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# Pathways to Protection and Permanency: Towards Regulated Global Economic Migration and Mobility

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If we believe global statistics, economically motivated migrants make up the majority of migrants in the world.<sup>1</sup> Yet, international legal instruments to govern economic migration remain underdeveloped and undersubscribed. Against this backdrop, Chapter IV of the Model International Mobility Convention (MIMC)<sup>2</sup> formulates a set of rights specifically applicable to economic migrants, encompassing different categories of visa holders, such as migrant workers, residents, and investors, and a number of sub-categories, including temporary and domestic workers. The chapter draws heavily on the 1990 Migrant Workers Convention, the ILO's Multilateral Framework on Labour Migration, as well as a number of other international and regional legal instruments and political commitments.<sup>3</sup>

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1. The ILO estimates that roughly two-thirds of all international migrants, or 150 million people, are migrant workers, about four percent of all workers globally. This includes "all international migrants who are currently employed or are unemployed and seeking employment in their present country of residence." See INT'L LABOUR ORG., ILO GLOBAL ESTIMATES OF MIGRANT WORKERS AND MIGRANT DOMESTIC WORKERS: RESULTS AND METHODOLOGY (2015), [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_436343.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf) [<https://perma.cc/HS2R-AL3D>].

2. Model International Mobility Convention (MIMC), *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*, at 32 (2017), [http://globalpolicy.columbia.edu/sites/default/files/mimc\\_document.pdf](http://globalpolicy.columbia.edu/sites/default/files/mimc_document.pdf) [<https://perma.cc/F3Q3-6G88>].

3. These include, but are not limited to: the Domestic Workers Convention, the Convention on the Rights of the Child, the ILO Minimum Age Convention, the Worst Forms of Child Labour Convention, the Private Employment Agencies Convention; the EU Directive on temporary agency work, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers; the Sustainable Development Goals, and the

As with the MIMC overall, Chapter IV largely follows a cumulative logic with rights progressively accumulating across the chapters. The exception to this logic is the section on temporary migrant workers, as described in Part IV of the chapter. Here, the MIMC allows the possibility to limit certain rights, otherwise applicable to migrant workers, for specific periods of time. This is perhaps one of the most innovative, and likely also the most controversial, parts of the chapter, which will be discussed in greater detail later on in this paper. The chapter also proposes a set of rules for inter-governmental conduct, designed to further facilitate economic migration. These are complemented by the Convention's Treaty Body provisions (Chapter VIII). The paper ends with some concluding observations.

#### ECONOMIC MIGRATION: CURRENT DYNAMICS

Current political and market dynamics surrounding economic migration are characterized by global power imbalances. Countries of destination largely get to determine who they admit and under which conditions, while countries of origin tend to have little interest or leverage to control the exit of migrant workers and other economically motivated migrants.<sup>4</sup> Policies in destination countries have become increasingly selective over the past decade, giving employment and residence rights more easily to high-skilled and/or wealthy migrants, while excluding less-skilled migrants.<sup>5</sup> At the same time, more governments in countries of origin have adopted proactive policies for encouraging and managing low-skilled labor migration, often with a view to relieving domestic labor market pressures and generating foreign currency earnings through remittance receipts.<sup>6</sup>

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Addis Ababa Action Agenda. The Chapter also leans on academic sources where it seeks to establish new norms.

4. JOSE ANTONIO ALONSO, UNITED NATIONS COMMITTEE FOR DEVELOPMENT POLICY, *MANAGING LABOUR MOBILITY: A MISSING PILLAR OF GLOBAL GOVERNANCE* (2015), [http://www.un.org/en/development/desa/policy/cdp/cdp\\_background\\_papers/bp2015\\_26.pdf](http://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2015_26.pdf) [<https://perma.cc/9LTQ-4Y73>]; REY KOSLOWSKI, THE CTR. FOR MIGRATION STUD., *GLOBAL MOBILITY AND THE QUEST FOR AN INTERNATIONAL MIGRATION REGIME* 103 (2008), <http://onlinelibrary.wiley.com/doi/10.1111/j.2050-411X.2008.tb00395.x/abstract> [<https://perma.cc/BL3K-K7EB>].

5. Matthias Czaika & Hein de Haas, *The Globalization of Migration: Has the World Become More Migratory?*, 48 *INT'L MIGRATION REV.* 283 (2014), <http://onlinelibrary.wiley.com/doi/10.1111/imre.12095/full> [<https://perma.cc/965U-V539>].

6. This is particularly true of countries of origin in Asia that send large numbers of migrant workers abroad, with the Philippines having the most evolved and often cited

As a result, two almost separate global labor markets have emerged. In the market for investors and highly skilled labor, rich and emerging economies compete with one another to attract wealth and talent to their shores. This is reflected, for example, in the adoption of investor visas, job search visas, and more generous provisions for allowing students to work (except in the English-speaking countries that already lead the market).<sup>7</sup> Developing countries stand to lose out in this competition.

The dynamics are inversed on the global market for low-skilled labor, where the supply of workers outstrips demand and countries of origin are in competition to place their workers abroad. A number of countries of origin have sought to protect their migrant workers abroad by adopting measures such as Memoranda of Understanding and bilateral agreements with destination countries;<sup>8</sup> adopting standard contracts and recruitment regulations to keep fees in check;<sup>9</sup> investing in pre-departure training and professional skills development for migrant workers;<sup>10</sup> establishing Migrant Welfare Funds or Banks to provide a measure of social protection;<sup>11</sup> and

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overseas employment policy. See, e.g., MARUJA M.B. ASIS, MIGRATION POL'Y INSTITUTE, THE PHILIPPINES' CULTURE OF MIGRATION (2006), <https://www.migrationpolicy.org/article/philippines-culture-migration> [<https://perma.cc/DY7Q-DK9F>]; Maruja M.B. Asis, MIGRATION POL'Y INST., *The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return* (2017), <https://www.migrationpolicy.org/article/philippines-beyond-labor-migration-toward-development-and-possibly-return> [<https://perma.cc/EU39-LYT9>]. For an overview of foreign worker policies in Bangladesh, India, Nepal, Pakistan and Sri Lanka, see *Situation Report: International Migration in South and South-West Asia*, UNESCAP, <http://sitreport.unescapsdd.org/labour-migration/governance-labour-migration> [<https://perma.cc/5ECR-HXVE>].

7. OECD, INTERNATIONAL MIGRATION OUTLOOK 2011 (2011), <http://www.oecd.org/migration/internationalmigrationoutlook2011.htm> [<https://perma.cc/78DE-48BK>].

8. See, e.g., PIYASIRI WICKRAMASEKARA, INT'L LAB. ORG., BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW (2015), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_413810.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_413810.pdf) [<https://perma.cc/JG4Z-K96K>].

9. KATHARINE JONES, INT'L ORG. FOR MIGRATION, RECRUITMENT MONITORING AND MIGRANT WELFARE ASSISTANCE: WHAT WORKS? (2015), [https://www.iom.int/sites/default/files/migrated\\_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf](https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf), [<https://perma.cc/YX5W-KWKJ>].

10. For a global overview, see EUR. TRAINING FOUNDATION, GLOBAL INVENTORY WITH A FOCUS ON COUNTRIES OF ORIGIN (2015), [http://cadmus.eui.eu/bitstream/handle/1814/36840/MISMES\\_Global\\_Inventory.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/36840/MISMES_Global_Inventory.pdf?sequence=1&isAllowed=y) [<https://perma.cc/KB7L-TNMD>].

11. See, e.g., MARIUS OLIVIER, INT'L ORG. FOR MIGRATION, SOCIAL PROTECTION FOR

strengthening the reach and breadth of their consular protections and services.<sup>12</sup> Yet, these measures only go so far, as long as large wage differentials between countries of origin and destination create a strong incentive for migrants to collude with recruiters or smugglers in circumventing regulations. What is more, destination countries can always turn to countries that supply cheaper labor with less regulations attached, a reality that further limits the scope of countries of origin to shape existing labor migration dynamics.

Those dynamics leave low-skilled workers in a weak bargaining position. To secure a job abroad, many incur debt paying high upfront-fees to recruiters, who may mislead them about the nature and conditions of employment abroad. Formal opportunities for low-skilled workers are generally confined to temporary and seasonal worker programs, which have proliferated in recent years. Such programs often come with restrictive conditions: not permitting workers to bring families, to gain secure residence status, or to accrue and export social security benefits. Moreover, migrant workers are often tied to their employer, making them vulnerable to abuses such as withholding of wages, poor living and working conditions, seizure of passports or identity documents, and physical or sexual violence. This risk is aggravated in sectors that are inadequately covered by labor laws or where enforcement is poor. For female migrant workers, these are often domestic work or the sex industry; for male migrants it may be working on fishing boats or in the agriculture sector. With trade union rights restricted or nonexistent in some countries, migrants in low-wage sectors are often not organized, further contributing to the imbalance in power between employers and migrant workers.

#### THE EXISTING LEGAL REGIME

For the time being, economic migration remains largely governed through a complex and fragmented tapestry of bilateral and re-

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MIGRANT WORKERS ABROAD: ADDRESSING THE DEFICIT VIA COUNTRY-OF-ORIGIN UNILATERAL MEASURES? (2017), [https://publications.iom.int/system/files/pdf/social\\_protection.pdf?language=en](https://publications.iom.int/system/files/pdf/social_protection.pdf?language=en) [<https://perma.cc/P52J-42Q3>].

12. For example, on the provision of consular services, see C. R. Abrar et al., *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, India and Sri Lanka* (Research Programme Consortium, Working Paper 23, 2014), <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=wp23-abrar-et-al-2014-institutional-strengthening-of-the-office-of-labour-attaches-final.pdf&site=354> [<https://perma.cc/TX4P-VCB9>].

gional agreements and understandings that can take various forms and contain different objectives, provisions and protections for migrant workers.<sup>13</sup> The current context lacks coherence but also effective coverage; the ILO notes that many bilateral labor agreements remain mute on provisions for the protection and equal treatment of migrant workers, gender concerns, and social dialogue.<sup>14</sup> Major international migration corridors fall in between existing regional agreements and are only subject to informal dialogue processes rather than more formalized governance arrangements.

There is no general framework that would spell out the rules of engagement among States in this area—that is, a “General Agreement on Labor Migration” similar to the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO). The closest States have come to any global commitment on rules governing admissions of migrant workers are those on the international movement of service providers established under the auspices of the GATS (Mode 4). Yet, under those rules, market access remains largely restricted to movements of intra-corporate transferees and other highly skilled persons for limited periods of time.

States have not only been reluctant to cede control as regards the quantity of migration, but also when it comes to rules regarding the “quality” of movements. A number of instruments spell out the rights of migrant workers and how they should be treated, chiefly the 1990 United Nations Convention on the Rights of Migrant Workers and Members of their Families and the ILO Migration for Employment Convention (No. 97) of 1949 and Migrant Workers Convention (No. 143) of 1975. The problem is that ratification rates of these legal instruments are low, especially among the main receiving countries, not least due to reluctance on the part of governments to recognize and uphold the rights of migrants in an irregular situation.

#### THE MIMC’S OBJECTIVES AND APPROACH TO ECONOMIC MIGRATION

The MIMC pursues two overarching strategies related to economic migration. First, in its perhaps most direct challenge to the implicit power granted to receiving States, Chapter IV introduces some “ground rules” for the governance of what is currently an under-regulated area. This is most evidently the case where its provisions directly affect States’ policies as regards visas, admissions, res-

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13. Wickramasekara, *supra* note 8. See SÁEZ, SEBASTIÁN, LET WORKERS MOVE: USING BILATERAL LABOR AGREEMENTS TO INCREASE TRADE IN SERVICES (2013).

14. Wickramasekara, *supra* note 8.

idence and citizenship—areas of policy that are traditionally considered sovereign domain.

Second, in a challenge to the existing international legal regime protecting migrant workers, the MIMC introduces a hierarchy or graduation of rights. This strategy grows out of a longstanding academic and policy debate about the existence of a trade-off between the number of migrants a State will admit, and the level of rights it will afford them.<sup>15</sup> If States have discretion over who they admit, and if maintaining openness to low-skill immigration is desirable from the perspective of the migrants and the countries of origin, then—the argument goes—certain rights limitations may be the price to pay for States' willingness to accept large numbers of low-skilled workers.

Opponents fear that backsliding on migrant workers' rights, especially for the less educated and skilled, will exacerbate inequality and risks reducing migrants to a permanent underclass.<sup>16</sup> It may also undermine labor standards for all workers in a particular sector or labor market. Those who argue for specific rights restrictions point to the ineffectiveness of existing legal frameworks, which often enough leave low-skilled workers essentially in a protection vacuum, and stress the agency and consent of migrant workers, who clearly benefit from greater income opportunities abroad (and who may not enjoy full labor rights protections in their country of origin, either).

While Chapter IV sides with the latter position in this debate, it clearly recognizes and seeks to address existing protection gaps for migrant workers. Thus, it expands, on the one hand, rights protections for migrant workers over and above what current legal instruments prescribe, but accepts, on the other, limitations on some rights for certain categories of migrant workers, namely temporary workers. The implicit “gamble” is that States will be more willing to accept and actually apply a more limited set of rights thus leading to a net improvement over the current widespread non-application of migrant workers' rights.

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15. See, e.g., Martin Ruhs, *The Rights of Migrant Workers: Economics, Politics and Ethics*, 155 INT'L LAB. REV., 281 (2016); Michelle Leighton, *The Price of Rights: Regulating International Labor Migration*, 154 INT'L LAB. REV. 277 (2015).

16. Leighton argues that adherence to international labor standards is not only legally and morally the right thing to do, but that the perception of fairness for workers, including higher wages, also increases productivity and leads to better economic outcomes. She further questions whether restricting migrant workers' rights would lead to greater acceptance of immigration given the often rather loose connection between public opinion on migration and the actual number and conditions of those admitted. Leighton, *supra* note 15.

## CHAPTER IV: KEY PROVISIONS AND INNOVATIONS

At the outset, Chapter IV reaffirms the basic rights of all economic migrants, regardless of category, including civil and political rights, such as the right to life, freedom from slavery and forced labor, right to privacy, freedom of conscience and religion, and the right to recognition as a person before the law. Further, all categories of migrant workers are entitled to fundamental labor rights, such as equality of treatment with nationals as regards remuneration and other conditions of work, and the right to receive understandable and enforceable employment contracts. Beyond Chapter IV, all economic migrants enjoy the protections laid out in Chapter VI, on “Assistance and Protection of Migrant Victims of Trafficking and Migrants Caught in Countries in Crisis.” These include, for example, the right to confidential legal proceedings for victims of trafficking, and to internal relocation and access to valid identity and travel documents in times of crisis.

Beyond reaffirming these fundamental rights, Chapter IV breaks new ground in important respects:

*1. It expands existing protections with particular emphasis on the rights of women migrant workers.*

Recognizing practices and situations that render women migrant workers particularly vulnerable, the MIMC obliges States Parties to, among other measures, protect women migrant workers from violence, exploitation and abuse (Art. 63(1)(a)) to provide them with access to sexual and reproductive health services and maternity protection (Art. 63(2)); and to ensure equal remuneration and working conditions for women and men (Art. 63(b)(3)). It also spells out specific protections that apply during pregnancy (Art. 76), banning employers from terminating the employment of a woman merely on the grounds of pregnancy (with some safeguards for the health of the mother or the child, as well as the safety of those relying on her), and declares that pregnancy is not a permissible ground for revoking the authorization of a residence or a work permit of a migrant worker or expelling her and members of her family.

*2. The MIMC includes new and strong language on pathways to permanent status—through residence and citizenship—for migrant workers and residents.*

Article 108 on the “Renewal of Status” for temporary workers

holds that foreign workers who are employed or have offers of employment are allowed to re-apply for a new work authorization.<sup>17</sup> Furthermore, the MIMC obliges States to allow temporary migrant workers to apply for regular permanent residence after no more than five years, and states that “[n]o temporary migrant worker shall be renewed in temporary status longer than seven years.”<sup>18</sup> On access to citizenship, the MIMC, in expanding on European law,<sup>19</sup> establishes ten years of legal residence in a country as the maximum threshold after which migrant workers and migrant residents shall be offered citizenship, “subject to the rules and requirements relating to naturalization applied in that State.” It also calls on States to “consider granting migrant workers and residents the possibility to possess multiple nationality”—an important condition for facilitating integration.

### *3. The chapter ventures quite far into regulating the visa policies of States.*

It obliges States to issue multiple-entry visas to temporary migrant workers, holding that States limit the number of exits and re-entries available on visas to no less than three per year. It further establishes clear parameters for governing the re-entry of temporary migrant workers. For those workers “in full compliance with the laws of the State of employment” the time period they must spend outside of the country before being allowed to re-enter “should in no cases extend beyond one year.” The chapter also includes detailed prescriptions for the admission of migrant entrepreneurs and investors [Art. 97], putting forward a set of “non-exclusive principles” that States Parties are encouraged to incorporate into their systems for evaluating candidates for initial and renewed visas. States Parties are obliged to regularly produce, and make publicly available, “reports on their implementation and regulation of the entrepreneurship visas.” According to the MIMC, such reports should include, “at a minimum,” information regarding the criteria used to award entrepreneurship visas; on those awarded and denied entrepreneurship visas by industry; on the rights and privileges attached with each category of entrepreneurship visa; and on investment thresholds. In some instances, the provisions of Chapter IV can seem difficult to opera-

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17. MIMC, *supra* note 2, art. 108.

18. *Id.* art. 109, ¶ 3.

19. European Convention on Nationality (1997) (ETS No. 166), <http://www.refworld.org/pdfid/3ae6b36618.pdf>, [<https://perma.cc/ZC8X-MHYZ>].



tionalize.<sup>20</sup> In sum, its provisions and innovations promise to add up to a stronger rights protection framework for migrant workers, including particularly vulnerable groups, such as women and temporary migrant workers.

#### CONCLUDING OBSERVATIONS

The MIMC is a daring undertaking, both in terms of its scope—it brings together disparate bodies of law, policy and constituencies—and in terms of content, with its willingness to push the boundaries of what is currently acceptable to States. Yet, while it is difficult to see States sign on to an instrument like this any time soon, the MIMC, and its chapter on economic migration, come at an opportune time. States are considering future governance and cooperation arrangements on migration and refugees, to be enshrined in two Global Compacts that are being developed and will be adopted by the end of 2018. If some of the provisions in Chapter IV—on women migrant workers’ rights, pathways to secure legal status, and rules around visa policies and temporary labor migration—will find consideration and resonance in those discussions and the resultant agreements, the door to future progress on a global labor mobility regime remains ajar.

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20. For example, Article 107, paragraph 3, states that “States of employment may restrict access to social rights for temporary migrant workers if there is demonstrable evidence that granting the rights creates a net fiscal loss for that State.” MIMC, *supra* note 2, art. 107, ¶ 3. Given the scarcity of available data on States’ migration-related spending, governments may find it rather easy to duck such an obligation by presenting evidence in a manner that corresponds to their political objectives.