

# **OBSTACLES TO RATIFYING THE MIGRANTS' WORKERS CONVENTION**

## **THE CANADIAN CASE**

13<sup>TH</sup> International Metropolis Conference

October 27<sup>th</sup> – 31<sup>st</sup> 2008

Bonn, Germany

# Methodology

## **Phase One: (September – December 2005)**

- Identified government departments most involved with the protection of the rights of migrant workers i.e. those that dealt with human rights issues, migration management and the application of labor standards. (CIDA, DEFAIT, HRSDC, PWGSC, CIC, Heritage)
- Conducted 20 semi-structured interviews with senior public service employees

# Methodology

## Phase Two: (April – August 2006)

A total of 15 requests for interviews were sent out to:

- All 12 Members of Parliament representing the four main political parties in Canada – CPC, LPC, BQ, and NDP on the House of Commons Standing Committee on Citizenship and Immigration
- The Hon. Minister of Citizenship and Immigration
- The Parliamentary Secretary to the Minister of Citizenship and Immigration
- Citizenship and Immigration critic of the Liberal Party of Canada who was not a member of the standing committee
- Successful in interviewing 9 out of 15

# The Federal Government's Point of View

## **Obstacle 1 : Migration and national sovereignty**

**« Migration policies are exclusively national sovereignty issues and should not be determined by Conventions at multilateral or international levels.»**

# The Federal Government's Point of View

## **Obstacle 2: Immigration philosophy**

**« The spirit of the Convention in terms of migration management, is historically removed from Canadian culture and tradition. »**

# The Federal Government's Point of View

## **Obstacle 3: Temporary workers**

**«Given the nature of the type of contract work that low or unskilled migrants have, by signing the Convention Canada will be forced to restructure its programmes and grant certain fundamental rights of the Convention. »**

# The Federal Government's Point of View

## **Obstacle 4: Respect of fundamental rights**

**« It will be unnecessary to sign the Convention since fundamental rights of all, irrespective of their legal status, are already guaranteed. »**

## Members of Parliament's Point of View

The fact that the Convention is widely unknown to MPs is the most important obstacle to ratification. Two political parties, the Bloc Québécois and the New Democratic Party, are in favour of Canada ratifying the Convention, as reaffirmed in a 2008 letter.

## Members of Parliament's Point of View

In an official letter from the immigration critic of the New Democratic Party to the Hon. Ministers of Citizenship and Immigration and Foreign Affairs dated June 13th, 2006, a formal request was made for Canada to ratify the Migrants Workers Convention.

## Official Response from the Minister of Citizenship and Immigration

Excerpts:

“In Canada, the human rights of migrants are fully protected by virtue of the provisions of the various international human rights instruments to which Canada is a party, as well as the Canadian Charter of Rights and Freedoms. While the MWC has aims that Canada supports, we do not consider it an effective instrument.”

## **Official Response from the Minister of Citizenship and Immigration**

There are, for instance, inconsistencies between articles of the MWC and the rights articulated in other international human rights instruments. The MWC has a broader application than these conventions and this could result in a situation where migrant workers have more rights than Canadian citizens in respect to civil, economic and social rights. These inconsistencies could also lead to legal confusion in terms of interpreting Canada's existing international commitments to the protection of human rights.

## **Official Response from the Minister of Citizenship and Immigration**

In addition, because the MWC, unlike other instruments, guarantees rights without limitation or exception, it could raise legal issues for Canada beyond the area of provincial/territorial jurisdictional responsibility i.e., housing, rent control, vocational training and social and health services.

## Official Response from the Minister of Citizenship and Immigration

The international instruments to which Canada is already party and the *Canadian Charter of Rights and Freedoms* provide adequate protection for migrant workers in Canada.

## **Legal brief on the legal obstacles to ratifying the convention**

Immediately make public the legal brief commissioned by the Department of Citizenship and Immigration to the judicial services of the Department of Justice, which identifies the legal obstacles to ratifying the Convention

## The 2008 Canadian General Election

### Question -

*Will your party take immediate steps to ratify the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families? If so, what steps will be taken? If not, why not?*

## Response from the Liberal Party of Canada

“Yes, a new Liberal government would take immediate steps to ratify the *UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.*” (Oct. 1<sup>st</sup> 2008)

## **Response from the New Democratic Party of Canada**

“Canada's New Democrats are deeply committed to multilateral processes and envisages an ambitious role for the United Nations in the protection of human rights including providing leadership on the treatment of migrant workers and their families.

We believe that it is in our national interest to have Canada demonstrate its domestic commitment to take a leadership role internationally to advance goals such as those outlined in The UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. This focus coincides with a number of priorities being advanced by the federal NDP.”

# Response from the New Democratic Party of Canada

## Examples:

- set clear worker protection measures and provide the resources needed to implement them as part of our goals for an improved immigration system—to ensure fairness, boost Canada's productivity, and ease family reunification.
- strong record in challenging the Canadian government on the use of temporary foreign workers saying that it clearly violates foreign worker criteria that wages and working conditions must be comparable to those of Canadian workers.

# Response from the New Democratic Party of Canada

## Examples:

Questioned the government on its limiting temporary foreign worker applicants to the newly introduced Experience Class at Skill Types O, A, B (managerial, professional and technical occupations and skilled trades) and pointed out that the majority of the 130,000 temporary foreign workers coming to Canada each year will never have a chance to stay in Canada permanently. Given their precarious status, these workers are open to exploitation by their employers via poor working conditions and lower wages. As a result, wages of ordinary Canadian workers will also be affected.

## Response from the Green Party of Canada

“The Green Party [of Canada] recognizes that migrant workers and their families face high risk of exploitation if not given adequate rights and protections from government. The party supports the development of an immigration policy underpinned by a human rights approach that respects the minimum standards set down in international human rights law in relation to migrant workers.” (October 10<sup>th</sup>, 2008)

## Green Party of Canada response

Consequently, [the Green Party of Canada] would support the ratification of the *UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, which guarantees workers' protection and prevents them from being exploited.

# Conclusion

## Q & A



# Contact information

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