
The Mobility Convention's Contribution to Addressing Socioeconomic Issues in Protracted Refugee Situations

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The Model International Mobility Convention (MIMC) is a unique and aspirational document that has the capacity to address a number of challenges related to forced migration. It is not a panacea for all migration-related concerns, and States will surely take issue with some parts of it. That said, its timing is critical: it comes at a moment when the world is increasingly focused on migration as a political, security and economic issue. Migration, and forced migration in particular, is no longer a side issue that is left to human rights activists and humanitarians; it is at the center of a range of negotiations that are now viewed as crucial to peace and stability. This commentary focuses on how the MIMC engages with socioeconomic issues in protracted refugee situations (PRS).¹ It considers the main concerns that are raised by protracted situations, and then outlines how the Convention approaches them. It concludes by offering a discussion of places for improvement, as well as current challenges to preventing situations from becoming protracted, and ending those that are ongoing.

PROTRACTED REFUGEE SITUATIONS

Today more than sixty-five million people have been uprooted from their homes.² While ongoing crises, such as the conflicts in Syria, Yemen, the Democratic Republic of the Congo, and the Central African Republic continue, the majority of displacement situations in the world—particularly refugee situations—are now pro-

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1. *Protracted Refugee Situations*, U.S. DEP'T OF STATE, <https://www.state.gov/j/prm/policyissues/issues/protracted/> [<https://perma.cc/KQJ3-UA8C>].

2. *Figures at a Glance*, UNHCR, <http://www.unhcr.org/en-us/figures-at-a-glance.html> [<https://perma.cc/TG6S-ELKB>].

tracted. Indeed, the average refugee situation lasts for a staggering twenty-six years, with entire generations growing up in exile and without access to some of their most basic human rights.³ In these situations, which have become an increasingly widespread and enduring feature of contemporary displacement:

[R]efugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance.⁴

According to the UNHCR's definition, nearly two-thirds of the world's refugees in 2015—some twelve million—are considered to be in a protracted situation.⁵ This is a staggering figure and one that is only expected to grow given the underlying root causes of forced displacement that will likely remain unresolved in the near future.

Moreover, the States hosting the largest populations of refugees tend to be the least capable, and also experience high levels of poverty and insecurity.⁶ Refugees and other forced migrants in these contexts often face significant rights denials, including difficulty accessing the right to work and limitations on their freedom of movement. Indeed, refugees and other forced migrants are often unable to obtain required work permits or the necessary permissions to leave a camp or settlement to work and support themselves, despite the codification of such rights in international refugee law. Many refugees in PRS are thus forced to rely on aid, and as the years go on, may remain in poverty. This results in unrealized potential, frustration and uncertainty—all the while host States miss the opportunity to benefit from the skills of refugees. It can also drive some refugees to seek other more vulnerable and marginalized avenues of earning income in dangerous or unregulated sectors of the informal economy. This can leave such populations exposed to trafficking, child labor and the risks characteristic of other precarious or exploitative situations.

3. UNHCR, PROTRACTED REFUGEE SITUATIONS: HIGH COMMISSIONER'S INITIATIVE 5 (2008), <http://www.unhcr.org/4937de6f2.pdf> [<https://perma.cc/PSH8-K67E>].

4. UNHCR defines such situations as those in which displacement has occurred for five years or longer for a population of 25,000 or more. *Id.* However, this definition does not include Palestinian refugees, internally displaced people, or urban self-settled refugees.

5. *Global Protracted Refugee Situations*, U.S. DEP'T OF STATE, <https://www.state.gov/documents/organization/266018.pdf> [<https://perma.cc/TCF3-8TKZ>].

6. *Protracted Refugee Situations*, *supra* note 1.

Likewise, children and youth in PRS often lack access to education for years on end. Refugees may struggle to access courts, health services, and may not be able to own land or property. The presence of refugees and other displaced populations for long periods of time can also exacerbate tensions within host communities, as locals feel that they must compete for health and education services that might be more readily available to refugees from international aid groups.

Increased attention on protracted displacement has renewed a call for thinking creatively about how to solve these seemingly endless situations. For example, Gil Loescher and James Milner focus on responsibility sharing among host States—which tend to be poorer and less able to cope—and wealthier, Northern States like the United States and European countries—which tend to absorb only a small number of refugees (less than one percent) through resettlement programs.⁷ They argue that States in the global South are inclined to feel that Northern States are trying to contain refugees to the South, while Northern States are inclined to view Southern States as impeding solutions for refugees, especially as they often ignore or flat out refuse support for any form of local integration.⁸ Thus, finding more balanced approaches to responsibility sharing is, broadly speaking, at the heart of solving protracted displacement.

Other perspectives include finding ways to make hosting refugees seem less unfavorable to the countries of first asylum. This includes urging further development investment in the area, as well as finding ways for refugees to work and apply their skills to grow the local economy. In this vein, refugees are framed not as a drain or burden over the long haul, but as having economic potential as entrepreneurs, consumers, taxpayers, and innovators. Their presence—often through local integration—may bring about more investment in infrastructure by the international community seeking to serve them, for example. Or they may boost other labor activities, as potentially seen in “special economic zones” taking place in Jordan.⁹ These local integration-based solutions may be “win-win” in helping to support the development of host communities, as well as addressing the denial of some socioeconomic rights, such as education, housing, health care, and livelihood opportunities.¹⁰

7. GIL LOESCHER & JAMES MILNER, PROTRACTED REFUGEE SITUATIONS: DOMESTIC AND INTERNATIONAL SECURITY IMPLICATIONS 375 (2005). JAMES MILNER, REFUGEES, THE STATE AND THE POLITICS OF ASYLUM IN AFRICA (2009).

8. *Id.*

9. *Id.*

10. ALEXANDER BETTS, FORCED MIGRATION AND GLOBAL POLITICS (2009).

Likewise, finding ways to shift from “care and maintenance” models (where international organizations simply maintain refugees in camps, rather than working to find solutions) to self-reliance (where refugees support themselves) can help to ameliorate and eventually end PRS.¹¹ This might include vocational skills training for refugees, political negotiations to open up business opportunities and markets, or finding other modes of cooperation between host communities, refugees, and international organizations working in the area.¹² Resettlement can also be beneficial in overcoming “care and maintenance” PRS stalemates. Indeed, when other countries offer to take a portion of a refugee population, this can unlock new political avenues for finding additional durable solutions, rather than leaving people in limbo for years on end. After all, host countries that bear the largest numbers of arrivals ought not be expected to solve the situation on their own. Finally, recognizing that refugee populations are diverse and that there is no one-size-fits-all approach is an important step to overcoming PRS. Indeed, many host countries are set on one solution—usually repatriation—and thus hold out for years as conflicts continue and conditions remain unsafe for return, rather than thinking creatively to help end displacement for some of the refugees they are hosting.

WHAT THE CONVENTION DOES

The MIMC does a number of things that help to address PRS, and it builds on existing relevant international law and norms, particularly those enshrined in the 1951 Refugee Convention¹³ and the EU Qualification Directive.¹⁴ First off, it explicitly mentions PRS in Ar-

11. For further discussion, see T. ALEXANDER ALEINIKOFF, *MIGRATION POL'Y INST., FROM DEPENDENCE TO SELF-RELIANCE: CHANGING THE PARADIGM IN PROTRACTED REFUGEE SITUATIONS* (2015).

12. See, for example, recent efforts to create “special economic zones” in Jordan, or local integration opportunities among refugees in Uganda. For more on local integration, see Karen Jacobsen, *Local Integration: The Forgotten Solution*, *MIGRATION POL'Y INST.*, (Oct. 1, 2003), <https://www.migrationpolicy.org/article/local-integration-forgotten-solution> [<https://perma.cc/4YUJ-P2BM>].

13. Convention Relating to the Status of Refugees, July 28, 1951, 198 U.N.T.S. 137.

14. Directive 2011/95/EU of the European Parliament and of the Council of 13 Dec 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast), 2011 O.J. (L 337) 9, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN> [<https://perma.cc/D6L4->

ticle 163, noting that return is not necessarily the only solution in such contexts and that States should facilitate integration and naturalization of those under international protection.¹⁵ This is important: the explicit mention of integration is a step forward in and of itself, as indicated by recent research on ways to find solutions to PRS. Moving beyond the rhetoric of return as the best and sole option is the first step in unlocking many PRS.

Second, the MIMC emphasizes expediting naturalization, essentially limiting how long displacement lasts before individuals are provided with pathways to integration and secure status. This is an obvious and significant step to avoiding protracted displacement. To this end, it proposes that some legal status (permanent residence or an equivalent legal status) should be obtained in under six years, and that time under international protection should count towards fulfilling naturalization or permanent residency requirements.

The MIMC also encourages a shift away from care and maintenance to self-reliance—another important move toward overcoming PRS and accessing socioeconomic rights. For example, these provisions cap the length of time that access to work can be denied and require that no restrictive measures should be imposed on those with international protection (even as there may be restrictions for other foreign nationals) when it comes to accessing the national labor market.¹⁶ And following the lead of the EU Qualification Directive which seeks to harmonize the criteria used by EU States to define who is a refugee,¹⁷ this approach emphasizes access to employment-related education and vocational training opportunities for adults, including training courses for upgrading skills, practical workplace experience and counseling services afforded by employment offices.¹⁸ All of these are key to helping find solutions to protracted situations and securing better access to socioeconomic rights.

The MIMC also emphasizes freedom of movement within the host territory, the issuance of travel documents, and the right to

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15. See Model International Mobility Convention, *International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter*, art. 163, ¶ 1 (2017), http://globalpolicy.columbia.edu/sites/default/files/mimc_document.pdf [<https://perma.cc/F3Q3-6G88>].

16. *Id.*, art. 169, ¶ 12. The Convention delimits such measures to no more than six months after the application has been filed, and indicates that refugees should have the same treatment as nationals once they have recognized protection status.

17. Directive, *supra* note 14.

18. MIMC, *supra* note 15, art. 169, ¶ 3.

choose one's place of residence. It places constraints on how long temporary protection should last and when it should translate to a more permanent and robust form of protection status. It also limits how long host countries can abstain from providing access to permanent status or naturalization. This is a key element to avoiding protracted situations, emphasizing that the labels and restrictions that come with displacement have an end point; as time passes, people should have more access to rights, ultimately working toward a solution that enables them to live in dignity and self-reliance. Put simply, it establishes the rights that affirm that no one should be a refugee forever. This broader point—that no one should be kept in limbo or remain a migrant indefinitely—is an important theme throughout the MIMC.

Moreover, the MIMC engages with and advances the principles of responsibility sharing, a concept commonly discussed in conversations about protracted displacement and that is key to overcoming such situations.¹⁹ For example, in Chapter VIII—which is devoted to conceptualizing a Treaty Body to monitor and implement the Convention—there is the proposal that other States should help when another State cannot effectively offer protection, particularly in contexts of mass influx.²⁰ These provisions also provide a clear framework for committing States to facilitate additional resettlement—a crucial way that wealthier countries can support struggling host States—and includes a formal mechanism for responsibility sharing by creating legal pathways for labor mobility as an additional solution to displacement. It also pushes for increased cooperation between States to work toward solutions to protracted situations. Indeed, many protracted situations have gone on for so long because the lack of cooperation to find solutions has continued. The MIMC thus emphasizes and opens space for creative thinking about how refugees and other displaced persons can begin to benefit local economies and host areas.

Likewise, the focus on work or livelihoods, freedom of movement and access to other rights relating to health and education (including higher education as a pathway for asylum) throughout the MIMC speak directly to protracted situations. In doing so, the Convention also highlights the complexity of why people move—yes,

19. For more, see, e.g., Martin Gottwald, *Burden Sharing and Refugee Protection*, in OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES 525 (Elena Fiddian-Qasmiyeh et al. eds., 2014); Alexander Betts, *The Refugee Regime Complex*, 29 REFUGEE SURVEY QUARTERLY 12 (2010); Eiko R. Thielemann, *Between Interests and Norms: Explaining Burden-Sharing in the European Union*, 16 J. OF REFUGEE STUD. 253 (2003).

20. MIMC, *supra* note 15, art. 174, ¶ 3.

they may flee persecution, but education, work and other factors are also relevant, particularly as years go by. For example, a family that originally fled persecution a decade ago would want to know if they could support themselves upon return. Has someone taken over their land and home? Are conditions such that they can find work? Or they may not want to return because schools and clinics may be difficult to access in their former home, or children and youth may be more familiar with the language and culture of their host country than the country their family fled years ago. They may want a student to finish their studies in the host country, rather than try to transfer back to a different system in the country of origin. Indeed, as with any family or individual considering a move, reasons can evolve over time—families change, babies are born, marriages happen, relatives pass away, and any number of life occurrences can alter calculations of movement—something that the MIMC as a whole helps to account for.

PLACES FOR IMPROVEMENT

Despite putting forward many important advancements, there remains some additional work that could be done to strengthen the MIMC's response to socioeconomic rights in the protracted context. There could be further attention on how States can avoid long-term encampment situations in particular, and how to respond differently to urban versus camp settings. There also continues to be a need for additional work on refugee agency: how can more choice and self-determination be realized for displaced persons? Much of the MIMC is geared toward the actions of States, by way of providing legal and policy guidance. Exploring ways for refugees to determine their path during displacement—including incorporating refugee ideas on how best to improve access to rights, or considering how refugees might have greater choice in the durable solutions relevant to them—might further address this concern. For example, incorporating refugee leadership in policy formation relating to health, education, livelihoods and freedom of movement would add a missing piece to how many States respond to refugees. Likewise the MIMC could more robustly incorporate refugee choice in the resettlement quotas that States will offer in the Responsibility Sharing scheme.²¹ The MIMC

21. The Convention does give some attention to this by way of providing an avenue to labor mobility for forced migrants, while also requiring that “consideration be given to the resettlement and mobility interests of refugees.” See MIMC, *supra* note 15, art. 210, ¶ 7. However, Alex Aleinikoff's discussion of Nansen passports and freedom of movement offers some additional ideas for improving refugees' choices during displacement. See T.

could also do more to account for shifting roles over the duration of displacement, including how different aid actors alter their assistance with the passing of time and how this may potentially transform and complicate the relationship of refugee committees to their host States.²² It could also be more explicit in understanding how forced migrants' needs change and are dynamic.

The MIMC also struggles to differentiate some context-specific issue areas within protracted situations, including cyclical migration or situations that are both emergency and protracted, such as Syria. Indeed, situations where refugees flee and then return (perhaps during a pause in the fighting, or a specific season where it might be safe enough to go and check on property or family that may have stayed behind), or where multiple waves of displacement cause refugees to flee, return, and then flee again are not uncommon. It is challenging to consider how to address this, but might be worth doing so in future conversations. Likewise, situations that are both emergency and protracted represent specific challenges, as humanitarian relief actors (who are acting in the immediate crisis phase) and development actors (who would tend to be more useful in protracted cases where immediate needs are addressed, but longer term development goals must be addressed) are notorious for not working well together. It is not clear whether the MIMC could do more to take this into account given its focus on creating a multilateral framework for addressing mobility more broadly. However, there might be opportunities to support further ways to alleviate the tensions with host communities that can emerge as refugees stay for long periods of time. Moreover, while reinforcing some of the resources available to humanitarian actors, the MIMC does not give many new tools to UNHCR or others to push harder on the right to work, freedom of movement, and other important rights relevant to refugee and other migrants' socioeconomic status. Finally, while the MIMC cannot delve into the political impasses and ongoing conflicts that cause displacement situations to become protracted, it could incorporate some sense of migration as a political variable in and of itself (rather than a mere symptom or byproduct of politics) in prolonging or ending conflict.²³ There might be opportunities for this as it complements other

Alexander Aleinikoff, *Taking Mobility Seriously in the Model International Mobility Convention*, 56 COLUM. J. OF TRANS. L. 296, 300 (2017). See also Alexander Betts, *Let Refugees Fly to Europe*, N.Y. TIMES (Sept. 24, 2015), <https://www.nytimes.com/2015/09/25/opinion/let-refugees-fly-to-europe.html> [<https://perma.cc/7CKV-QNL2>].

22. See, e.g., SARAH DEARDORFF MILLER, UNHCR AS A SURROGATE STATE: PROTRACTED REFUGEE SITUATIONS (forthcoming 2018).

23. For a broader discussion of some of these issues, see SARAH DEARDORFF MILLER,

important moments in addressing PRS, including building upon the New York Declaration; a renewed focus on mass migration; the UNHCR Executive Committee Conclusion on PRS from 2009; Convention Plus; Development Assistance to Refugees; Development through Local Integration; and the self-reliance strategy, as seen in Uganda and elsewhere.²⁴

CONCLUSION

In closing, the MIMC marks an important step in driving forward ongoing conversations about improved responses to migration, and forced migration in particular. It provides many concrete recommendations, serving as a guide for how to progress in ways that are better for receiving States, and, most of all, to the displaced themselves. This commentary has highlighted some of the key concerns raised by protracted displacement and potential ways of overcoming these challenges. It has focused on various socioeconomic aspects of protracted displacement, including the right to work, and outlined how the MIMC offers improvements to the current common responses. Some include time limits on how long a person can be denied a status and access to important rights, in part by articulating clear guidelines on when work permits and other opportunities should become available to refugees and other forced migrants. This commentary has also pointed out ways in which the MIMC could be even stronger, or highlighted gaps where it would be helpful to offer more guidance. Above all, the MIMC serves as a useful tool for continuing the conversation on what the international response to mobility

POLITICAL AND HUMANITARIAN RESPONSES TO SYRIAN DISPLACEMENT (2016).

24. UNHCR, CONCLUSION OF PROTRACTED REFUGEE SITUATIONS, <http://www.unhcr.org/en-us/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html> [https://perma.cc/7J2L-FSXV];

Convention Plus at a Glance, UNHCR, <http://www.unhcr.org/403b30684.pdf> [https://perma.cc/YV6V-SCVV];

UNHCR, DEVELOPMENT ASSISTANCE FOR REFUGEES (DAR) FOR UGANDA SELF RELIANCE STRATEGY: WAY FORWARD (2003), <http://www.unhcr.org/en-us/protection/operations/41c6a19b4/development-assistance-refugees-dar-uganda-self-reliance-strategy-report.html> [https://perma.cc/8NE7-VEW9]; UNHCR, ZAMBIA INITIATIVE: DEVELOPMENT THROUGH LOCAL INTEGRATION (2002), <http://www.unhcr.org/en-us/partners/partners/3dd4fb264/zambia-initiative-development-local-integration-programme-formulation-mission.html> [https://perma.cc/B6EC-Y5S4]; UNHCR EXCOM, LOCAL INTEGRATION AND SELF-RELIANCE (2005), <http://www.unhcr.org/en-us/excom/standcom/42a0054f2/local-integration-self-reliance.html> [https://perma.cc/55U4-99L2].

should be. Now, more than ever, is the time to have this discussion, and the MIMC—whether adopted or simply drawn upon to advance this conversation—is an important step forward in ending protracted displacement.