids foreign nationals from opening commercial companies or institutes in the fields of industry, agriculture, mines and services.¹⁸ However, foreign nationals are allowed to launch a business or an industry in Iran, with special permission from the Iranian government for the purpose of foreign investment in Iran.

In order for a foreign national to attain a work visa, their employer must request a work permit for them; one of the conditions in issuing a work permit is the lack of expertise among Iranian nationals.¹⁹

Iran has two types of laws concerning foreign companies. The first are laws that address issues concerning foreign companies directly such as the Foreign Investment Promotion and Protection Act (FIPPA)²⁰ and the second are general laws of which certain articles or by-laws address foreign companies, for instance the Taxation Law and the Labor Law.

Under FIPPA, investment must result in economic growth; promote technology, quality of products, increase employment

opportunities and exports, and entry into international markets. Foreign investment should not involve the granting of any special rights resulting into a monopoly and the value ratio of goods and services produced by the aggregate of foreign investments; also they should not exceed 25 percent in each economic sector and 35 percent in each economic branch.²¹All foreigners doing business in Iran or deriving an income from sources in Iran are subject to taxation.

According to Iran's Investment and Economical and Technology Assistance Statistics, between 1993 and 2008, 55 projects with the total amount of \$44,211 were carried out by Afghan nationals. Therefore, should Afghan nationals decide to enter the Iranian business market, they will be forced to do so through foreign investment, in light of Iran's Constitutions restriction on foreign nationals opening commercial companies or institutes. It should be noted that investment of a foreign national does not entitle them to permanent residency or Iranian citizenship. These individuals residency is subject to their work visa.

B. MEXICAN MIGRANT WORKERS TRADE RIGHTS IN THE UNITED STATES

There are no restrictions to foreigners owning or running businesses in the United States. In 1990, the United States government created an immigration program designed to attract people who want to invest in America in return for residency. This law awards a permanent resident visa to the immigrant investor and each member of his or her immediate family through the US Business Visas²². Most Mexican migrant workers have low educational levels and consequently normally work in the agriculture and domestic service fields and are recipients of H-2 guest worker visas attained through the request of an American employer.

Business ownership patterns among Mexican immigrants have

mostly been ignored. Two main factors for this neglect are noticeable. First, Mexican migrants have low education levels, deemed too low for a substantial impact on business ownership. Second, census data show very low rates of self employment among Mexicans relative to other immigrants. Hence, the presumption is that rates of business ownership are low and, by implication, that the potential for entrepreneurship is also low.

However, Mexican immigrants find alternative ways of for business ownership, including informal employment and self-employment. Mexican-Americans contribute an estimated \$283 million in federal and state taxes.²³

III. MONETARY RIGHTS OF MIGRANT WORKERS

It is the right of every migrant worker to pursue economic development. They are free to dispose of their wealth and resources as they please and have the right to enjoyment of all economic rights. In achieving the right of a standard level of living for migrant workers and their families they should also have access to financial institutes.

A. TRANSFER OF EARNING'S

Remittances, the portion of international migrant workers earnings sent back from the country of employment to the country of origin, play a central role in the economies of many sending countries and have been on top of policy maker's agenda, focusing on their positive and negative impact.

Remittances are generated by some 150 million migrants who send money home regularly, typically between \$100 and \$300 at a time. According to the Organization for Economic Co-operation and Development this figure is more than official development assistance, donor nations provided almost \$104 billion in aid to developing countries last year. In addition, migrant remittances also surpassed

foreign direct investment in developing countries, which last year totaled around \$167 billion, according to the Institute of International Finance.²⁴

Many migrant workers leave their families behind in their own country while they seek better work opportunities in other countries. Through remittances migrant workers are able to help sustain their families back home, However, what is saved are often hidden in homes, in cooking pots or under mattresses, rather than put to work in financial institutions, constituting a major lost opportunity for local economic development.

Hence, the IFAD is focusing on channeling this money so that it can contribute to prosperity in rural areas; one of its priorities is to cut transaction costs and link remittances to other financial services such as savings, investments and loans. As a result of increased competition, transaction costs have fallen sharply for money transfers to major urban areas in the mentioned region.²⁵

1. REMITTANCE RIGHTS OF AFGHAN MIGRANT WORKERS IN IRAN

All legal foreign residents in Iran may use Iranian bank facilities for remitting money to their home countries. In such a formal remittance system such transactions are governed by laws and regulations and are frequently expensive.

Another requirement for completing a remittance is that the person receiving the money in country of origin must have a bank account. However, opening a bank account in Afghanistan is difficult and uncommon, as the banks there do not provide complete bank services. Thus, even if a migrant worker's relative has a bank account in Afghanistan they will still opt for the informal system of money remittance as the formal system is expensive and time consuming. Consequently, informal remittance services are popular among migrant workers and small businessmen who have no confidence in

commercial banks, or for whom commercial services are too expensive and/or seem unreliable.

Afghan migrant workers who reside in Iran with their families normally tend to remit little money to Afghanistan; they spend most of their income on daily household expenses, and infrequently, if at all, remit money back to relatives or other household members in Afghanistan.

Savings sent home by migrants constitute a major source of funds for the basic needs of relatives, either by directly enhancing their purchasing power, or by covering debts. Afghan migrant workers who normally send remittances home do so two to six times annually, often to the head of the household.²⁶

For Afghan migrant workers in Iran money exchange dealers, provide a reliable, convenient²⁷ and cost-effective²⁸ system of making international and domestic payments. Often the dealer and counterpart have a social, familial, or ethnic link, or there are such links somewhere along the chain between them. Along that chain various remittance orders can offset one another so that relatively small balances have to be settled at the end the process.²⁹

Before the Soviet invasion, Afghan migrants coming from Iran were said to carry the money themselves (in secret pockets, through friends or invested in goods), while during the almost 25 years of conflict, smugglers transferred some of the remittances, charging up to 10 percent commission.³⁰

Another form of remittance used by Afghan migrants in Iran is the *Sara System*, unlike the informal method of remittance of the *hawala*, the *Sara System*³¹ is actually an informal bank system and pretty much operates the same way as the *Hawala*.

2. REMITTANCE RIGHTS OF MEXICAN MIGRANT WORKERS IN THE UNITED STATES

Remitting money to Mexico has gotten easier over the past years for all foreign nationals, legal and illegal, in the United States. Beginning in December 2001 some 15 banking institutions with branches from Los Angeles to Delaware agreed to allow migrants from Mexico, whether in the country legally or not, to use identification cards they receive from Mexican consulates³² to open bank accounts.

Millions of monthly money order, averaging 200\$ each, generate more than 9.3\$ billion a year for Mexico. But each time migrants go to the money transfer counter to send cash to their parents and siblings, the workers fortify a multibillion-dollar network that has made Mexico one of the leading recipients of migrant remittances in the world. Quick electronic transactions turn the workers, who barely make enough money to support themselves in the United States, into breadwinners³³ for their nations.³⁴

Remittances are Mexico's third-largest source of income, after oil exports and tourism. In much of rural Mexico remittances exceed local and state budgets. Mexico's president, Vicente Fox, has hailed them as "national heroes".

B. BANK ACCOUNTS

1. AFGHAN MIGRANT WORKERS RIGHT TO OPEN A BANK ACCOUNT IN IRAN

In theory opening a bank account for a foreigner is quite simple; however in practice it can be frustrating due to lack of knowledge and expertise of Iranian bank tellers.³⁵ A migrant worker³⁶ must provide documentation to show that they are both legally residing and working in the country, their passport and work permit satisfy this requirement.

The difficulties and lack of trust that Afghan workers have towards Iranian banks cause them not to open bank accounts in Iran.

2. MEXICAN MIGRANT WORKERS RIGHT TO OPEN A BANK ACCOUNT IN UNITED STATES

It is quite simple to open a bank account in the United States, all that is required are the following documentations: a Social Security Card³⁷ or tax ID number³⁸, passport or other government-issued ID, driver's license or other ID or official correspondence with the individuals address on it. In 2001 US banks were first permitted by law to use foreign consular identification cards³⁹ to allow migrant workers to open bank accounts.⁴⁰

Many Mexican in the United States are unaccustomed to having bank accounts. US banks, partnered with Mexican banks, are beginning to expand banking access to the poor and rural populations of Mexico.

Data from Mexican Migration Project also point to factors that influence a Mexican migrant from not opening a bank account. Migrants who have been in the United States for a short time believe that they will be returning to their home country soon and feel that a bank account is unnecessary. Migrants with limited exposure to banks are often suspicious of banks pricing and feel that banks may take advantage of them. By addressing the factors that make opening an account less likely, banks will be better able to attract this growing market.

The National Labor Relations Act (NRLA) of 1935⁴¹ and the Fair Labor Standards Act (FLSA) of 1938⁴² imposed limits on the exploitation of labor. The NRLA guarantees workers the right to organize and join labor unions while the FLSA sets minimum standards for wages, overtime provisions and child labor laws.

CHAPTER TWO: LABOR AND EMPLOYMENT RIGHTS OF AFGHAN MIGRANTS IN IRAN AND MEXICAN IN THE UNITED STATES

Leaving one's own country to work abroad is normally accompanied with difficulties. Better opportunities and standard of living may be the result of migration to another country, but undeniably it may also involve obstacles and hardships. It is not enough to have a right to a reasonable standard of living; rather the migrant worker must have the means and opportunity to achieve this right. The best way is the right to work; it provides everyone the opportunity to earn a living wage in a safe work environment, and also provides for the freedom to organize and bargain collectively,⁴³ which prevents an employee who is being treated badly or being too little to leave a job and move to a different employer, thereby giving all employers an incentive to pay fair wages and treat workers decently.

The migration for Employment Convention (Revised), 1949 (No. 97)⁴⁴ and the accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86)⁴⁵ emphasis on medical services, equality of treatment in respect of remuneration and membership of trade unions, the provision of free public employment services and supervision of employers' or private agencies' recruitment, introduction and placement operation.

I. EQUAL OPPORTUNITY AND WORK DISCRIMINATION FOR MIGRANT WORKERS

Migrant workers often experience discrimination collectively and individually, and may be subject to hostility and exploitation. The magnitude of problems associated with migration has resulted in it increasingly becoming a subject of concern for many governments. Such perception sometimes triggers reactions resulting in the mistreatment of migrant workers and in some cases results in the

denial of their human rights.

In light of the standards established in national and international legal instruments for the protection of migrant workers right, the number of incidents involving violations of the rights of migrant workers to just conditions of work continues to be a cause for concern.⁴⁶

A. EQUAL OPPORTUNITY AND WORK DISCRIMINATION FOR AFGHAN MIGRANT WORKERS IN IRAN

Within the framework of the provisions and procedure stipulated in the Labor Law of Iran⁴⁷ foreign citizens may be employed in Iran. If Iranian citizens lack the necessary expertise for a certain occupation a qualified foreign national may be issued a work permit but under the condition that the expertise of the foreign national will be used for training of and later replacement by Iranian individuals.

Once employed in Iran, foreign workers are subject to the various laws and regulations of the Islamic Republic of Iran, except in cases where there is a clear legal exclusion. Moreover, the only Article of Iran's Labor Code that refers to work discrimination is Section 38⁴⁸ which specifically refers only to discrimination in paying workers wages, although this section fails to mention citizenship as a form of discrimination in payment of salaries.

In addition, regarding discrimination, Section 6 of Iran's Labor Law refers to the Constitution of Iran, specifically sections 43(4), 2(6) and 19⁴⁹, 20⁵⁰ and 28, for the prohibition to force a person to perform work against his will or to exploit others. Section 6 also guarantees equal rights, equal protection of the law, and the right to freely choose an occupation, provided that it is not inconsistent with Islamic Republic and does not violate other rights. However, Section 6 of Iran's Labor Code specifically names Iranian as the subject of these rights and does not consider foreign nationals.⁵¹

B. EQUAL OPPORTUNITY AND WORK DISCRIMINATION FOR MEXICAN MIGRANT WORKERS IN THE UNITED STATES

United States law has several laws and regulations⁵² protecting workers from work discriminating on the basis of national origin; as well race, color, religion and sex, and they apply to all workers in the United States. Also, the Immigration Reform and Control Act (IRCA) states that it is not permissible to discriminate against anyone in the workplace. However, the extent of this ban depends on the number of employees.⁵³

In general, workers in the United States rely on a combination of government regulations and collective bargaining to ensure decent treatment. With this combination whenever an employee is not being treated fairly or is being paid too little they will leave the job for one with better conditions. These laws ensure a minimum wage and overtime premium and prohibit discrimination on the basis of race, sex and other factors; and protect health and safety.⁵⁴

Moreover, many of the occupations or industries in which migrants work are not covered by government regulations protecting minimum wage or the right to organize. Agriculture and domestic work, for example, are either excluded from protection or treated differently. Many migrant workers, on the other hand, find themselves excluded because they work for subcontractors especially in janitorial and textile work or are categorized as independent contractors, especially domestic and home care workers. Language barriers, lack of knowledge about rights, and cultural power imbalances make it difficult for immigrant workers to insist on being treated fairly.⁵⁵

In light of the mentioned laws protecting migrant workers, migrant workers rights are not completely guaranteed under US laws. The most discriminative immigration laws are the guest worker programs, H-2-A agriculture work and H-2-B non-agricultural work⁵⁶, under which employers can import unskilled labor for temporary or

seasonal work lasting less than a year. The H-2 visas used by guest-workers are for individuals only and generally do not permit them to bring their families to the United States. This means that guest workers are separated from their families, including their minor children, for periods often lasting nearly a year with no hope of reunification in the country of employment.

Though the H-2B program was created two decades ago by the Immigration Reform and Control Act (IRCA) of 1986, the US Department of Labor has never legislation regulations enacting substantive labor protections for these workers. IRCA, in fact, does not explicitly require such regulatory safeguards⁵⁷, providing only the guidance that the importation of H-2B workers must not adversely affect US workers wages and working conditions.⁵⁸

II. MIGRANT WORKERS RIGHT TO WORK AND RECEIVE WAGES

The right to work⁵⁹ is the concept that people have an inherent right to work, and may not be prevented from doing so. Migrant workers are ensured the human right to work and receive wages that contribute to an adequate standard of living amongst many of their rights. The enjoyment of just and favorable conditions of work which ensure, in particular fair wages and equal remuneration for work of equal value without the distinction of any kind and a decent living for themselves, is the inherent right of every worker, migrant workers included.

A. AFGHAN MIGRANT WORKERS RIGHT TO WORK AND RECEIVE WAGES IN IRAN

Afghan migrant workers have the right to work in Iran, so long as they possess a valid work permit which is only attainable by the petition of an Iranian employer. They may continue to work so long as they have a work contract with that employer and are not allowed to work for

another employer as doing so is in violation of their work permit and may lead to their expulsion from the country. In case of cancellation or termination of a workers employment contract they are allowed a reasonable amount of time to seek work with another Iranian employer and in such case a new work permit will be issued.⁶⁰ Every migrant worker possess the right to work so long as they have a valid work permit but attainment of such a permit is the difficult part for an Afghan migrant worker.

Everyone who works in Iran must receive a salary, Iran's Labor Law has mentioned three methods in which workers salary may be calculated⁶¹ and has also defined a minimum wage rate⁶². Migrant workers salaries may not be below the determined government minimum wage nor may it be determined on the basis of age, gender, race, ethnic origin⁶³ and political and religious convictions.

B. MEXICAN MIGRANT WORKERS RIGHT TO WORK AND RECEIVE WAGES IN THE UNITED STATES

Migrant workers legally in the United States have the right to work and receive a wage for their work. Recently, they were excluded from nearly all major federal labor laws passed during the New Deal⁶⁴ and are not covered by workers compensation laws in many states nor are they entitled to overtime pay under federal law.

Furthermore, it is common for foreign guestworkers who come to the United States under the H-2B program to be cheated out of wages. Guestworkers routinely receive less pay than the law requires. In some industries in which guestworkers account for a great part of their workforce, e.g. seafood processing and forestry, wage-and-hour violations are the common, rather than an exception. Because of their vulnerability, guestworkers are unlikely to complain about these violations, and public wage-and-hour enforcement has minimal practical impact⁶⁵. The average annual income of farm workers is

estimated to be \$11,000; however, this estimate is actually quite high⁶⁶ because it includes higher paid workers, such as crew leaders.

In the contract between the H-2B worker and the employer a minimum hourly wage must be stated, the prevailing wage in recent years is approximately between \$6 an hour to over \$10 an hour, depending on the year and the state. As a result their pay ranges from \$15 to \$30 per bag.⁶⁷ Thus, clearly the substantive wage rates set forth in the H-2 visa programs are illusory and unenforceable. Farm workers⁶⁸, in addition, are not protected by federal law against unfair labor practice when they try to collectively bargain for better wages or working conditions.⁶⁹

III. MIGRANT WORKERS RIGHT TO SAFE AND REASONABLE WORK CONDITIONS

All persons, regardless of their nationality or race are entitled to basic labor protections, including migrant workers who are also entitled to certain human rights and protections specifically linked to their vulnerable status.

The lack of safety regulations, inconsistent employee training regarding hazards and use of personal protection equipment, combine to create a work environment that is fraught with potential for injury.

Some employers force migrant workers to work under conditions that could be compared to a modern day slave labor. Governments need to regulate laws requiring employers to provide workplaces free from seriously recognized hazards and to comply with occupational safety and health standards. They can do this by setting and enforcing workplace safety and health standards and by providing safety and health information, training and assistance to workers and employers.⁷⁰

A. AFGHAN MIGRANT WORKERS RIGHTS TO SAFE AND REASONABLE WORK CONDITIONS IN IRAN

Iranian law regarding the regulations for the issuance' of a work permit to a foreign national mainly allows for an opportunity of work in high skilled jobs.

Most low skilled jobs require the use of machinery, high powered equipment and tools which under Iran's Labor Code employers are obliged to have tested and approved at specific government laboratories or centers.⁷¹

In its Labor Code Iran has specific sections concerning the working conditions of women protecting them from performing dangerous, arduous or harmful work or the lifting, manually or without mechanical means, of loads heavier than the authorized maximum.

With regards to health, standards, the Iranian Labor Code has named the Ministry of Health, Therapeutic Care and Medical Training as the authority to set regulations for workplace safety and health, family workshops included.⁷² The Health in the Workplace Division enforces health standards and carries out regular inspections. It also finds harmful factors for the workplace.

B. MEXICAN MIGRANT WORKERS RIGHTS TO SAFE AND REASONABLE WORK CONDITIONS IN THE UNITED STATES

United States law requires employers to provide workplaces free from recognized hazards, to comply with occupational safety and health standards and protect workers by setting and enforcing workplace safety and health standards,⁷³ and by providing safety and health information, training and assistance to all workers and employers.⁷⁴ Workers in the United States are provided the basic protections for a safe and healthful work Place.⁷⁵

Farm work is considered to be second only to mining in the rating

of most hazardous occupations. There is a high exposure to pesticides through topical exposure, inhalation, and ingestion, resulting in the highest rate of toxic chemical injuries of any group in the United States. Farm injuries, exposure to heat and sun, and poor sanitation in the fields are other factors that contribute to the dangers of this work.⁷⁶

Special regulations regarding the protection of agriculture workers in the work place exist in US law.⁷⁷ Detailed field sanitation, employee training and safety protection requirements are outlined in federal guidelines and are subject to inspection.

Current enforcement focuses upon the pay requirements of the act referred to by the acronym WHAT (wages, housing, and transportation). As most often migrant workers are not provided with suitable housing accommodations. They are forced to tolerate overcrowded housing, unclean water, and additional unsanitary conditions. These conditions contribute to an increased risk of accidents, sanitation-related diseases, and infectious diseases.⁷⁸

CHAPTER THREE: SOCIAL RIGHTS OF AFGHAN MIGRANT WORKERS IN IRAN AND MEXICAN MIGRANT WORKERS IN THE UNITED STATES

I. NOTION OF MIGRANT WORKERS SOCIAL RIGHTS

With the increase of international labor mobility the subject of social protection for migrant workers arises. Social rights ensure that all people have some specified standard of living, without discrimination. These rights should relieve poverty and improve access to adequate food, clothing, housing, education, healthcare and other requirements of dignity, equality and security of low income persons and other disadvantaged groups.

Another basic requirement for migrant workers is housing.

Everyone has a right to housing and in light of migrant workers vulnerable situation special attention should be afforded to this right allowing them to facilitate access to a safe, secure, habitable, and affordable home with freedom from forced eviction.⁷⁹ Many migrant workers arrive in the host country with low skills; their productivity in the host country can be increased further through education and training. Thus, the right to education should be viewed as an important element for migrant workers.

Everyone regardless of age or ability to work is guaranteed the means necessary to procure basic needs and services. Social security Should not be limited to nationals of the host country and migrant workers who normally contribute to the system should be included and treated equally.⁸⁰

Protection of the migrant workers family is included in their social rights. Migrant workers should be allowed to enter into consensual marriage with whom they choose free from restrictions. Spouses and children of migrant workers should also be entitled to the same rights as the migrant worker in the host country.

II. MIGRANT WORKERS RIGHTS TO EQUALITY WITH NATIONALS

Historically, non-nationals have enjoyed very little legal protection. The dominant idea has long been that rights were connected to nationality; accordingly, aliens hardly had any rights and used to be protected mainly by diplomatic services of their country of origin.

Migrant workers should be treated equal to the nationals of the host country in respect to remuneration and conditions of work, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract, minimum age, restrictions on work performed at home, etc.⁸¹

Investigations, arrests and detentions are to be carried out in

accordance with established procedures. The migrant workers right to equality with nationals of the State before the courts and tribunals must be respected.

Other areas that migrant workers are entitled to equality with nationals of the State of employment are access to education, vocational guidance and placement services, vocational training, retraining; these opportunities allows for development of their skills and in turn they are able to be more productive in developing the host country. Migrant workers shall enjoy equality of treatment in respect to protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment and access to alternative employment in the event of the loss of work or termination of other remunerated activity.

A. RIGHT TO EQUAL ACCESS TO THE HOST COUNTRY'S JUDICIAL SYSTEM

Migrant workers should have access to the host country's judicial system. This ensures the protection of migrant workers by allowing them the opportunity to seek redress if their rights are violated.

Migrants vulnerability is also increased by the sectors of economic activity In which they are active; they often have the so-called 'three-D' Jobs (dirty, degrading and dangerous) and are also over-represented in marginally viable and sometimes semi legal sectors such as seasonal agricultural work, domestic services and the sex industry, in which the protection of workers is underdeveloped.⁸²

1. AFGHAN MIGRANT WORKERS EQUAL ACCESS TO THE IRANIAN JUDICIAL SYSTEM

Similar to Iranian citizens, foreigners in Iran are also entitled to refer to the courts and seek justice, or a redress of grievances in both civil and criminal cases. Although, foreign nationals have equal access to

courts in Iran, the judicial system is at times time consuming, complicated and expensive for migrant workers, deterring most from pursuing cases.⁸³

2. MEXICAN MIGRANT WORKERS EQUAL ACCESS TO THE UNITED STATES JUDICIAL SYSTEM

Migrant workers are allowed access to US courts similar to natives. Legal assistance for vulnerable groups such as immigrants is crucial. Migrant workers are usually faced with breach of contract, not being paid minimum wage or not getting paid at all, dangerous work conditions and job injuries, unlawful discrimination in housing and employment based on alien age or national origin, disputes over access to public education and other public benefits.

Also access to legal assistance is crucial to the realization of equal employment rights and economic well-being for migrant workers who labor in the United States. The United States system for enforcing these rights is among the most important avenues through which immigrants and non-citizens gain entry into the mainstream of US society. For all workers in the United States, employment fairness is not just a function of the substantive legal rights; rather the key to justice in the workplace is more often whether or not they have any real ability to enforce those employment rights which requires getting assistance from a professional advocate. This makes legal assistance for foreign migrant workers a crucial necessity, because without it, the promise of equal employment right is hollow, even where significant rights may exist in the statute books.⁸⁴

B. EQUAL ACCESS TO EDUCATIONAL AND VOCATIONAL SYSTEMS OF THE HOST COUNTRY

Immigrants often do not arrive at their host country with much, but they do bring their human capital. Since schooling is the most basic

index of their skill, how much education migrants had before they arrive in the host country and how much they were able to add while there are critical questions in determining their eventual economic success or failure.

1. AFGHANS MIGRANT WORKERS RIGHT TO EQUAL ACCESS TO IRAN'S EDUCATIONAL AND VOCATIONAL SYSTEM

Iranian law calls for the establishment of training facilities for the purpose of allowing jobseekers to improve technical skills a productive and continuous way.⁸⁵ Iranian law also encourages training for employed workers by allowing the worker's employment relationship to continue with period of training being counted towards the worker's length of service in every respect.

However, Afghan migrant workers are normally employed in the agriculture and construction sectors and do not normally benefit from these rights, any training that they do receive are informal and do not include training centers.⁸⁶

2. MEXICAN MIGRANT WORKERS RIGHT TO EQUAL ACCESS TO THE UNITED EDUCATIONAL AND VOCATIONAL SYSTEM

Understanding the need to better educate and train migrant workers, the United States has created several public funded programs for this purpose. States are required to ensure that the services provided to Migrant Seasonal from workers (MSFW s)⁸⁷ are other jobseekers. This means that MSFWs should receive all workforce development services, benefits and protections on an equitable and non-discriminatory basis, i.e. career guidance, testing, job development, training, and job referral.

The Special Agricultural Workers (SAW) legalization program provides many farm workers access to literacy education through the amnesty education programs administered through SLIAG (State

Legalization Impact Assistance Grant)⁸⁸One challenge is that migrants must move from one program to the other as they follow the crops, and there is little coordination from one program to another. Exhausted learners, many of whom are unaccustomed to formal schooling, must learn the systems of each new program and often must undergo repetitive assessment and entry procedures.

Chronic barriers to education include lack of transportation to class sites and child care. The transportation problem is especially acute on the east Coast, where workers rely on crew bosses for transportation to work and classes. A camp-based program with mobile teaching units eliminates the need for transportation to community class sites, but such an approach is beyond the resources of many programs. Most in-camp programs instead rely on traveling teachers who bring materials into the camp. Although child care is sometimes organized for classes held away from the camp in community settings, adults attending in-camp classes often bring their children with them.

C. RIGHT TO EQUAL SOCIAL SECURITY BENEFITS

The migrant workers lifestyle requires special provisions with regard to the various branches of social security and services. Social security is of utmost importance for the well-being of migrant workers, their families and communities as a whole. The world community recognizes the right to social security for everyone, including social insurance, through widely accepted international human rights standards⁸⁹.

Unlike native workers, migrant workers often face difficulties with regard to social security coverage and entitlement to benefits. These difficulties are due to a number of factors, such as the principle of territoriality and the principle of nationality. The principle of territory limits the scope of application of social security legislation to

the territory of a country; consequently, its nationals working abroad are not covered by such legislation and therefore are not entitled to benefits. The exclusion of foreigners from coverage or entitlement to benefits in the country of employment is a result of the nationality principle.

Normally governments of host and source countries encourage return migration of temporary migrants for various reasons. After paying contributions to the social security system of the host country for several years, many migrants may be influenced by the potential loss of these contributions in their return decision.

The Migration for Employment (Revised) Convention, 1949 (NO. 97)⁹⁰ and the Migrant Workers (Supplementary Provisions) Convention, 1975 (NO. 143)⁹¹, as well as their accompanying Recommendations, provide a framework for guidance on what should constitute the basic components of a comprehensive labor migration policy, the protection of migrant workers, the development of their potentials and measures to control migration movements.

Most importantly, they call for the adoption of a policy to promote equality of treatment and opportunity between regular status migrants and nationals in employment and occupation in the areas of access to employment, remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes and access to legal proceedings.

1. AFGHANS MIGRANT WORKERS RIGHT TO EQUAL SOCIAL SECURITY BENEFITS IN IRAN

As per social security act of Iran Article 5 foreigners working in Iran enjoy the same advantages resulting from the social security system's provisions in the same manner as Iranian nationals, except in cases where special arrangements have been made in accordance with bilateral or multilateral treaties and agreements between Iran and other

countries.

In Iran's Administrative Regulations Governing Aliens Insurance Provisions alien technicians, staff employees and experts legally working in Iran that are engaged in work in factories⁹² covered by the Social Insurance Act shall be insured with the Organization exactly in the same manner as the Iranian workers.

With regard to a life pension, as per article2, upon presenting their documents aliens will receive the pension as they reside in Iran like other insure At least once every six months the attorney should present a certificate⁹³ indicating that the beneficiary is still alive.

2. MEXICAN AFGHAN MIGRANT WORKERS RIGHT TO EQUAL SOCIAL SECURITY BENEFITS

IN THE UNITED STATES

Social Security (SS) in the United States is a government program that pays monthly benefits to: workers who are disabled, retired, and certain family members of retired, disabled, or deceased workers. Social Security also includes Medicare, a health insurance program for persons 65 and over and certain disabled workers.

Legal foreign workers with valid US work may receive Social Security disability benefits if they qualify. To qualify for disability benefits workers of any age need to have enough Social Security credits and a "severe" physical or mental condition that is expected to keep them from being able to work for one year or more, or that is expected to cause their death.

Supplement Security Income (SSI) is a program that makes monthly payments to people who have low income and few resources. The amount of SSI benefits depends on ones income and the state they reside in. In general, most people who get SSI also qualify for Medicaid, food stamps and other financial assistance.

However, regarding health benefits, few migrant workers have health benefits such as sick leave and medical insurance through their jobs. Although Mexicans make substantial contributions to the US economy, they continue to have some of the worst health outcomes. For example, 1.2 million Mexicans in the United States have been diagnosed with diabetes, and only five percent have employer-sponsored health insurance coverage.

Mexican migrant workers are more likely to work for small employers or in industries that do not offer health insurance coverage to employees. Businesses with less than 25 employees are less likely to offer coverage; thus, these immigrants are less likely to have employer-sponsored health insurance.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) changed the rules for how immigrants can qualify for most publicly-funded programs, including Medicaid.⁹⁴ The new laws made coverage more restrictive, especially for legal immigrants. While ineligible for regular Medicaid coverage, all immigrants' regardless of immigration status may be eligible for emergency Medicaid as long as they meet other Medical eligibility rules. A medical emergency is defined as a medical condition (including labor and delivery) with acute symptoms that could place the patient's health in serious jeopardy, resulting in serious impairment to bodily function or causing serious dysfunction of any bodily organ or part. Medical will pay for the labor and delivery charges of women, regardless of the immigration status of the mother.

In recent years Mexican migrant workers arrive in the United States with H-2 visa. H-2A workers are exempt from US Social Security and Medicare taxes and the employer must provide workers compensation where required by state law or if not required, equivalent insurance at no cost to the workers. Workers compensation insurance pays for the workers doctor and hospital bills, and pays 66.6

percent of the workers 'wages for the time they cannot work, if more than one week is missed due to job injury. If the employer chooses to provide three meals per day to the workers, he may charge the worker (s) a certain amount per day for the meals. The employer also must pay the worker for costs incurred for transportation from the place of recruitment to the place of employment ,provide free transportation between the provided housing and the worksite and provide the tools necessary to perform the job duties, at no cost to the workers, and guarantee employment for at least three-fourths of the workdays of the work contract

However, H-2B workers are subject to social security deductions and payments. In fact, employers are to treatH-2-B employees exactly the same as a regular domestic employee when it relates to social security and other payroll deductions but are not required to provide benefits to their H-2-B workers. Most companies defined" benefits" as hospitalization, vacation, paid sick leave, personal leave, etc..... Although, not required some companies do choose to extend all or some of these benefits to their H-2-B workers.H-2-B employers do not have to provide workmen's compensation insurance, but should consider some type of insurance to provide coverage for H-2-B workers in case they are injured on the job. Most companies already have existing plans in place for their regular workers, in which case the H-2-B workers could fall under this plans.

III. MIGRANT WORKERS FAMILY RIGHT IN THE HOST COUNTRY

In the family the first steps in human development are taken, it is the foundational element of human society. The family is the most necessary force in the full development of the human person.

Migrant workers are not economic objects, but are human beings who are accompanied by family members and who have their own

fundamental human right. Therefore, the unity of every family should be protected. The Migrant Workers Convention dictates that all rights granted to migrant workers are automatically applied to family members;⁹⁵ they should be treated as equal citizens with acquired rights. Equal treatment also extends to accessibility of education, professional training, healthcare, social services, and participation in cultural events.

Children of migrant workers are also entitled to certain rights; they have the right to a formal education equal to native and when necessary, the host country must offer some type of education program in order to improve the integration of children of migrant workers, especially with regard to improving their native language and enhancing their culture. Children of migrant workers also have a right to a name, registration, a nationality at birth, no host country can deny this basic rights.

A. MIGRANT WORKERS RIGHT TO MARRIAGE WITH NATIVES

Human rights law protects the right of all peoples to enter into equal and consenting marriage and found a family. The family is founded on the free choice of spouses to unite themselves. One aspect of fundamental importance for the promotion of human rights is recognition of the “rights of the family”. This implies the protection of marriage in the framework of “human rights “and of family life as an objective of every juridical system. The family and marriage need to be defended and promoted not only by that State but also by the whole of society . Every persons decisive commitment is necessary because the family and marriage are the starting point for addressing the challenges of the present and the risks of the future.

1. AFGHANS MIGRANT WORKERS RIGHT TO MARRIAGE WITH

IRANIAN CITIZENS

Marriage of foreign nationals to Iranian citizens is allowed but with restriction. Firstly, only a Muslim may marry a Muslim⁹⁶ however, people of other religions are free to marry with their religious laws. However, if the wife is a foreign national and the husband is Iranian the only restriction that applies is that the wife be Muslim. After registration of such a marriage with the appropriate organs of the Iran, the foreign wife automatically becomes an Iranian citizen⁹⁷ and needs to apply for an Iranian birth certificate and passport.

2 . MEXICAN MIGRANT WORKERS RIGHT TO MARRIAGE WITH US CITIZENS

There are no limitations for who foreigners can marry in the United States, Citizens and non-US citizens, including temporary visitors, legal and illegal immigrants, have the right to get married in the United States to whomever they choose.⁹⁸It is not uncommon a Mexican migrant worker to marry a US citizen, although they usually marry a Mexican-American who was either born in the United States or naturalized.

B. RIGHT TO BIRTH REGISTRATION OF MIGRANT WORKERS CHILDREN

The child who is not registered at birth is in danger of being shut out of society denied the right to an official identity, a recognized name and a nationality which result in the enjoyment of other rights such as education and health care, participation and protection. With no document to prove how old they are, they are, they are likely to face the lack of access to basic such as health and education, with no proof of age and identity, they may lack the most basic protection against abuse and exploitation. The ‘invisibility’ of unregistered children makes it more likely that the discrimination, neglect and abuse they

experience will remain unnoticed. While birth registration does not of itself guarantee education, health or protection, its absence can put these fundamental rights beyond the reach of those already on the margins of society.

The Convention on the Rights of the Child (CRC)⁹⁹ in Article 7 states that every child has the right to registered immediately after birth. This right is a basic human right and should be ensured by all States to every child under their jurisdiction, including to non-nationals, asylum seekers, refugee and stateless children. Birth registration does not mean the granting of citizenship, rather it merely is a record documenting the birth of a child with details of the child's time, date and place of birth stated within the certificate. A birth registration is probably the first vital document proving existence of any human

Being and thereafter the child is able to receive documents of identity i.e. birth certificate, passport. Therefore, it is obvious why birth registration¹⁰⁰ is important and vital.

1. AFGHAN MIGRANT WORKERS CHILDREN'S RIGHT TO BIRTH REGISTRATION IRAN

Birth registration in Iran is compulsory, the birth of each and the abortion of a fetus six months after conception shall be reported to the Birth Registration Organization within the time and manner prescribed by laws or special procedures¹⁰¹.

2. MEXICAN MIGRANT WORKERS CHILDREN'S RIGHT TO BIRTH REGISTRATION IN THE UNITED STATES

The registration of births, deaths, fetal deaths, and other vital events in the United States is a State and local function. The civil laws of every State provide for a continuous, permanent, and compulsory vital registration system.¹⁰² Thus, birth registration in the United States is a

simple procedure and automatically results in the issuance of a birth certificate. Birth certificates are normally issued by the Vital Record Department in the birth state. In reality, upon registration of a birth the certificate issued is a birth certificate^{103, 104}.

C. MIGRANT WORKERS CITIZENSHIP AND NATURALIZATION RIGHTS THE HOST COUNTRY

Most states confer nationality according to the principle of *jus soli* ('law of the soil') or *jus sanguinis* ('law of blood') or a combination of the two. According to the principal of *jus sanguinis*, citizenship is imposed upon any individual upon birth based upon the rule of blood and through relation. Otherwise, it is determined by the individual birth place and belonging to a land, *jus soil*. Usually the countries with a small area and a big population follow the rule of descent blood, while in less populated and larger countries enjoying rich natural resources, various facilities and economic development, the rule of the country of birth is prevailing. Switzerland is a good example for the rule of descent blood, while the United States is characterized by the rule of the country of birth.

1.AFGHAN MIGRANT WORKERS RIGHT TO IRANIAN CITIZENSHIP AND NATURALIZATION.

By civil law, Iranian nationality is conferred mostly by *jus sanguinis* on the paternal side; children cannot automatically acquire the Iranian nationality of their mothers. However, in late September of 2006 the Iranian Civil Code was amended and now allows children born to Iranian mothers and non- Iranian fathers, to apply for citizenship after they reach 18 and do not have a criminal record or a security violation background can apply for citizenship.¹⁰⁵

Outside of the *jus sanguinis* principal those born in Iran with an unknown parentage, are considered Iranian citizens,¹⁰⁶ those, which

are born to foreign parents, one of whom might be of Iranian birth, are considered Iranian citizens¹⁰⁷. Also, children born in Iran to foreign fathers are entitled to Iranian citizenship if they continue to stay in Iran one year after they become 18 years old¹⁰⁸ and the children born to parents who are citizens of the states where children born to Iranian citizens are granted the citizenship of that country, under the condition of receipt of a permit¹⁰⁹, upon marriage of a non- Iranian woman to an Iranian man the wife automatically becomes an Iranian citizen.¹¹⁰

Foreign national may become naturalized Iranian citizens¹¹¹ within the framework of Iranian laws¹¹², however, citizenship may be Withdrawn from such persons if they request citizenship from another State. Naturalization also results in the forfeit of any former citizenship.¹¹³ It should be noted, however, that the government might refrain from granting Iranian citizenship to aliens either on account of political reasons or for the protection of national security. The admission of such applications might, therefore, require the Cabinet's approval. Hence, in light of the stated there is no guarantee that Afghan nationals possessing the above requirements to receive Iranian citizenship.¹¹⁴

2. MEXICAN MIGRANT WORKERS RIGHT TO US CITIZENSHIP AND NATURALIZATION

The United States implements a combination of the principle of *jus soli* and *jus sanguini*, hence any person born in the United

States or to US parents are automatically US citizens. Besides citizenship by these means, each year hundreds of thousands of foreign nationals¹¹⁵ become naturalized citizens of the United States¹¹⁶. After naturalization, foreign- born citizens can enjoy the same benefits, rights and responsibilities that the Constitution give to US citizens, such as the right to vote. They can also apply for a US passport to travel overseas. They receive United States government

protection and assistance when abroad.

A migrant worker that is at least 18 years of age; have been granted lawful permanent residence in the United States, and have resided in the country continuously for at least 5 years and also able to speak, read and write the English language, has knowledge of the US government and US history, and good moral character may apply for naturalization. If a migrant worker is able to comply with the mentioned conditions it is more than likely they will be approved for naturalization. The only problem is that presently a majority of Mexican migrant workers enter the United States on the H-2 guestworker program which grants a visa for a period of 1 year and is renewable for an additional 2 years, while a 5 year residency is required.

D. MIGRANT WORKERS CHILDREN'S RIGHT TO ORMAL EDUCATION

Education plays a critical role in realizing the full potential of each human being. It also has a protective role in reducing vulnerability to exploitative and hazardous labor, trafficking and sexual exploitation, and child labor. All children, without discrimination of any kind, including on the basis of their status or the status of their parents, have a right to education.¹¹⁷

Most migrant workers are low income and sometimes can not afford to or due to the migrant lifestyle of constantly moving from place to place do not send their children to school. As a result, migrant children do not have the opportunity to reach challenging academic standards that will prepare them for further learning, and productive employment. Migrant students have unique educational needs stemming from mobility, work and family responsibilities, poverty, and often language. Public schools that are geared towards meeting the needs of a relatively stable population of students residing in a

geographic area may be unaware of or have difficulty meeting the special need of migrant students.

1.AFGHAN MIGRANT WORKERS CHILDREN’S RIGHT TO A FORMAL EDUCATION IN IRAN

All children of foreign nationals that are residing in Iran legally are allowed to attend Iranian public schools as well as private and international schools¹¹⁸. For enrollment of their children into any formal school in Iran, migrant workers must provide proof of a valid work permit. Moreover, although the children may attend public schools their education is not free and is obliged to pay a fee. Hence, in Iran formal education¹¹⁹ is only for Iranian citizens or those residing legally with the financial means¹²⁰. By this policy children may easily fall through the cracks either due to being in the country illegally or due to the lack of financial means of parents to send all their children to school. Also, there are no special programs to meet migrant children’s special needs and their curriculum is identical to those of their Iranian peers.

2.MEXICAN MIGRANT WORKERS CHILDREN’S RIGHT TO A FORMAL EDUCATION IN THE UNITED STATES

In the United States all children are allowed to enroll in US public and private schools, during enrollment proof of legal residency is not requested¹²¹, consequently even illegal aliens may enroll.¹²² In fact it is illegal for any child not to attend school.¹²³

The problem, however, is not enrollment, but the migrant lifestyle. Children of migrants and fishers are among the most educationally disadvantaged children in the country. The conditions associated with their migratory lifestyle impose multiple obstacles to educational achievement, such as discontinuity in education, social and cultural isolation, strenuous work outside of school, extreme poverty, and poor

health. Limited proficiency in English imposes an educational burden on many migrant children.

Given that the needs of migrant students can vary greatly among the states, the federal government has adopted programs which allow maximum flexibility for states to address the needs of the students they serve. The Federal government allocates funds to States Education Agencies (SEAs) based on the estimated number of migrant students residing both permanently and temporally within the state. Educational services to migrant students are provided in programs which are designed and administered at the state and local level. SEAs can also use federal funds to improve coordination of educational services to migrant students between states.¹²⁴

The federally funded Migrant Education Program (MEP)¹²⁵ was established in 1966 to support state programs designed to meet the complex educational needs of migrant students and to facilitate interstate coordination of services.¹²⁶ The goal of the Migrant Education Program is to ensure that all migrant students reach challenging academic standards and graduate with a high school diploma (or complete a GED) that prepares them for responsible citizenship, further learning, and productive employment.

CHAPTER FOUR: MIGRANT WORKERS RIGHT TO FREEDOM OF MOVEMENT

Although freedom of movement¹²⁷ has long been accepted as a basic human right, it involves problematic aspects hindering its actual enjoyment. Inherent in the concept of migration, the right to freedom of movement can be exercised with respect to movement 1- within the territory of a country, 2- to leave any country, and 3- to return to his or her own country.

The first aspect of the right to freedom of movement is the

freedom of residence within the border of a State and applies to all persons without distinction as to nationality. However, its application extends only to persons migrant workers or migrant workers in an irregular situation.

The second aspect of the right to freedom of movement is that of being able to leave any country including one's own, this too applies to all persons without distinction. The United Nations Human Rights Committee has submitted that while there is no right in the ICCPR to enter any country except one's own, the right to leave and return should be interpreted in an expansive manner. This right has thus been translated into a right to travel, and access to appropriate travel documents may be considered as an integral part of it. The major limitation on the right to freedom of movement is that, under international law, there is no corollary right to enter the territory of another country.

The third aspect is the right to enter one's own country. The right is also linked to the issue of forced exiles or expulsions, which can deprive persons of their right to return.¹²⁸

One of the most frequent reasons for the disruption of migrant family unity is the expulsion of one or more migrant family members from the host State. There must always be a relation of proportionality between the host State's legitimate aim, served by an expulsion measure, and the right to respect for family life of the migrants under expulsion. Measures to collectively expel aliens, including migrant workers, are expressly prohibited by international human rights law.¹²⁹

A. MIGRANT WORKERS RIGHT TO LEAVE AND RETURN TO THEIR STATE OF ORIGIN

All migrants have the right to leave any country including their own and to return to their country of origin.¹³⁰ On the other hand, there hand, there is no corresponding right to enter another country.

However, the right to enter a territory to escape persecution is implicit in the Refugee Convention. The right to return to one's own country should include the right to return to one's country of origin, one's country of nationality, or one's country of habitual residence.

Immigrants are directly affected by this freedom due to the fact that they have entered a new nation intending to settle there. Additionally the right to free movement affects economic migrants, those who have fled their homes not in fear of persecution but in search of a higher standard of living, free movement allows for increased job and educational opportunities. Some states have placed restrictions on those who wish to leave placed restrictions on those who wish to leave in order to curb the "brain drain".

Many argue that there are reasons for limits to be placed on certain individual's freedom of movement. In certain cases restrictions on movement are admissible when the security of a nation or an entire group of people is at stake. If an individual or a group has committed an atrocity within a nation their free movement may be taken away in order to prevent them from fleeing the country and escaping trial.¹³¹

1. RIGHT OF AFGHAN MIGRANT WORKERS IN IRAN TO LEAVE AND RETURN TO THEIR COUNTRY

Exit permission for foreign nationals is granted subject to presentation of a tax clearance or a written commitment by the employer of expatriate employees or with the third party Iranian legal entities.¹³²

Furthermore, Iranian law only permits foreign travel bans upon court order for persons formally accused of criminal offenses. However, if a foreign national has any unsettled matters with the Iranian authorities they are not allowed to leave Iran. But, a person may be permitted to leave the country even if he has an outstanding matter. In such cases he must present a written order from a judge. Hence, there no major restrictions for a migrant worker to exit Iran

and return to their home country, although the process may be time consuming

2. RIGHT OF MEXICAN MIGRANT WORKERS IN THE UNITED STATES TO LEAVE AND RETURN TO THEIR COUNTRY

Foreign nationals are free to leave the United States and return to the country of origin, although, departure may be denied to aliens who are fugitives from justice on account of an offense punishable in the United States. NEERS is a special registration system that applies to males 16 years of age or older who are citizens of specified countries.¹³³

B. MIGRANT WORKERS RIGHT TO FREEDOM OF MOBILITY IN TERRITORY OF STATE OF EMPLOYMENT

The right to freedom of movement and residence within the border of a State applies to all persons without distinction as to nationality. However, it will only apply to persons lawfully within a territory of a State, In addition, the Human Rights Committee has stated that any difference in treatment between nationals and non-nationals is relation to restrictions on movement must be justified and conform to the principle of proportionality. The International Labor Organization (ILO)¹³⁴ considers freedom of movement as a fundamental right of workers and their families

1. RIGHT OF AFGHAN MIGRANT WORKERS IN IRAN TO FREE MOBILITY IN TERRITORY OF STATE OF EMPLOYMENT.

All foreign nationals legally residing in Iran are allow to travel freely throughout the country, however, their place of residency is restricted to the city that their visa has been issued for. The foreigner's passport is checked by the airline they are using, however, all Iranian train stations have a special office which for passport control.

Migrant workers are only allowed to work in cities which their work permit was issued for and normally their residency visa is issued for the same city. There are no restrictions to travel throughout Iran for migrant workers the only restriction regards residency.

2. RIGHT OF MEXICAN MIGRANT WORKERS IN THE UNITED STATES TO FREE MOBILITY IN TERRITORY OF STATE OF EMPLOYMENT.

In the United States, the right to travel, domestically and internationally, is constitutionally protected. The US Supreme Court has held that it is “a part of the ‘liberty’ of the which a citizen cannot be deprived without due process of law under the Fifth Amendment.”¹³⁵ Within the United States, there are no restrictions on movement or change of residence from state to state or city to city, save in exceptional situations. Further, non-US citizens are free to leave the United States and to return to their country of origin, or to travel to third countries, except in rare instances. Departure may be denied, for example, to an alien will be given written notice of that restriction, and will be entitled to an administrative hearing.

Furthermore, travel within the United States is generally unregulated and unrestricted. In exceptional circumstances, however, aliens are subject to certain conditions regarding their travel. In most cases, such persons are diplomatic personnel or governmental representatives to international organizations.

However unfortunately in practice it is not uncommon for employers or recruitment agents to confiscate the passport of migrant workers especially those with H-2 visas.

C. MIGRANT WORKERS FREEDOM FROM ARBITRARY EXPLUSION

An expulsion decision must be by the competent authority¹³⁶ in accordance with law and only for reasons defined in the national

legislation of the State of employment.¹³⁷

Migrant workers are entitled to protection against arbitrary or collective expulsion.¹³⁸ Any expulsions are different from the deportation of a number of individual basis and be subject to due process. the latter is permissible provided each individual has proceeded through a fair and satisfactory individual procedure. In any case of mass or collective expulsions there is risk that the expulsion will be tainted with discrimination and arbitrariness, and will therefore be inherently unlawful.

Furthermore, with regard to deportation, deportation procedures must be in accordance with due process of law and include guarantees that fundamental human right will be respected and protected. A migrant subject to deportation still has human rights. Deportation of non-nationals who have been charged with or convicted of serious criminal offences in their country of residence is limited by a number of factors.¹³⁹ Criminal deportees are entitled to human rights to human rights safeguard applicable to expulsion, including protection from arbitrary or mass expulsion.¹⁴⁰ The provision of an extradition treaty is often, in practice, a necessary element, but it too must conform to international law and particular must respect the customary international law prohibition against refoulement.

1. RIGHT OF AFGHAN MIGRANT WORKERS IN IRAN TO FREEDOM FROM ARBITRARY EXPULSION

Iranian law does not allow for arbitrary expulsion. However, deportation of foreign national is allowed for criminal reasons and in case of non-possession of a valid visa or work permit.¹⁴¹ Such foreign citizen possessing valid work permits whose recruitment contacts with their employers are terminated are obligated to surrender to surrender their work permit to the Ministry of Labor and Social Affair and the subject Ministry may request the appropriate authorities to expel the

worker from Iran, Even if their work visa is still valid. In other words, the foreign citizen will be allowed to stay in Iran and will be issued a new work permit if they attain new employment and the necessary forms are filed.

2. RIGHT OF MEXICAN MIGRANT WORKERS IN THE US TO FREEDOM FROM ARBITRARY EXPULSION

United States Law does not allow for arbitrary expulsion, but does allow for deportation of foreign under certain conditions. If a foreign national violates the conditions of their visa or overstays their visa validity or if the migrant worker commits an aggravated felony certain crimes¹⁴² it may lead to their deportation may be subjected to deportation. Any migrant worker visa has expired, and at time violated the terms of their visa, may be deported.

CONCLUSIONS AND RECOMMENDATIONS

Migrant workers are entitled to their human rights even though they may reside in a country other than their country of origin. They should not be treated unequal to citizens of the host country and states should ensure protection of migrant workers human rights. International instruments ensure the entitlement of human rights for migrant workers. As human being they are guaranteed all fundamental human rights in the same way as everyone else. In addition, the UN International Convention on the Protection of the Rights of All migrants Workers and Members of Their Families specifically outline migrant workers rights as well as their families and affords certain rights it illegal migrant workers.

The United States and Iran are amongst the top ten receiving countries of migrants in world and have many similarities and difficulties with each others. The United States is known as a world

leader in accepting and integrating migrants into its society. Even though the United States needs and relies on this work source US migrant laws are sometimes discriminatory and in violation of migrants basic human rights and even sometimes in contrary to their own federal laws.

However, Iran with a high unemployment rate does not impart migrant workers; rather it prefers an attraction of foreign laborers. Furthermore, throughout history Afghan nationals have always sought refuge in Iran while fleeing unsatisfactory political or economical conditions.

Iranian laws either lack adequate rules and regulations to meet the present migrant situation or afford rights for foreign workers while leaving a loophole to prevent the implementation of those rights as was witnessed with regard to citizenship.

After comparing migrant workers rights afforded in international instruments to the actual rights granted to them by Iran and the United States, one realizes the contradiction of the laws in theory and practice, more notable in Iran, as well as the discriminatory migrant laws, i.e. the H-2 guestworker program. Although, it is evident that these host countries have something to offer as in light of negatives migrant workers anxiously migrant to these countries.

In Iran, Afghan migrant workers normally have family members residing there and have the social advantages of the same language and religion as well as similar culture; Mexican migrant worker on the other hand, experience better opportunities and rights. Similar to Afghan migrants they have established communities in the United States however; they are forced to endure a language barrier and different culture. Private organizations have also taken interest in Mexican migrant workers needs, especially in helping them to attain their legal rights and protection of their fundamental human rights.

Both countries cannot deny that they benefit greatly from this

cheap labor and their skills, however, their migrant policies require reform to enable migrant workers to enjoy all human rights that they are entitled to do. It is important these host countries update their migrant policies so that they meet International Law standards and are in correspondence to today's economic and labor needs.

Hence, in light of these conclusions, I propose the following key recommendations for both host countries:

IRAN

■ Reform and legislation of migrant Laws: present laws regarding migrant workers, i.e. Iran's labor Code on discrimination, are actually written for Iranian nationals resulting in ambiguity as to their implementation to foreign nationals. Iran should take no consideration the changes that globalization has brought to today's world when updating its migrant policy.

■ Special Migrant Workers Programs: special programs should be developed to address migrant workers needs. Migrants' lifestyles and challenges should be taken into consideration when drafting these programs.

■ The Promotion of Social Inculcation and Tolerance: Afghan migrants commonly complain about discrimination and racism both in the workplace and in society. Iran should counter all forms of intolerance and take active measures to promote the inclusion and

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economic and social participation of Afghan nationals.

■ Minimize Irregular Migration: Allowing migrants Iran should facilitate the acquisition of work visas, allowing migrants an opportunity to enter into the country legally. It also should do more to combat migrant smuggling and trafficking. Irregular migrants should be legalized or removed.

■ Development in country of Origin: Economic development and investment in Afghanistan will provide economic opportunities and consequently, Afghan nationals will be able to provide for their families without leaving their countries.

THE UNITED STATES

■ Minimize Irregular Migration: In light of the United States need for foreign labor it should allow migrant workers to enter the country legally by revising its quotas to realistic number and facilitate visa procedures. The United States should either legalize or remove irregular migrants while respecting their human rights.

■ Development in country of Origin: Economic development and investment in Mexico will provide better economic opportunities and standards of living, allowing for Mexicans to reach their goal in their own country.

■ Reform the guestworker program: The H-2 guest worker does not ensure the migrant worker the right to collectively bargain, a right that all workers are entitled to. It also does not allow workers to bring their family with them, resulting in the separation of families for long periods of time. This program also does not ensure the enforcement of workers' rights especially with regards to work conditions and wages. The United States needs to immediately amend its guest worker program to prevent further violations of migrant workers human rights.

■ Reform Agricultural Work Law: A majority of Mexican migrant workers are employed in the agricultural sector which is not covered by important federal labor laws. These laws were written during a period when most agricultural units were family run and require revision in accordance to present conditions. Agricultural work laws, require drastic reform and updating before they can meet International laws protect the human rights of migrant workers. ❖

NOTES

1. ILO, "Press Release, ILO/07/52", (ILO October 03, 2007) Accessed October 05, 2008 available at [http://www.ilo.org/global/About the ILQ/Media and public information/Press releases/lang-en/WCMS 085110/index.htm](http://www.ilo.org/global/About%20the%20ILO/Media%20and%20public%20information/Press%20releases/lang-en/WCMS_085110/index.htm).

2. International Organization for Migrant, "International Migration Law", Accessed July 31, 2008 available at <http://www.iom.int/jahia/Jahia/pid/563>

3. Wikipedia, the free encyclopedia, "Property Law", (Wikipedia, February 2007), Accessed May 2008 available at [http:// en.wikipedia.org/wiki/Property law# Definition of property](http://en.wikipedia.org/wiki/Property_law#Definition_of_property)

4. Alchain, Armen A., "Property Rights", (the Concise Encyclopedia of Economics. Library of Economics and Liberty, 2003) Accessed May 4, 2008 available at <http://www.econlib.org/LIBRARY/Enc/PropertyRights.html> See also in general : Anderson, Terry Lee & Laura E. Huggins, Property Rights, "(Stanford, Calif: Hoover Institution Press,2003)

5. Principle 22 of the constitution of the Islamic Republic of Iran, "The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law." Constitution of the Islamic Republic of Iran, ICL, Constitution of the Islamic Republic of Iran, adopted October 4, 1979, (entered into force December 3, 1979) Accessed August 8, 2008 available at <http://www.servat.unibe.ch/law/icl/ir00000.html> , see also Article 5 of the Iranian Civil Code , Alavian Associates, Civil Code of Islamic Republic of Iran, adopted May23,1928, (last amended 199)Accessed August 8, 2008 available at <http://www.alaviandassociates.com/documents/civilcode.pdf>

6. Article 8 of Iran's Civil Code, "Immovable Property, of which foreign nationals have taken possession or shall take possession under the terms treaties, shall in every respect come within the scope of the laws of Iran."

7. Similar to Iranian citizens Afghan migrants have access to judicial courts, however, Afghan nationals spoken with, report that they prefer not to seek judicial

redress citing that they believe their cases are not given the same importance as Iranian citizens cases.

8. It should be noted that in Afghanistan foreigners are not allowed to purchase land but may lease it up till 50 years, See US Commercial Service, “ Doing Business in Afghanistan : A country Commercial Guide for US companies”, (US State Department, November 2007), pg 30, Accessed August 11, 2008 available at <http://trade.gov/static/afghanistancg2007.pdf>

9. Iran Export, “Status of Foreign Nationals”, (Iran Export, May 2007), Accessed May 2008 from <http://www.iran-export.com/inveli/status.htm>

10. Regulations many vary state to state, for example, only in the state of Oklahoma foreigners are not allowed to buy land but they may buy condominiums.

11. Global Property Guide, “ US buying costs range from low to moderate”, (Global Property Guide, July 2007), Accessed May 2008 available at <http://www.globalpropertyguide.com/North-America/United-States>

12. There are three general areas of US tax that a foreign person should be concerned with. The first is income taxes, taxes on income earned by the foreign person. The second is estate taxes, taxes on the value of property transmitted by an individual at his death to his successors in interest. The third is gift taxes, taxes on the value of property given by an individual during his lifetime to other persons. Each general area has its own rules and tax rates. The US also employs the principle of reciprocity upon US taxes and residents of countries with tax treaties with the United States may receive more favorable US tax treatment than residents of non-treaty countries.

13. Thereafter, United States estate taxes will apply at progressive rates up to a fifty percent maximum.

14. Generally, United States situs assets include stock in United States corporations, tangible personal property and United States real property located in the United States, and bonds and other debt instrument issued by United States persons. Exceptions from United States situs status exists for certain debt instruments issued by United States persons and funds held in a United States bank or saving and loan association account.

15. A trust created upon the death of an individual and qualifying for the federal estate tax marital deduction where the decedent’s surviving spouse is not a United

States citizen. A qualified domestic trust is the only form of transfer that will qualify for the marital deduction for a decedent who leaves an alien spouse. In addition to satisfying the normal marital deduction rules, the trust instrument must require that at least one trustee be an individual who is a citizen of the United States or a domestic corporation, and that no trust distribution may be made without the consent of the trustee. An approximate election on the estate tax return is also required.

16. Generally, it imposes these taxes at the same rates as the Federal estate tax.

17. The same definition of “domicile” used in the Estate Tax discussion above applies for gift tax purposes”, however, a different definition of “United States situs” assets applies. For gift tax purposes, intangible assets such as stock in United States corporations and United States debt obligations are not United States situs assets. Thus, a nondomiciliary can gift these assets without gift taxes even though they may be subject to estate tax if owned by that same nondomiciliary at death.

18. Any Afghan worker that has a business does not actual own it, similar to home ownership. If the place of business is bought by an afghan national it is purchased in the name of an Iranian citizen and the business permit (parvanekasb) is also in the name of an Iranian citizen. Recently, an afghan refugee of 45 years who owns a business in Iran was fined for 4 million tomans for doing business in Iran without a business permit.

19. Article 120 of Iran’s Labor Code

20. Following months of dispute between the Parliament and Guardian Council, the Expediency Council ratified the final version of a new foreign investment law in Iran coined as the Foreign Investment Promotion and Protection Act (FIPPA) on the 26 May 2002. See United Nations Public Administration Network, Foreign Investment Promotion and Protection Act (FIPPA), entered into force May 26, 2002 Accessed April 2008 available at <http://unpanl.un.org/intradoc/groups/public/documents/APCITY/UNPANO15885.pdf>

21. Payvand's Iran News, "Iran's New Foreign Investment Law and What it Means to International Oil Companies", (Iran Energy Focus, 2003) Accessed May 2008 available at <http://www.netnative.com/news102/sep/1016.html>

22. There are several types of investment visas available, I Investment Green Card Program (EB-5 Visa and Green Card): A foreigner invests \$500,000 or \$1

Million in a business that creates 10 full time jobs, or the foreigner imports goods or services in excess of \$1 M per year from the US; 2- Active Exporter/Importer Program (E-1 Visa): If the foreigner's country has a Treaty of Trade and Commerce with the US, they can live in the US and engage in substantial import or export between the US and their country; 3- Treaty Investor Program (E-2 Visa): If a foreigner invests in the US and are from a country that has a Treaty Investor Agreement with the US, they can live and work in America on an indefinitely renewable E-2 Treaty Investor Visa; 4- Business Management Green-Card Program (L-1 Visa and Green Card): A foreigner establishes a US affiliate of their foreign company and this affiliate requests them to come to the US as its manager. *See* International Business & Introduction Brokers. "USA Business Visas", Accessed May 2008 available at <http://www.usa.inbib.com/immigration/visnbusiness.aspx>

23. Mador, Jessica, "Number of Latino-owned businesses to grow", (Minnesota Public Radio, March 2008) Accessed May 13, 2008 available at <http://minnesota.publicradio.org/display/web/2008/03/09/latino/?resource=1>

24. Garcia, Adriana, "Immigrants sent \$300 billion home in 2006: study", (Reuter, October 17, 2007), Retrieved May 15, 2008 from www.reuters.com/article/bondsNews/idUSNI735191520071017

25. Ibid

26. Stigter, Elen, "Transnational Networks and Migration from Faryabto Iran".(Afghanistan Research and Evaluation Unit, Feb 2005); pg 40, Accessed July 15, 2007 available at <http://www.UNCHR.org/cgi-bin/texis/vtx/home/pendoc.pdf?tbl=SUBSITES&id=430b1bdf2>

27. The system is based on networks between main cities in Afghanistan, with hawa/adars from Maimana maintaining close contacts with Tehran and Mazar-i-Sharif. Counterparts can be relatives or business associates. The hawaladars clients include Afghan migrants in Iran and businessmen who hold valid passports and visas, constituting an essential part of the money transfer system, For instance, in Tehran an employee gives money to hawaladars' counterpart in Tehran. The employee (or his counterpart) informs that he will send x amount of money. Other contacts, businessmen or companies who use the money to bring the items to Mazar-i-Sharif for selling, sell the and gives the money to the counterpart in Mazar-i-Sharif. *See* Supra. Continued Protection, Sustainable Reintegration: Afghan

Refugees and Migrants in Iran

28. The cost of money transfers through the hawala system and other informal money transfer channels is generally lower than through institutional channels. In April 2004, commission for remittances from Iran charged by the hawaladar to the remitter was 3 percent commission. In Iran some individuals were known to contact labor migrants directly to transfer the money at the rate of 5 percent commission, acting as an intermediary between the migrant and the hawaladar and increasing the costs to the labor migrant.

29. Timberg, Thomas A., "Informal Remittance Systems and Afghanistan", (Nathan Associates, December 2003), Accessed July 07, 2007 available at <http://www.nathaninc.com/NATHAN/FILES/CCPAGECONTENT/DOCFILENAME/0000502422/Informal%20Remittance%20Systems%20and%20Afghanistan.pdf>

30. *Supra* Transnational Networks and Migration from Faryab to Iran.

31. Each region of Afghanistan has a head (*farman*) who manages and controls all activities in his region. Those who want to utilize this method of receiving money must have an account with their *regions farman*. While in Iran, migrant workers hand over their savings to a -trustworthy Afghan for an unspecified amount of time and with no interest, sometimes for a period of 10 years. Whenever they would like to have their money transferred home they simply contact the person holding their savings and tell them the amount of money they want to send in what amount of time, usually less than 24 hours. the region to be sent to, name of recipient and *Sara* account number of the recipient, in one case 42 million tomans was transferred within 12 hours. It is interesting to note that no records are kept, at least on the side of the party in Iran, and all financial transactions are done in good faith.

32. The Mexican government has begun to distribute new digitally coded consular identification cards, which check an applicant's information against computerized census and voter rolls in Mexico.

33. After four years of work in the US, Mexican migrant worker Ricardo Morales, a 26- year-old roofer from the central Mexican state of Zacatecas, was able to turn his parents' tin shack into a three-bedroom concrete house. He has a savings account of some 3,000\$ in Mexico that he intends to use to help send a younger brother to college. He recently bought an acre of land, where he will build a small home for himself. To be able to afford all this he lives with four other men in a one-

bedroom. Mr. Morales says he earns about 500\$ a week and sends about 400\$ home each month. See Rawe, Julie, “ The fastest Way to Make Money”, (Pew Hispanic Center, June 2003), Accessed June 2008 available at <http://pewhispanic.org/reports>

34. Thompson, Ginger, “ Big Mexican Breadwinner: The Migrant Worker”(New York Times, March 2002) Accessed June12, 2008 available at

<http://query.nytimes.com/gst/fullpage.html?res=9C02E5D9143BF936A15750C0A9649C8B63&sec=&spn=&pagewanted=all>

35. A majority of times whenever a legal foreign national, worker or non-worker, refers to an Iranian bank the Iranian tellers and at times even the banks President are not aware of the simple procedures regarding foreign national, e.g. cashing a simple travels check is difficult and at time impossible with some banks refusing to cash the traveler checks even with proper documentation.

36. It suffices for any foreign national in Iran to show their valid residency visa in order to open a bank account.

37. A Social Security Card is only issued to US citizens and permanent residents.

38. Individual Tax Identification Number (ITIN) is a tax identification number for those not eligible for Social Security numbers. They are similar to Social Security numbers, but may not be used for work purposes. ITINs are issued to individuals filing tax returns or opening interest-bearing bank accounts. To apply for an ITIN, you must show proof of filing taxes (such as a complete IRS Form 1040) or proof that you need it for an interest-bearing account.

39. in 2001 Wells Fargo was the first bank to accept this form of identification, and within two years the number of accounts opened at Wells Fargo using the consular ID card surpassed a quarter of a million.

40. Bruno, Andorra & K. Larry Storrs,” Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation” (CRS Report for Congress, 2004), pg.10, Accessed May 16,2008 available at www.fas.org/sgp/crs/misc/RL32094.pdf

41. National Labor Relations Board, "National Relations Act", entered into force July 5, 1934, Accessed August 9, 2008 available at http://www.nlr.gov/about/overview/national_labor_relations_act.aspx

42. US Department of Labor, Fair Labor Standards Act, entered into force June 25, 1934, Accessed August 9, 2008 available at [http:// www.osha.gov/ plslepub/](http://www.osha.gov/plslepub/)

wageindex.download?p_file=F15794/FairLaborStandAct.pdf

43. Center for Economic and Social Rights, “The Right to work”, (Center for Economic and Social Rights,2005), Accessed May 13, 2008 available at <http://cesr.org/work> See also in general: Compa, Lance A.& Stephan F. Diamond, Human Rights, Labor Right and International Trade, (Pennsylvania: University of Pennsylvania Press, 2003)

44. ILO, Migration for Employment Convention (Revised),1949 (No. 97), Accessed October 07,2008 available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?Co97>

45. ILO, Migration for Employment Recommendation (Revised), 1949 (No.86), Accessed October 07, 2008 available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?r086>

46. Perruchoud, Richard, “Legal Standard for the Protection of Migrant Workers” , (September 2000), pg 1, Accessed November 28, 2007 available at <http://www.eclac.org/celade/proyectos/migracion/perrochoud.doc> See also in general: International Labor Office, Time for Equality at Work, (Geneva: Published by International Labor Organization, 2003)

47. The Labor Law of Iran consists of 203 Articles regarding contracts, conditions of employment, job safety and health, inspection, training, employment services, workers and employers’ organizations, collective bargaining and agreements, welfare services, workers and their families, mediated dispute settlement, and the establishment of a Supreme Labor Council. Articles concerning the employment of foreign citizens may be found in Chapter 5, Division III under the Training and Employment section. ILO NATEX, Labor Code of the Islamic Republic of Iran, entered into force November 20, 1990 Accessed August 9, 2008 from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/21843/64830/E90IRN01.htm>

48. Section 8 of Iran’s Labor Code, “Equal wages shall be paid to men and women performing work of equal value in a workplace under the same conditions. Any discrimination in wage determination on the basis of age , gender, race, ethnic origin and political and religious convictions shall be prohibited”.

49. Principal 19 of Iran’s Constitution, “All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; color, race, language, and the like, do not bestow any privilege.”

50. Principal 20 of Iran's Constitution, "All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural right, in conformity with Islamic criteria."

51. Section 6 of Iran's Labor Code, "... Iranian, whatever their tribe or ethnic group, enjoy the same rights; skin color, race, language and the like do not constitute any privilege or distinction; all individuals, whether men or women, are entitled to the same protection of the law; and every person has the right to freely choose an occupation, provided that such occupation is not inconsistent with Islamic principles or the public interests and does not violate other people's rights."

52. Title VII of the US Civil Rights Act of 1964 prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color or national origin and is enforced by the Equal Employment Opportunity Commission (EEOC). Also, Executive Order 11246 prohibits covered federal contractors and subcontractors from discriminating on the basis of national origin, as well as race, color, religion and sex, and requires affirmative action to ensure equal employment opportunity without regard to those factors and is enforced by the Office Federal Contract Compliance Programs (OFCCP)

53. Four or more employees: Discrimination against any person in hiring, discharging, or recruiting because of national origin or citizenship status is prohibited. Fifteen or more employees: Discriminate when hiring, discharging, recruiting, making job assignment, fixing compensation or in any other terms and conditions of employment is not allowed.

54. Ontiveros, Maria L., "Immigration Workers and the Thirteenth Amendment", (Social Science Research Network, June 2007), pg 5 Accessed July 17, 2007 available at <http://SSRN-id1017066L17.pdf>

55. Ibid, pg.6

56. Under the H-2 program, employers brought about 121,000 guest-workers into the United States in 2005, approximately 32,000 for agricultural work and another 89,000 for jobs in forestry, seafood processing, landscaping, construction and other non-agricultural industries.

57. An employer needs to only state the nature, wage and working conditions of the job and assure the DOL that the wage and other terms meet prevailing conditions

in the industry. Because the H-2B wage requirement is set fourth by administrative directive and not by regulation, the Department of Labor takes the position that it lacks legal authority to enforce the H-2B prevailing wage.

58. Southern Poverty Law Center, “How Guestworker Program Operate” , (Southern Poverty Law Center, n.d.) Accessed June 13, 2008 available at <http://www.splcenter.org/legal/guestreport/guest2.jsp>

59. Universal Declaration of Human Rights, Article23(1), “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”

United Nation, Universal Declaration of Human Rights, Adopted December 10, 1948, accessed June 13, 2008, available at <http://www.un.org/overview/rights.html>

60. It should be noted that Afghan refugees are not entitled to work without a work permit, which they rarely are able to secure.

61. In Section 35 Iran’s Labor Code divided ‘wage’ in to three parts: hourly wage, piece work wage and hourly piece wage. Where a wage is based on hours of work, it is called an hourly wage. When wage is based on the amount of the work done or volume produced, it is called a piecework wage. But when it is based on the volume produced or the amount of work done during a specified period of time, it is called an hourly piecework wage. The standards and benefits of all three are determined by the Supreme Labor Council and are to approved by the Ministry of Labor and Social Affairs.

62. Minimum wage in Iran is determined by the Supreme Labor Council to be reviewed every year according to the sectors of Industry. The criteria for defining minimum wage is inflation announced by the Central Bank of Iran and a sufficient amount to meet the living expenses of an average family. If an employer pays an employee less than the fixed minimum wage for work performed during statutory hours of work then the employer must pay the difference between the wage paid and the most recent minimum wage. (section 44 of Iran’s Labor Code)

63. Since a majority of Afghan nationals do not possess a work permit employers tend to exploit them and pay salaries under minimum wage.

64. The New Deal was the title that United States President Franklin D. Roosevelt gave to a sequence of programs he initiated between 1933 and 1938 with the goal of giving relief to the poor, reform of the financial system, and recovery of

the economy during The Great Depression.

65. Southern Poverty Law Center, “H-2B Guestworkers Facing Rampant Abuse”, (Southern Poverty Law Center, April 16, 2008), Accessed June 13, 2008 available at <http://www.splcenter.org/news/item.jsp?aid=309>

66. Seasonal farm workers are the poorest laborers in the United States, earning an average of \$6500 per year. Farm workers who migrate are poorer than settled seasonal laborers, with migrants earning \$5,000 per year. The most vulnerable migrant workers, such as those laboring for farm labor contractors in eastern states, earn annual wages as low as \$3500. The bottom rung of the economic ladder – migrant tomato workers, payday is about 45 cents for every 32-pound bucket of tomatoes they pick. That comes to about Bauer, Mary, *Migrant Tomato Workers Face Chronic Abuses*”, (Hispanic News, May 22, 2008), Retrieved on June 13, 2008 from http://www.hispanic.cc/migrant_tomato_workers_face_chronic_abuses.htm

67. An experienced hand-planting crew an average 1,500 well-planted seedlings per person per day. On rough sites, a worker might average just 600 trees per day; in open fields, a worker might plant up to 2,000 in a day. At the average rate of 1,500 trees, a worker could earn between \$22.50 and \$45 a day, far less than the legally required wage. By law, the employer is obligated to make up the difference between the bag rate and the prevailing wage rate, this is rarely done. Most workers report working between eight and 12 hours a day. But they rarely earn overtime pay, despite the fact that they often work six full days a week and average well over 40 hour. In addition, they are routinely required to purchase their own work-related tools and incur other expenses and deductions, unlawfully cutting into their pay. Cohen, J.Richard, “Migrant Workers at Bottom of Food Chain Face Abuse, Growing Economic Disparity”, (Southern Poverty Law Center, May 05 2005,) Retrieved June 13, 2008 from <http://www.splcenter.org/news/item.jsp?aid=311>

68. Immigrant farm workers do back breaking manual labor that Americans are reluctant to do even in items of high unemployment. The vast majority of farm workers are from Mexico and central American where conditions of extreme poverty drives people to suffer the hardships of American farms in silence. Most estimates place the Mexican and Central American farm worker population at over 90 percent of all farm workers in the US and most speak only Spanish. The fact that the vast majority of farm workers are not-white adds a dimension of racial and ethnic

discrimination against them; not only in terms of employment practices but also in the relationships within the established communities in which they work.

69. The US Department of Labor has sharply cut resources to investigate and bring enforcement actions against those who abuse farm workers. Even federal legal programs serving migrant workers are prohibited from bringing class action lawsuits, the type of litigation most likely to bring far-reaching change. However, these workers often choose to remain silent. The fear of being fired, blacklisted or deported keeps many from protesting deplorable work conditions.

70. See also in general: Flanagan, Robert J. , *Globalization and Labor Conditions: Working Conditions and Worker Rights in a Global Economy*, (Oxford: Oxford University Press, 2006)

71. Section 89 of Iran's Labor Code, "Before installing and operating any machinery, equipment, or tools which are required to be tested under the regulations adopted by the High Council for Occupational Safety, employers shall arrange for the necessary tests to be carried out at the laboratories and the centers approved by the High Council for Occupational Safety, and shall obtain the appropriate certification and send a copy thereof to the Ministry of Labors and Social Affairs for information," See also Section 91 of Iran's Labor Code

72. See Section 85 of Iran's Labor Code

73. US Department of Labor, "The Occupational Safety and Health Act of 1970", Accessed June 13, 2008 available at <http://www.osha.gov/as/opa/worker/index.html>

74. Works in the private sector are covered by an OSHA regional office under federal OSHA or an OSHA program operated by state government. Public sector workers in states that run their own OSHA programs are covered by those states. Federal workers are covered by their agencies: By Presidential Executive Order, federal agencies must maintain an effective safety and health program that meets the same standard as private employers. But federal agencies cannot be fined for violating health and safety standards, except for the US Postal Service, which is treated as a private employer.

75. In addition to being exposed to occupational hazards, migrant workers are subjected to overcrowded housing, unclean water, and additional unsanitary conditions. Housing regulations attempt to provide decent living conditions for

migrant workers, but housing is often overcrowded, poorly maintained, and lacking in ventilation, bathing facilities, and safe drinking water. These conditions contribute to an increased risk of accidents, sanitation-related diseases, and infectious diseases.

76. Every year nearly three hundred children die and twenty-four thousand are injured in farm work. Agriculture is one of the most hazardous industries in this country, with more than 700 occupational fatalities and 120,000 work-related disabling injuries occurring annually. Physically demanding tasks, utilization of machinery, proximity to animals, and exposure to environmental toxins make farming an inherently dangerous occupation. See Braund, Wendy E. & Miriam Alexander, "Agricultural Injuries: Improving Occupational Safety", (Medscape Public Health & Prevention, January 23, 2007), Accessed May 16, 2007 available at <http://www.medscape.com/viewarticle/550831>

77. The Migrant and Seasonal Agricultural Worker Protection Act, 29 USC. §1801, et. seq. (MSPA) was adopted in 1983 exclusively to regulate the employee/employer relationship in agriculture. The purpose of the Act was to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers, to require registration of farm labor contractors, and to assure necessary protections for the migrant and seasonal agricultural workers, agricultural associations, and agricultural employers. This Act is also applied to forestry activities.

78. Encyclopedia of Public Health, "Migrant Workers" ,(answers.com, n.d.) Assessed June 13, 2008 available at <http://www.answers.com/topic/migrant-worker>

79. This right is protected in Article 25 of the Universal Declaration of Human Rights, Article II of the International Covenant on Economic Social and Cultural Rights and general comment 4 and 7, Article 27 of the Convention on the Rights of the Child, Article 5 of Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of Convention on the Elimination of All Forms of Discrimination Against Women, Article II of American Declaration on the Rights and Duties of Man.

80. The right to social security is protected in Article 22 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Economic Social and Cultural Rights, Article 26 of the Convention on the Rights of the Child,

Article 5 of Convention on the Elimination of All Forms of Racial Discrimination, Articles 11 & 14 of Convention on the Elimination of All Forms of Discrimination Against Women, and Article 16 of American Declaration on the Rights and Duties of Man. See also in general: Chapman, Audrey R. & Sage Russell, *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, (New York: Intersentia, 2002)

81. This right is guaranteed in Article 25 of the Convention on the Rights of Migrant Workers and Families. Also Article 27 and 28 of the same Convention recognizes the migrant workers equality with nationals concerning social security benefits and emergency medical care.

82. Pecoud, Antoine & Paul de Guchteneire, "Migration, Human Rights and the United Nations: An Investigation into the Low Ratification Record of the UN Migrant Workers Convention", (GLOBAL MIGRATION PERSPECTIVES No.3, October 2004) pp. 3-4, Accessed June 13, 2008 available at <http://www.gcim.org/gmp/Global%20Migration%20Perspectives%20N0%203.pdf>

83. However in the past UNCHR has offered refugees free legal advice. In 2004, BAFIA and UNCHR jointly established Dispute Settlement Committees (DSCs) in seven of Iran's provinces and added five more Committees in 2005. Each DSC consisted of a judge, one representative each from BAFIA and the Afghan community, and a lawyer contracted by UNCHR. DSCs mediated non-payment of salaries and landlords' refusal to return housing deposits. They were successful in gaining reimbursements of \$850 to \$14,500. See USCRJ, "Iran Refugee 2007 Country Report", Accessed August 9, 2008 available at <http://refugees.org/countrvreports.aspx?id=2001>

84. There is one enforcement mechanism, however, which, at certain times, has worked reasonably well to enforce the employment rights of migrants. In the late 1970's the US Legal Services Corporation (LSC) began to provide funding for a specialized subset of legal aid programs, which have come to be known as "migrant legal services" programs. These migrant legal services programs are designed to operate as a network of law offices which specialize in the problems of migrant workers, especially employment matters. Other migrant legal services programs around the US have also provided this same kind of representation, often collaborating in a loosely coordinated network .see Beardall, Bill, "Providing Full

and Fair Legal Services to the New Transnational migrant workers in the US” , (Changing Face Conference Report, April 2000 Volume 6 Number 2), Accessed June 14, 2008 available at <http://migration.ucdavis.edu/cf/comments.php?id=88-0-2-0>

85. Section 107 of Iran’s Labor code

86. NICCO is a NGO with promotes self-reliance and sustainability .vocational training in information technology for afghan refugees for the purpose of encouraging the refugees to return home and find employment , NICCO operates a vocational school in mashhad ,zone 5.the school gathers about 120 young students including local Iranians and Iraqi refugees as well as afghan refugees . the school focuses on training of computer literacy and Desktop Publishing skills which will enable the students to get jobs and become economically self-sufficient.see NICCO “ Iran Project”, Accessed August 9, 2008 available at http://www.kyoto-nicco.org/iran_e.htm

87. A MSFW is either, a migrant farm worker, a seasonal farm worker, or a migrant food processing worker: Migrant farm workers- is a seasonal farm worker who has to travel to do the farm work so that he/she is unable to return to his/her permanent residence within the same date. Seasonal Farm workers – is a person who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farm work earned at least half of his/her earned income from farm work, and was not employed in farm work year round by the same employer. Migrant Food Processing worker –means a person who during the preceding 12 months has worked at least an aggregate of 25 or more days of parts of days in which some work was performed in food processing, (as classified in the 2002 North American Industry Classification System (NAICS) definitions 3116, 311421, 311941 and 311411 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. See US Department of Labor Employment & Training Administration, “Who are Migrant and Seasonal Farm workers”, (US Department of Labor , October 03, 2006-update June 26,2007), Accessed June 13,2008 Available at http://www.doleta.gov/programs/who_msfw.cfm

88. Barlett, Karen J. & Vargas, Flavio O., "Literacy Education for Adult Migrant Farm Workers" (National Clearinghouse on Literacy Education Washington DC, 1991) Retrieved June 12, 2008 from <http://www.ericdigests.org/pre-9220/migrant.htm>

89. Social Insurances is ensured in Article 22 of the Universal Declaration of Human Rights, 1948; Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1966. Social security was also reaffirmed as a basic human right at the General Discussion on Social Security at the International labor conference of the ILO in 2001.

90. ILO, Migration for Employment Convention (Revised), 1949 (NO.97), Accessed October 07, 2008 available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>

91. ILO, Migrant Workers (Supplementary Provisions) Convention, 1975 (NO. 143), Accessed October 07, 2008 available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>

92. If the period of their assignment is one year or less they shall be insured against accidents arising from work and its consequences and if the period of their assignment exceeds one year, they shall enjoy, like Iranian employees, all the benefits prescribed by the Social Insurance Act, with the exception of those benefits mentioned in Chapter Five, part two as well as marriage aid.

93. This certificate, properly notarized by the Iranian Embassy or Consulate, should be abstained from the local authorities where the beneficiary is residing and submitted to the organization.

94. Prior to these changes, immigrants could qualify for coverage if they met other program requirements, Had been naturalized, were lawful permanent residents or were permanently residing in the United States Under Color of Law (PRUCOL)

95. The international Convention for the Protection of Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention) in Article 4 defines "members of the family" as those "persons married to migrant workers or having a relationship with them to the effect that, according to Applicable law, it produces effects equivalent to marriage, as well as their dependent children and other Dependent persons who are recognized as members of the family by applicable legislation or applicable Bilateral or multilateral agreements between the

States concerned ” see also in general” : Family Rights in International Law see also in general : McCabe , Margaret & Maggie Rae , Human Rights and Family Law, (Oxford : Hart Publishing Limited , 2006)

96. article 17 of Iran’s Marriage Law, Center for Women and Family Affairs, Marriage Law , (*Adopted 1931*) , Accessed on June 30, 2008, available at [http://state.women.gov.ir/ebooks/laws and regulation of women and family in the Islamic republic of Iran/chaptr03/2462.htm](http://state.women.gov.ir/ebooks/laws%20and%20regulation%20of%20women%20and%20family%20in%20the%20Islamic%20republic%20of%20Iran/chaptr03/2462.htm)

97. With regard to a non-Iranian wife who may have acquired Iranian by nationality by marriage Article 986 of Iran’s Civil Code states that she may revert to her former nationality after divorce or the death of her husband, provided that she informs the Ministry of Foreign Affairs in writing of the facts. However, a widow who has children from her former husband cannot take advantage of this right so long as her children have not attained the full age of 18.

98. Foreigners need to take in to consideration the immigration requirements; moreover there are several Steps that must be followed in order for the marriage to be valid. Marriage procedures differ, sometimes substantially, from state to state. One important prerequisite is the state, residency requirement, as some states require it and others do not, some require both parties to reside in the state, others have a waiting period between the issuance of a marriage license and when you can actually marry. Other factors that must be taken into consideration include blood tests , ID requirement, types of legal marriages and age constraints . See US Department of State, “Getting married in the US”, (US Department of Stare, n.d.) Accessed May 15, 2008 available at <http://tokyo.usembassy.gov/e/acs/tacs-7114.html#req>

99. UN Treaty Documents, Convention on the Rights of the Child (CRC), adopted November20,1989, (entered into force September 2,1990), Accessed August 9, 2008 available at <http://untreaty.un.org/English/TreatyEvent2001/pdf/03e.pdf>

100. Birth registration is the official recording of the birth of a child by some administrative level of state and coordinated by a particular branch of government, It is a permanent and official record of a child’s existence.

101. Article 993 of Iran’s Civil Code.

102. Each system depends to a very great extent on the conscientious efforts of the physicians, hospital personnel, funeral directors, coroners, and medical

examiners in preparing or certifying information needed to complete the original records.

103. Nationality in the US is based on jus soli, consequently every child born in the US is a US citizen and automatically receives a birth certificate and can be used to apply for government benefits, such as passports.

104. A&M Logos International, Inc., "ABC/ Birth Certificate", (A&M Logos International, Inc., n.d.) Accessed May 16,2008 available at <http://www.apostille.us/abc/birth certificate.shtml>

105. Before this amendment children born as a result of such marriages were not allowed Iranian citizenship, however, this amendment does not guarantee citizenship it merely offers the opportunity of request for citizenship.

106. Article 976 Para 3 of Iran's Civil Code.

107. Ibid, Article 976 Para 4

108. Ibid, Article 976 Para 5

109. Ibid, Article 978

110. With regard to a non- Iranian wife who may have acquired Iranian nationality by marriage. Article 986 of Iran's Civil Code states that she may revert to her former after divorce or the death of her husband, provided that she informs the Ministry of Foreign Affairs in writing of the facts. However, a widow who has children from her former husband cannot take advantage of this right so long as her children have not attained the full age of 18. In any case, a woman who may acquire foreign nationality according to this Article cannot possess properties except within the fixed for foreign nationals. If she possess landed properties more than those allowed in the case of foreign nationals, or subsequently she comes into possession by inheritance of landed properties exceeding that limit, she must transfer the surplus amount of landed properties to Iranian nationals within one year from the date of her acquiring the inherited property. Failing to do so, the properties in question will be sold under the supervision of the local Pubic Prosecutor and the proceeds will be paid to her after the deduction of the expenses of sale.

111. Article 42 of Iran's Constitution October 4,1979, (entered into force December 3,1979) Accessed August 8,2008 available at <http://www.servat.unib.ch/law/icl/ir00000.html>

112. The applicant should be 18 years old, have five years of consecutive or

alternate residence in Iran, served their military service and should not be convicted of any major crime or non- political offence in any country.

113. A person who has acquired Iranian citizenship by following the above procedure, unlike those who are Iranian citizens either by the rule of descent blood or the country of birth will not enjoy all the rights to which Iranians are entitled. For instance, according to the Civil Code Article 982, such citizens might not practice law, become Parliament deputies or members of the Guardian Council, or provincial and urban councils as well as president.

114. In one case that I came across, second generation Afghan refugees fulfilling the requirements were denied citizenship.

115. In 2004, USCIS naturalized 537,151 persons. The leading countries of birth of new citizens were Mexico (63,840), India (37,975), and the Philippines (31,448). See Rytina, Nancy F. & ChunnongSaeger, “Naturalizations in the United States:2004”, (Department of Homeland Security, June 2005) Accessed May 16, 2008 available at <http://www.dhs.gov/xlibrary/assets/satistics/publications/NaturalizationFlowReport2004.pdf>

116. Naturalization is the process by which US citizenship is conferred upon a foreign citizen or national after he or she fulfils the requirements established by Congress in the Immigration and Nationality Act (INA).

117. The right to an education is guaranteed in Article 13 of the ICESCR, Article 28 of the CRC, Article 30 of the Migrant Workers Convention, Article 10 of CEDAW See United Nations, Convention on the Elimination of Discrimination Against Women, adopted 1979(entered into force September 3,1981) Accessed August 9,2008 available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> See also in general: Adas, Leah & AnnaKirova, **Global Migration and Education: Schools, Children, and Families**, (Mahwah, New Jersey, Routledge,2007)

118. The British School on its website states that due to the school’s status within Iran the school can only accept the children of parents with work permits issued by the Iranian authorities. See British Schools in the Middle East, Accessed August 9,2008 available at <http://www.bsme.org.uk/schools/more.asp?id=11&sch=The Pakistani International School Tehran> also requires the Residential Permit of the student and their father. See Pakistani International School Tehran, Accessed August

9,2008 available at <http://pistehran.com/admission.htm>

119. Underground and informal Afghan funded and run elementary schools exist throughout Iran. A former teacher explained to me that these schools cater to Afghan children who do not have proper refugee paperwork or their family does not have the financial means to send them to Iranian formal schools. The cost of enrollment is 1,000 tomans. It should be noted since these informal schools are illegal they are usually held in basements in a difficult environment, overcrowded and noisy.

120. A NGO in Iran, Society for the Protection of the Rights of Children (SPRC), advocates and promotes the UN Conventions on the Rights of the Child and focuses on areas such as child labor and working children and children working and living on the street. It also provides informal education to Afghan refugee children who are either illegal or do not have the financial means to attend Iranian schools. See Children's Rights Information Network, Darvazeh-Ghar (DG) project, Khane Koodak, Accessed August 7,2008 available at www.crin.org/Organisations/vieworg.asp?id=1966

121. Require proof of the child's date of birth, an immunization record or assurance form the former school district or a medical office that the required immunization have been done (or a required series begun) with a record to be sent, completion of a Parent Registration Statement attesting to whether the student has been or is suspended or expelled for offences involving drugs or alcohol, weapons or violence and proof of state residency.

122. The state of California, with the passage of Proposition 187 , which in theory is an exception as it denies illegal aliens from access to public schools; however, California educational institutions today the residence but not the legal status of elementary school pupils and university students.

123. If a child is seen unsupervised outside during school hours an officer may apprehend them and take them to their home and report the case to Social Services. Preventing children from attending school is considered a form of child abuse in the US.

124. See also in general: www.ed.gov

125. In 1994, MEP was reauthorized as part of IASA, which was enacted to enable all K-12 students to meet challenging content and performance standards.

126. Federally supported regular school year and summer term programs have

played an important role in improving educational opportunities for migrant students: however, migrant children continue to experience high dropout rates, low achievement levels, and slow progress through school.

127. Freedom of movement is mentioned in Article 13 of Universal Declaration of Human Rights and Article 12 of the ICCPR.

128. Federally supported regular school year and summer term programs have played an important role in improving educational opportunities for migrant students: however, migrant children continue to experience high dropout rates, low achievement levels, and slow progress through school

129. Also mentioned in Article 22 paragraph 1 of the 1990 international Convention on Migrant Workers and by Article I of protocol No. 7 to the European Convention on Human Rights. See also in general: Singh Juss, Satvinder, *International Migration and Global Justice*, (Bodmin: Cornwall, Ashgate Publishing, Ltd., 2006), pp 33-64

130. Article 13 (2) of the Universal Declaration of Human Rights (UDHR), the ICCPR Article 12 (2) and (4), the Migrant workers Convention Article 8 (1) and (2) and the CRC Article 10 (2).

131. Human Rights Education Associates, “Freedom of Movement”, (HREA, n. d.), Accessed June 13, 2008 available at http://www.hrea.org/index.php?base_id-148#top

132. Ministry of Economic and Affairs of Finance, Article 89 of the Direct Taxes Law, Accessed May 16, 2008 available at <http://www.mefa.gov.if/laws/showELst.asp?nFrom=82&nTo=92&DN=1>; Direct Taxes Law

133. Bangladesh, Egypt, Indonesia, Jordan, Kuwait, Pakistan, Saudi Arabia, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Iran, Iraq, Libya, Sudan and Syria

134. See also: The ILO Regulation (EEC) No 1612/68 of the council of 15 October 1968 on Freedom of Movement for Workers within the Community provides for the full protection of workers within their respective communities or across national

135. US Supreme Court Centre, “Zemel c. Rusk, 381 US 1 (1965)”, (US Supreme Court, 1965) Accessed June 20, 2008 available at

<http://supreme.justia.com/us/38/1>

136. Migrant Workers Convention Article 22 para 2 US Documentation Centre. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted December 18, 1990. (entered into force July 1, 2003) Accessed July 30, 2008 available at <http://www.un.org/documents/ga/res/45/a45r158.htm>

137. Ibid, Article 56 para 1

138. Article 13 of the ICCPR, Article 22 and 56 f the Migrant Workers Convention; Article 4 of Protocol 4 to the European Convention on Human Rights (ECHR), Article 22 of the American Convention on human Rights (ACHR) and Article 12 of the Charter on Human and peoples' Rights (ACHPR)

139. Criminal deportation of migrants raises human rights concerns when, for example it places such a person at risk of torture or other serious human rights violations, it results in family separation, a permanent resident becomes subject to criminal deportation as an adult when they have no meaningful links with their country of origin, having been born in their country of residence, or having first come there as a child and a person subject to criminal deportation is detained by the immigration authorities pending deportation, but cannot be deported, and so is held in prolonged or indefinite detention

140. Article 22 of the Migrant Workers Convention and Article 13 of the ICCPR

141. According to the Article 10 of the Executive Regulations the Ministry of Labor and Social Affair is authorized to take measures for the nullification of the work permit for those foreign nationals who do not observe Islamic principle, current laws and regulation of the country and the standard labor relations, on the basis of reports and declarations received from the related departments. Once a work permit is nullified the foreign national may no longer reside in Iran and must leave the country, furthermore, if necessary the Ministry of Labor and Social Affair will request the complement authorities to prohibit the entrance of those foreign citizen to the country, who haven't observed the same and have committed an offence more than twice.

142. The Category of "aggravated felony" was initially limited to major crimes, like murder and weapons trafficking, committed by non-citizen. But today, aggravated felonies include violent offenses varying a sentence of one year or

longer, some types of fraud , certain smuggling infraction , and various other nonviolent crimes considered misdemeanors under state laws. Typically consequence of an aggravated felony conviction is uniquely restricted legal process, followed by lifelong banishment from the US.

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