



Towards a post-2015 development agenda:

What role for migrant rights and international labour migration?

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BACKGROUND PAPER



Towards a post-2015 development agenda:

What role for migrant rights and international labour migration?

Synopsis

This paper discusses the potential role of international labour migration and the rights of migrant workers ('migrant rights') in a post-2015 international development agenda. The paper is primarily concerned with legal rather than illegal migration and employment of migrant workers, with a focus on low-skilled workers whose international movement is currently most restricted. The paper does not discuss highly-skilled labour migrants who generally enjoy many more opportunities for emigration and better protection of their rights than low-skilled workers.



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The analysis in this paper draws heavily on my previous work on international labour migration and migrant rights (especially Ruhs 2012a - see the bibliography for references). Many of the issues raised in this paper are discussed in much more detail in my forthcoming book on *The Price of Rights. Regulating International Labour Migration* (Princeton University Press, 2013).

Contents

Acknowledgements	i
Contents	ii
Figures	iii
Abbreviations	iv
1. Introduction	1
2. The international legal framework for protecting migrant rights: why do so few countries ratify the conventions on migrant workers?	3
2.1. ILO Migrant Worker Conventions	3
2.2. The UN Convention on Migrant Workers	4
2.3. Ratifications and obstacles in migrant-receiving countries	4
2.4. The perspectives of migrants and migrant-sending countries	8
3. International monitoring and protection of migrant rights in practice: which way forward?	9
3.1. Effectiveness of the CMW in protecting migrant rights in practice	9
3.2. Limitations of international monitoring of migrant rights	12
3.3. The case for a global migrant rights index	13
3.4. ‘Core Rights’ as a way of bridging the ‘real’ and the ‘ideal’	14
4. Increasing migration for development while protecting migrant rights: the role of new and improved temporary migration programmes	17
4.1. Developmental benefits of liberalising international labour migration	17
4.2. Making temporary migration programmes work	18
4.3. Debates and governance of temporary migration programmes	22
5. Conclusion: Migrant rights and labour migration in the post-2015 development framework	24
References	26
Appendix – Explanation of migrant rights analysed in Figure 3.1	29

Figures

Figure 2.1 Ratifications of International Human Rights Treaties, 1965–2011	5
Figure 2.2 Ratifications of the ILO’s Fundamental Conventions and Migrant Workers Conventions, 1930–2011	6
Figure 3.1 Restrictions on migrant rights, 2009	11

Abbreviations

CLS	Core Labour Standards
CMW	Convention on migrant workers
EEA	European Economic Area
ICMR	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IPMWC	International NGO Platform for the Migrant Workers' Convention
ILO	International Labour Organisation
MAC	Migration Advisory Committee
MDG	Millennium Development Goals
OHCHR	Office of the High Commissioner of Human Rights
UNDP	United Nations Development Programme

1. Introduction

In 2000, United Nations member states and international organisations agreed to work to achieve eight international development goals (the Millennium Development Goals, MDGs) by 2015: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development. The most recent *Millennium Development Goals Report* shows that while significant progress has been made in some areas, such as reducing extreme poverty, few of the goals are likely to be met by 2015 (United Nations, 2012).

With the MDG deadline looming in 2015, discussions have begun about a post-2015 framework for international development (see e.g. Beyond 2015). It is widely agreed that while the MDG framework should serve as a basis for discussion, there is a need for a critical approach that considers a range of issues and challenges that have become more prominent in recent years, including rising inequality, demographic pressures and global governance issues in the wake of the current global financial and economic crises. In his recent report on a potential post-2015 development agenda, Ban Ki-moon, the Secretary-General of the United Nations, suggested that:

Consideration of a new development agenda beyond 2015 would need to start with a thorough, broad based and inclusive review of the present agenda and its underlying approach, as well as assessment of what has worked and what has not. Such a review would need to be put in the context of the global development challenges ahead. (UN 2011, p.16)

This paper discusses the potential role of international labour migration and the rights of migrant workers ('migrant rights') in a post-2015 international development agenda. The paper is primarily concerned with legal rather than illegal migration and employment of migrant workers, with a focus on low-skilled workers whose international movement is currently most restricted. The paper does not discuss highly-skilled labour migrants who generally enjoy many more opportunities for emigration and better protection of their rights than low-skilled workers.

While international migration can clearly not be a 'magic bullet' for addressing fundamental issues of underdevelopment, the liberalisation of international labour migration from low- to high-income countries, especially of low-skilled migrant workers, can have very large beneficial impacts for the human development of migrants and their families and, under certain circumstances, also for the broader development of migrants' countries of origin (see, for example, the UNDP's *Human Development Report* 2009). The impact of international migration on development is critically influenced by the rights migrant workers are granted, both in law and in practice, in their countries of employment (Ruhs, 2011). This is why comprehensive discussions of the role of international labour migration in development must include a strong emphasis on the role of migrant rights in shaping outcomes for migrants as well as migrant-receiving and migrant-sending countries.¹

Better access to labour markets in high-income countries has long been a key demand made by low-income countries in international development debates. Yet, international labour migration and migrant rights are not mentioned in the MDGs. MDG 8 ('develop a global partnership for development') includes the specific target to 'develop further an open, rule-based, predictable, non-

¹ Most countries experience both immigration and emigration. The paper uses the terms "migrant-receiving countries" and "migrant-sending countries", for linguistic convenience, to distinguish between net-immigration countries (i.e. countries that are receiving more migrant workers than they are sending abroad) and net-emigration countries (i.e. countries that are sending more workers than they are receiving).

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

discriminatory trading and financial system', i.e. it addresses issues to do with international trade and capital flows – but not international labour flows. This is not surprising given the well-known political sensitivities concerning the regulation of immigration, but it does raise the important question of whether and how international migration and migrant rights can and should play a role in the post-2015 development agenda.

The paper is divided into three main parts. It begins with a brief overview of the international legal framework for the protection of the rights of migrant workers and a discussion of why so few countries have ratified the existing migrant workers conventions. The second part discusses the effectiveness of the existing international conventions in monitoring rights and protecting migrant workers. It makes the case for a global migrant rights database in order to comprehensively monitor and analyse the determinants and effects of rights restrictions in practice. The paper also suggests that a focus on 'core rights' may be an effective way of bridging the 'real' (i.e. restrictions on migrant rights in practice) and the 'ideal' (i.e. the rights stipulated in international conventions on migrant workers) in this debate, and provide more effective protection in practice.

Following a brief discussion of the potential developmental benefits of increased labour migration for migrants and the development of their countries of origin, the third part of the paper discusses the potential role of new and improved temporary migration programmes in expanding the access of migrants from low-income countries to the labour markets of higher-income countries while at the same time protecting a set of core rights of migrant workers.

The paper concludes that there is a strong case for including international labour migration and migrant rights in the post-2015 development agenda. Given that the liberalisation of low-skilled labour migration will require new and improved temporary migration programmes, there is an urgent need for open and reasoned debate about how such programmes should be designed, including the important question of what core rights of migrant workers should always be protected. For such programmes to be effective in benefiting migrants and promoting development, it is important to ensure that sending countries and migrant organisations are involved in this debate.

2. The international legal framework for protecting migrant rights: why do so few countries ratify the conventions on migrant workers?

The three most significant international legal instruments that specifically address the rights of migrant workers are the UN's *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (adopted in 1990) and the ILO's *Migration of Employment Convention* (1949) and the *Migrant Workers (Supplementary Provisions) Convention* (1975). Together with the more general human rights treaties, these instruments set out a very comprehensive set of civil, political, economic, social and other rights for migrants, including the right to equal protection under labour laws, anti-discrimination laws and family laws.

2.1. ILO Migrant Worker Conventions

Briefly, ILO Convention 97 (adopted in 1949) was motivated by a concern to facilitate the movement of surplus labour from Europe to other parts of the world. It encourages countries to sign bilateral recruitment agreements (a model agreement is included in the associated ILO Recommendation 86) and includes measures to regulate the conditions under which migration occurs, general protection provisions, and, for the first time, measures to ensure equal treatment for migrant workers in various aspects of recruitment and employment. Specifically, Article 6 requires each state party for which this convention is in force to grant migrant workers equal treatment with regard to remuneration, membership in trades unions and enjoyment of the benefits of collective bargaining, accommodation and social security (subject to certain limitations, most notably, that 'there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition'). Article 7 stipulates that any public employment services provided to migrants must be free of charge. Importantly, under the protections of ILO, Convention 97 only applies to migrant workers who are legally residing and working in the host country.

In light of the radical economic and social changes during the 1960s and early 1970s (including the termination of various guest worker programmes throughout Europe), ILO Convention 143 aimed to bring migration flows under control, focusing on the elimination of irregular migration and suppressing activities of organisers of illegal movements of migrants. The Preamble to this Convention speaks of the need to 'avoid excessive and uncontrolled or unassisted increase of migratory movements...' which clearly reflects the concerns about immigration pressures at the time. Article 10 widens the scope of equality between migrants and nationals of the host state by requiring not only equal treatment but also equality of opportunity in respect of 'employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory'. Article 8 stipulates that host countries must not restrict a migrant's rights to free choice of employment for more than two years; that loss of employment shall not, in its own, imply a loss of residence permit; and that all migrants who have legally resided in the host country 'shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining'. For the first time in international law, ILO Convention 143 also includes some rights for migrants in irregular status who, according to Article 9, should enjoy equality 'in respect of rights arising out of past employment as regards remuneration, social security and other benefits'.

2.2. The UN Convention on Migrant Workers

Based on over a decade of negotiations, the UN's *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (adopted in 1990, henceforth 'CMW' for 'Convention on Migrant Workers') incorporates and builds on ILO Conventions 97 and 143. It sets out a very broad set of rights for migrants, including those living and/or working abroad illegally. The CMW includes 93 articles (compared to 23 articles of ILO Convention 97 and 24 articles of ILO Convention 143) and stipulates fundamental human rights to all migrant workers, both regular and irregular, with additional rights being recognised for regular migrant workers and members of their families. Importantly, the CMW is based on the principle of equal treatment of migrant and nationals rather than on a 'minimum standards' approach characterising many other international legal instruments (Lonroth, 1991). Examples of rights stipulated by the CMW for both regular and irregular migrants include:

- the right to life (Article 9)
- the right to be free from forced labour (Article 11)
- the right to equality with nationals before courts and tribunals (Article 18)
- the right not to have identity documents confiscated (Article 21)
- the right to equal treatment with regard to remuneration, other conditions and terms of employment, and social security (Articles 25 and 27)
- the right to join and take part in meetings and activities of trades unions (Article 26)

Additional rights of regular migrants include:

- The right to form associations and trades unions (Article 40)
- The right to equal treatment with nationals in relation to access to education institutions, vocational training, housing (including social housing) and social and health services (Article 43)
- The right to seek alternative employment in case of termination of work contract prior to expiration of the work permit (Article 51)
- The right to freely choose their remunerated activity after five years of residence in the host country (article 52)
- The right to equality of treatment with citizens in respect of protection against dismissal, employment benefits, and access to public work schemes intended to combat unemployment (Article 54)
- The right to redress in case of violation of the terms of the employment contract (Article 54)

The CMW also deals with the right to family reunification but in a limited and carefully worded way. Article 44 suggests that 'state parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children'.

2.3. Ratifications and obstacles in migrant-receiving countries

In practice, the ratifications of the CMW and ILO conventions on migrant workers by state parties have been very disappointing (see Figures 2.1 and 2.2 below), in both absolute terms (i.e. considering the total number of UN and ILO member states) and in relative terms (i.e. compared to the ratifications of other human rights treaties and ILO conventions). With 45 ratifications as of

December 2011, the CMW is the least ratified among all major human rights treaties. It has less than a quarter of the ratifications of the Convention on the Rights of the Child (passed a year before the CMW) and less than a third of the ratifications of the Convention on the Rights of Persons with Disabilities (passed 16 years *after* the CMW). No EU member state or other OECD country – with the exception of Mexico and Chile – have ratified the CMW. The few countries that have ratified the CMW are predominantly migrant-sending rather than migrant-receiving countries.² The average share of migrants in their population is 3%, compared to over 10% in developed countries (UNDP, 2009). They are all ‘low’ or ‘middle-income’ countries (based on World Bank Classifications 2009), with three quarters having a ‘low’ or ‘medium’ human development index (UNDP, 2009). A third of the countries that have ratified the CMW, have added reservations. The most commonly article affected by the reservation is Article 92, para 1, which provides that any unresolved dispute may be submitted to arbitration or the international court of justice at the request of one of the parties involved.

These figures suggest that, while accepting the idea of human rights, the world’s high-income countries – where migrants are most heavily concentrated in terms of both absolute numbers and shares in the population³ – clearly do not accept that these rights should also apply to migrants living in their territories. It is also noteworthy, however, that some major sending countries such as Pakistan have also not ratified the CMW, an issue discussed further below.

Figure 2.1 Ratifications of International Human Rights Treaties, 1965–2011



CERD = International Convention on the Elimination of All Forms of Racial Discrimination;

CCPR = International Covenant on Civil and Political Rights;

CESC = International Covenant on Economic, Social and Cultural Rights;

² As of December 2011, the CMW has been ratified by Albania (2007), Algeria (2005), Argentina (2007), Azerbaijan (1999), Bangladesh (2011), Belize (2001), Bolivia (2000), Bosnia and Herzegovina (1996), Burkina Faso (2003), Cape Verde (1997), Chile (2005), Colombia (1995), Ecuador (2002), Egypt (1993), El Salvador (2003), Ghana (2000), Guatemala (2003), Guinea (2000), Guyana (2010), Honduras (2005), Jamaica (2008), Kyrgyzstan (2003), Lesotho (2005), Libyan Arab Jamahitiya (2004), Mali (2003), Mauritania (2007), Mexico (1999), Morocco (1993), Nicaragua (2005), Niger (2009), Nigeria (2009), Paraguay (2008), Peru (2005), Philippines (1995), Rwanda (2008), Senegal (1999), Seychelles (1994), Sri Lanka (1996), St. Vincent and the Grenadines (2010), Syrian Arab Republic (2005), Tajikistan (2002), Timor-Leste (2004), Turkey (2004), Uganda (1995), and Uruguay (2001).

³ According to the United Nations Population Division, migration to ‘more developed countries’ accounts for about 60 percent of global migration. 85 percent of migration to ‘less developed countries’ is from other ‘less developed countries’. See <http://www.un.org/esa/population/meetings/tenthcoord2012/V.%20Sabine%20Henning%20-%20Migration%20trends.pdf>.

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

CEDAW = Convention on the Elimination of All Forms of Discrimination Against Women;

CAT= Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

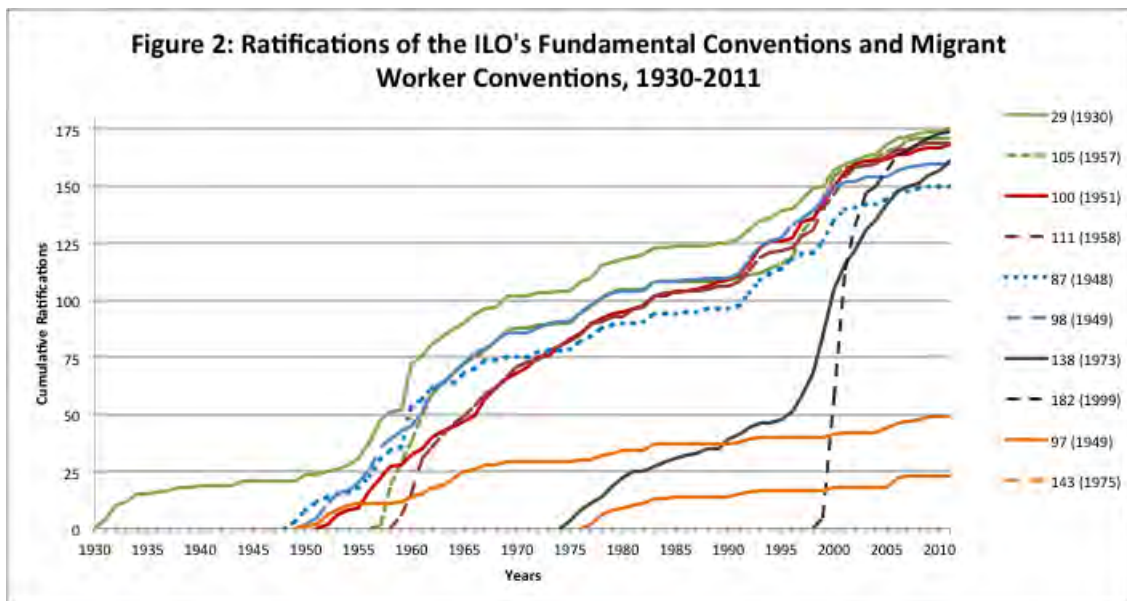
CRC = Convention on the Rights of the Child;

CMW = International Convention on the Protection of All Migrant Workers and Members of their Families;

CRPD = Convention on the Rights of Persons with Disabilities.

Source: See <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> accessed in Dec 2011

Figure 2.2 Ratifications of the ILO's Fundamental Conventions and Migrant Workers Conventions, 1930-2011



Freedom of association and collective bargaining: Conventions 87 and 98

Elimination of forced and compulsory labour: Conventions 29 and 105

Elimination of discrimination in employment and occupation: Conventions 100 and 111

Abolition of child labour: Conventions 138 and 182

Protection of migrant workers: Conventions 97 and 143

Source: See <http://www.ilo.org/ilolex/english/newratframeE.htm> accessed in December 2011

Academic and policy analyses of the reasons for nation states' reluctance to sign up to international migrant worker conventions, especially to the CMW, have suggested a wide range of obstacles (Hune and Niessen, 1994; Guchteneire, Paul de et al, 2009; *International Migration Review* 1991; *International Migration* 2000). The major factors discussed include: a lack of promotion, awareness and understanding of the CMW in many countries (Taran, 2000); a lack of understanding of all the technical details of the CMW (Piper, 2009); the length and complexity of the CMW which raise a range of legal issues for national implementation (Helton, 1991; Cholewinski, 1997); potential overlap with other international conventions (Böhning 1991); and various contextual factors including, for example, an adverse economic and social climate (Hune and Niessen, 1994) and a reluctance to 'be first' to ratify the convention (Piper 2009; Pecoud and de Guchteneire 2006).

Some of these factors have undoubtedly played a role in discouraging high-income countries from ratifying the CMW over the past 20 years. Rather than being root causes, however, most of these factors are auxiliary issues that reflect and stem from a much more fundamental – and in many ways obvious – explanation of nation states' reluctance to sign up to international migrant worker conventions.

The key underlying factors, now widely accepted among analysts of the CMW, relates to the national interests – however perceived– and politics of nation states. How to define the ‘national interest’ is highly *normative* (e.g. Whose interests and impacts should we care about and why? What weights should be given to the frequently competing interests of employers, workers, consumers, migrants, and sending countries?), *contested* (e.g. employers will have different priorities than workers), and *variable* across countries and over time (e.g. the impact of immigration on domestic unemployment may be much more important during period of economic downturn than economic growth). Despite these variations, the fundamental issues debated in immigration policy are very similar across countries. They include the effects of immigration on: economic growth and public finances (e.g. how immigration affects productivity growth and the welfare state); the distribution of national income (e.g. how immigration affects the wages of low-skilled domestic workers); national identity and social cohesion (concepts that are very hard to define but nevertheless often dominate public debates); and national security and crime.

To understand why nation states restrict the right of migrant workers, it is important to recognise that rights do not only have intrinsic value, as emphasised by the human rights approach to migration, but that they also play an important instrumental role in shaping the effects of migration. Consequently, the rights that major immigration countries are willing to grant to migrant workers critically depend on their impacts on the existing population in the host country. These impacts can involve perceived and/or real benefits and costs that could be economic, social, political and/or cultural.

The costs of extending and protecting rights vary across different types of rights and are likely to be context-specific. It is also important to add that rights can create costs as well as benefits (economic, social, cultural and other) in the short, medium and long run.

If migrant rights are, at least to some extent, instruments and the result of a policy choice made by migrant-receiving countries (Cox and Posner, 2009), it is plausible to expect high-income countries to selectively and strategically restrict some of the rights of migrants in a way that maximises the net benefits for the receiving country. The economic cost of some rights (e.g. some social rights) is inversely related to the skill level (and, thus, earnings) of the migrant. For example, low-skilled workers in low-skilled jobs can be expected to make smaller tax contributions and greater demands on the welfare state than higher skilled workers in higher paying jobs. This is why some – but not all – of the rights granted to migrants under labour immigration programmes can be expected critically to depend on their skills (e.g. Ruhs, 2013).

It is important to be clear that in many cases, it will be in the interest of the receiving country to grant rather than deny migrant rights. For example, protecting the rights of migrant workers in the labour market can be an important tool for protecting domestic workers by helping to ensure that employers do not prefer migrant workers because they can be employed under restricted rights. For another example, the denial of the most basic social rights—such as the rights to emergency and other basic healthcare—could create more costs than benefits for the existing population. For example, migrants without any health-care benefits may not attend medical services if they are carrying infectious diseases. Migrants without any welfare benefits may also feel compelled to work at below-standard wages to survive.

A number of empirical studies of the CMW have confirmed that a major obstacle to ratification is the perceived cost of granting specific rights to migrant workers (see, for example, the country studies in Guchteneire, Paul de et al, 2009). In particular, many immigration countries consider the comprehensive set of rights stipulated in the CMW as being in conflict with their policies for regulating immigration, especially of low and medium-skilled migrants, through temporary migration programmes that usually restrict at least some of the rights of migrants such as the right to free choice of employment, the right to equal access to social welfare benefits and the right to family reunification.

2.4. The perspectives of migrants and migrant-sending countries

Large numbers of migrant workers are employed in countries that severely restrict migrants' rights, suggesting that many workers are willing to tolerate, at least temporarily, a trade-off between higher wages and fewer rights (also see Abella, 2008). It needs to be added that it is possible that the restricted rights extended to a migrant worker are still greater than the rights the migrant would enjoy in his or her country of origin. Of course, the mere presence of migrants in countries with 'high numbers-low rights' policies does not mean that such policies are in the migrants' best interests and therefore desirable. Nevertheless, the fact that migrants often pay significant recruitment fees to work in such countries highlights the need for a more explicit discussion of the choices that many workers in developing countries face. We can expect considerable variation in migrants' motivations. Migrants' intentions (e.g. temporary - one-off or repeated - or permanent stay abroad) and their 'frame of reference' are important determinants of the choices they make at particular points in time. The role of good information in order to make informed and rational decisions is likely to be key. Narrow rights-based approaches to migration rarely discuss the agency of migrant workers; that is, their capacity to make rational and independent decisions when faced with limited options. Instead these approaches often tend to treat migrants as victims of recruiters and smugglers rather than as rational economic agents maximising within constraints.

Sending countries do not always insist on equality of rights in order not to reduce the access of its nationals to labour markets abroad. For example, some major migrant-sending countries have for a long time been reluctant to ratify the International Convention on the Protection of All Migrant Workers and Members of their Families for fear of losing jobs for their nationals abroad (Piper and Iredale, 2003). The conflict between migrant rights and better access to jobs in high-income countries is also apparent in the negotiations about the role of wage parity in the international movement of service providers within 'Mode 4' (which regulates the 'movement of natural persons') of the World Trade Organization's General Agreement on Trade in Services (GATS). Many high-income countries want wage parity to protect the jobs of their nationals, but the governments of some major sending countries have argued that that equal wages would limit the numbers of their migrants abroad. In 2005, Argentina, Bolivia, Brazil, Chile, Colombia, India, Pakistan, Peru, Mexico, Philippines submitted a 'plurilateral request' to the WTO calling for greater liberalization of service provision under Mode 4. A key demand of this WTO communication was that 'wage parity will not be a pre-condition of entry' for contractual service providers and independent professionals.⁴ India has been one of the most vocal critics of the wage parity requirement which is widely seen as restricting access to labour markets of higher income countries. 'Wage parity ... is intended to provide a non-discriminatory environment, [but] tends to erode the cost advantage of hiring foreigners and works like a de facto quota' (Chaudhuri et al., 2004, p. 366). Chanda (1991, p.635) goes further, asserting that wage parity 'negates the very basis of cross-country labour flows which stems from endowment-based cost differentials between countries'.

⁴ See http://commerce.nic.in/trade/sub_tns-w-31.pdf.

3. International monitoring and protection of migrant rights in practice: which way forward?

3.1. Effectiveness of the CMW in protecting migrant rights in practice

The relatively low number of ratifications of the CMW and other international conventions on migrant workers does not mean that they have not had any impacts. For example, Wexler (2007) argues that, even when international legal standards are not ratified, they can serve non-legal functions by influencing non-binding regional processes, contributing to the development and dissemination of good practices, and helping to produce and codify a human rights discourse (Wexler, 2007). It has also been suggested that, for example, Mexico's ratification of the CMW helps its efforts to advocate and promote the rights of Mexican migrants in the USA even though the USA has not ratified the convention (Diaz and Kuhner, 2009). In the UK, it has been argued that the convention is a useful 'authoritative statement of the minimum international standards with respect to migrant workers' (Ryan 2009, p. 293) that is increasingly used by NGOs and migrant rights advocates and that has become relevant to political debates on migration, even if there is a very low chance of the UK ratifying the CMW in the short or medium term. It has also been suggested that the CMW can enable civil society organisations (CSOs), including migrant rights organisations, to raise awareness and speak more forcefully about the rights of migrant workers (Piper, 2009). The International Steering Committee for the Campaign for Ratification of the Migrant Rights Convention (2009, p.7) argues that the convention has become 'an instrument of reference for State parties and non-ratifying countries, including those that have stated explicitly that they do not wish to ratify it'.

Nevertheless, despite these potential benefits of the CMW, even when not ratified, it is clear that the low levels of ratification and the non-ratification by all major migrant-receiving countries severely limit the CMW's applicability and effectiveness in protecting the great majority of migrant workers. Given the low levels of ratification in its first 20 years, it is hard to deny that the CMW has been largely unsuccessful in achieving its main stated aim of providing an effective framework for protecting the rights of migrant workers in the global economy.

In practice, there is a large gap between the rights of migrant workers stipulated in international human rights law and the rights that migrants working in high-income countries often experience in practice. The most cursory review of the rights of migrant workers around the world confirms that the majority, and especially those in low-waged jobs, enjoy very few of the rights stipulated in international conventions. For example, under most existing temporary migration programmes in North America and Europe, migrants have neither the right to free choice of employment nor the access to welfare benefits that citizens and long-term residents typically enjoy (Ruhs, 2011). In many of the Persian Gulf States in the Middle East, which have long admitted significant numbers of migrant workers, the protections of local labour laws do not apply to certain types of migrant labour (e.g. domestic workers). In Singapore, another major employer of migrant workers, migrants working in low-waged jobs are officially prohibited from co-habiting with, or getting married to, a Singaporean citizen. Illegally resident migrants, whose global numbers are substantial, have very few rights regardless of what country they are working in (with very few exceptions, see FRA, 2011).

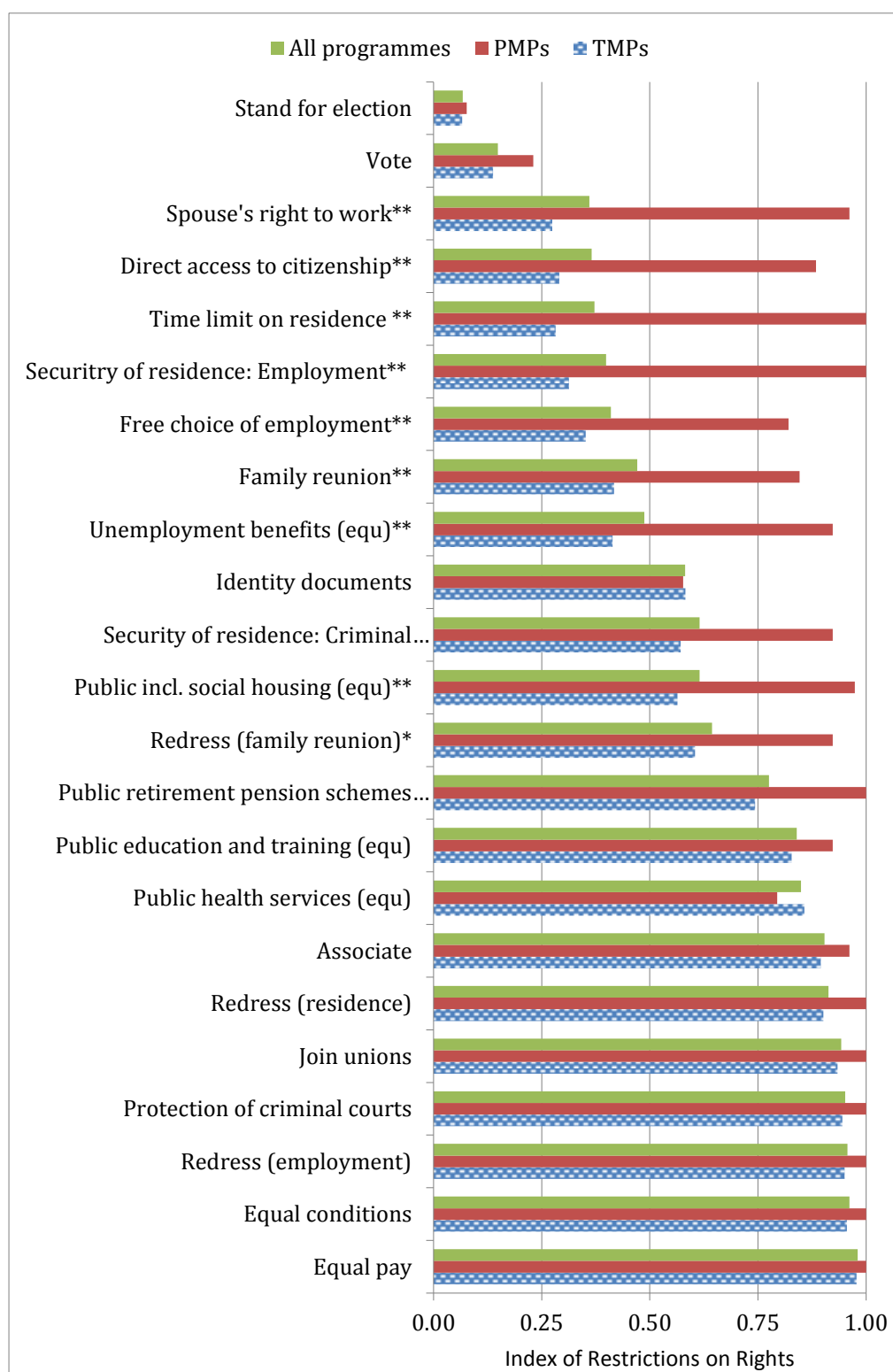
Gender is an important factor. In some countries and occupations, female migrants are significantly more vulnerable to violations of their rights than male migrants. For example, Singapore's work-permit programmes for low-skilled migrant workers specifies that 'If the foreign employee is a female foreign employee, the foreign employee shall not become pregnant or deliver any child in Singapore during and after the validity period of her Work Permit, unless she is a Work Permit holder who is

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

already married to a Singapore Citizen or Permanent Resident with the approval of the Controller' (Ministry of Manpower, Work Pass Division, accessed on 6 October 2011). Rights violations tend to be most severe in 'less visible occupations' such as domestic services and care which are dominated by women (see Lutz, 2011; and Anderson, 2000).

Ruhs (2011) created and analysed a unique new dataset that provides measures of the rights of migrant workers admitted under over 100 labour immigration programmes in 46 high- and middle-income countries. An important limitation of this analysis is its focus on 'rights in law' rather than 'rights in practice'. Figure 3.1 (taken from Ruhs 2011) shows the most common restrictions on the rights of migrant workers admitted under temporary and permanent migration programmes. It shows that rights restrictions are much more common under temporary than permanent migration programmes. Figure 3.1 also makes clear that restrictions vary significantly across different rights (the rights index ranges from 0 to 1, with a greater number indicating fewer restrictions on rights). Among the types of rights analysed, the six most commonly restricted rights are the rights to stand for election and vote (two political rights), the spouse's right to work, direct access to citizenship, time limit and security of residence (for residence and family rights). The two most restricted social rights relate to unemployment benefits and social housing. The right to free choice of employment is the only economic right that is commonly restricted.

Figure 3.1 Restrictions on migrant rights, 2009



Notes: PMPs: permanent migration programmes (i.e. programmes granting permanent residence rights on arrival); TMP: temporary migration programmes; the index ranges from 0 (most restrictive) to 1 (least restrictive); *: statistically significant difference between restrictions on right under PMPs and TMPs ($p < 0.1$); **: $p < 0.05$; "(equ)" after a social right means that the score measure the degree of

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

equality of rights rather than providing an absolute measure that takes account of whether citizens enjoy the right.

Source: Ruhs 2011. For more explanation of each of the rights in Figure 3.1, see the Appendix to this paper.

3.2. Limitations of international monitoring of migrant rights

Although there has been a growing UN machinery for reporting on migrants' rights, the current mechanisms for international monitoring of the extent to which governments comply with the rights stipulated in international migrant workers' conventions are relatively weak. The 'Committee on the Protection of the Rights of All Migrant workers and Members of their Families' – a body of independent experts convened by the Office of the High Commissioner for Human Rights – is monitoring the implementation of the CMW in countries that have ratified it. All countries that have ratified the CMW are 'obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of 'concluding observations'. Like other UN treaty bodies, the Migrant Workers' Committee meets about two to three times a year.

The key limitation of the Committee's work is that its monitoring of migrant rights relates only to countries that have ratified it. Since no major high-income country of immigration has ratified the convention, its monitoring systems do not cover the rights of migrant workers in high-income countries. A second factor that has affected the effectiveness of the Migrant Workers' Committee has been the delay in the delivery of country report to the Committee. Edelenbos (2009) pointed out that 'of the thirty-seven initial reports due on 20 April 2009, only thirteen have been received'.⁵ At its 16th session, the Committee decided to amend its rules to allow examination of the implementation of the CMW in states that failed to comply with their reporting obligations (OHCHR, 2012).

The mandate of the *Special Rapporteur of the Human Rights of Migrants* was created in 1999 by the former UN Commission on Human rights (now UN Human Rights Council) and has since been renewed three times. The Special Rapporteur receives information about violations of migrants' rights, carries out country visits (irrespective of whether a country has ratified the CMW) and provides an annual report to the Human Rights Council. Key limitations include limited budget, staff and the fact that country visits can only be carried out upon invitation or through a request to the government concerned (for more discussion, see Edelenbos, 2009). Since 1999, the Special Rapporteur has visited the following countries: Albania, Burkina Faso, Canada, Ecuador, Guatemala, Indonesia, Iran, Italy, Japan, Mexico, Morocco, Peru, Philippines, Romania, Senegal, South Africa, South Korea, Spain, Tunisia, Turkey, UK, the USA and the EU. Reports from the special rapporteur publicly detail the state of human rights of migrant workers, highlight areas of concern and conclude with a set of recommendations. The reports are presented to the Human Rights Council and also to the General Assembly at the council's request, which means it reaches all UN members and can result in public

⁵ The status of initial reports on 30 April 2009 was as follows: Albania, due 1 October 2008; Algeria, received; Argentina, due 1 June 2008; Azerbaijan, received; Belize, due 1 July 2004; Bolivia, received; Bosnia and Herzegovina, received; Burkina Faso, due 1 March 2005; Cape Verde, due 1 July 2004; Chile, due 1 July 2006; Colombia, received; Ecuador, received; Egypt, received; El Salvador, received; Ghana, due 1 July 2004; Guatemala, due 1 July 2004; Guinea, due 1 July 2004; Honduras, due 1 December 2006; Kyrgyzstan, due 1 January 2005; Lesotho, due 1 January 2007; Libyan Arab Jamahiriya, due 1 October 2005; Mali, received; Mauritania, due 1 May 2008; Mexico, received; Morocco, due 1 July 2004; Nicaragua, due 1 February 2007; Niger, due 1 July 2010; Paraguay, due 1 January 2010; Peru, due 1 January 2007; Philippines, received; Rwanda, due 1 April 2010; Senegal, due 1 July 2004; Seychelles, due 1 July 2004; Sri Lanka, received; Syrian Arab Republic, received; Tajikistan, due 1 July 2004; Timor-Leste, due 1 May 2005; Turkey, due 1 January 2006; Uganda, due 1 July 2004; Uruguay, due 1 July 2004.

naming and shaming. These are also freely accessible online and thus help with highlighting compliance and non-compliance and promoting a debate about human rights of migrant workers.

There are also a number of international NGOs concerned with the promotion and monitoring of the rights in the CMW. They include: Amnesty International, Anti-Slavery International, Migrants Rights International, World Council of Churches and December 18 among others. The NGOs provide their own inputs to the work of the Committee on Migrant Workers in the form of shadow reports.⁶ Through a coalition group, the International NGO Platform for the Migrant Workers' Convention (IPMWC), the NGOs advocate the significance of the CMW and closely follow the work of the Committee. Their efforts thus far seem effective in terms of bringing together national and local NGOs to participate in UN mechanisms and in mobilising public opinion.⁷ The major achievement of the NGO community relates to the documentation of human rights violations and the dissemination of information on the Convention and the rights it protects (Grange and D'Auchamp 2009, p. 92).

Part of the reason why it has proved challenging to monitor the implementation of the CMW among many countries that have ratified it is that some of the low-income sending countries that have ratified the convention have very poor human rights records. 'Freedom House' carries out annual assessments of the political rights and civil liberties (of all people, not just migrants) in a large number of countries. According to the latest assessment, eight of the countries that ratified the CMW are 'not free', 25 are 'partly free' and only 12 were classified as 'free' (Freedom House, 2012). It is not unreasonable to speculate that some of the sending countries that have ratified the convention use it primarily to campaign for better rights of their nationals abroad rather than to help improve the situation of migrants in their own countries.

3.3. The case for a global migrant rights index

A key obstacle to more comprehensive monitoring at the international level is the lack of a readily available and international comparative measure of the protection of migrant rights in different countries. While there has been a rapidly growing literature and policy interest in measuring human rights (for a review see, for example, Carr Center for Human Rights, 2005), there is currently no comprehensive global index of migrant rights. In the research literature, very few studies have tried to systematically measure the scope and variation of the legal rights of different types of migrants across high-income countries. Notable exceptions include Harald Waldrauch's work (2001) which constructs a 'legal index' that measures the integration of migrants in six European countries and the more recent 'Migrant Integration Policy Index' (MIPEX) which uses a mix of legal and outcome indicators to measure policies for integrating migrants in EU Member States and three non-EU countries. Specifically, MIPEX measures the extent to which each country's policies conform to European directives and European standards of best practice in six areas: labour market access, family reunion, long-term residence, political participation, access to nationality and anti-discrimination. The migration policy indices developed by Lowell (2005), Cerna (2008) and Klugman and Pereira (2009) also include an evaluation of a small number of migrant rights.

Ruhs (2011) has recently constructed an index of the rights of migrant workers in 46 high- and middle-income countries. While this is the most comprehensive database of migrant rights created to date, a key limitation of this analysis is the exclusive focus on 'rights in law' (rather than 'rights in practice') and the use of research assistants rather than country experts in constructing the indicators for rights in different countries. The dataset is also limited to two years only (2008 and 2009).

⁶ See for example http://www2.ohchr.org/english/bodies/cmw/docs/ngos/ANMW_WMC_SriLanka11.pdf.

⁷ <http://www.december18.net/international-ngo-platform-migrant-workers-convention-ipmwc>.

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

There is, therefore, a strong case for investing in the development of a database of indicators of migrant rights protections in different countries over time.

The rights of migrants vary by their immigration status (e.g. workers, family, student, asylum seeker, irregular) and, among workers, by skill levels (see Ruhs, 2011). A new global migrant rights index would therefore have to distinguish between different types of rights (e.g. civil and political, economic and social, residency rights, family reunion rights) for different types of migrants. The indicators could be conceptualised by a group of experts including migrant rights specialists and measurement experts, and then be implemented by a group of country experts. If the information were collected every year, it would be possible to build up a longitudinal database of measures of rights protection across countries, different groups of migrants and over time. In addition to facilitating comprehensive monitoring, this database would allow analysis of the patterns, determinants and effects of restrictions of migrant rights. A range of questions could be analysed, for example:

Patterns, variations and trends: how do rights restrictions vary across different rights, groups of migrants and countries? Which rights are most commonly restricted? How do rights restrictions evolve over time?

Determinants: What are the drivers of restrictions of the rights of migrant workers? How are rights restrictions related to labour markets, welfare states and admission policies?

Impacts: What are the effects of restricting the rights of migrants on the migrants themselves, migrant-receiving countries and migrant-sending countries?

It is clear that a global migrant rights index would facilitate much more effective international monitoring of the protection of migrant rights in different countries. Who would be best placed to develop such an index? In theory, standard-setting organisations such as the OHCHR and the ILO should have a great interest in promoting the development of such a database. In practice, the work of UN and other international organisations is often constrained by the interests of their member states. Immigration is one of the most salient and most controversial public policy issues in many high-income countries. Consequently, the development of any index that could be used to rank member according to their policies toward migration and migrants is likely to be opposed by members states who are concerned that their position in the final ranking may not look ‘favourable’ from a domestic political perspective (some governments may not want to be seen to be ‘too open and generous’ towards migrants, while others may not want to be seen much more restrictive than other comparable countries).

If provided with adequate resources, an academic institution with respected expertise in the theory and measurement of rights may in practice be better placed to develop rigorous and objective measures of migrant rights in different countries. The development of the index would require careful conceptualisation of the indicators, accurate measurement through a team of country experts and considered aggregation and presentation of the results in a way that makes them transparent and accessible to anybody (e.g. through a dedicated website where people can interact with the data to create their own indices based on their own preferred indicators). Such an exercise would require significant resources – but it would clearly lead to a step change in international monitoring and debates of migrant rights.

3.4. ‘Core Rights’ as a way of bridging the ‘real’ and the ‘ideal’

The Office of the High Commissioner for Human Rights (OHCHR) and the International Labour Organization (ILO) have been the two key institutions in the global governance of migrant rights. Both are standard-setting organisations with strong normative mandates to promote non-discrimination and equality of rights. It is, therefore, not surprising that their work and campaigns

have insisted on a very comprehensive set of rights for migrant workers without much discussion of potential hierarchies of rights, i.e. without much debate about whether some rights are more important than others. As promoted by OHCHR and ILO, the international legal framework for the human rights of migrant workers is strongly associated with the following four core principles of human rights: *universality*, i.e. human rights apply everywhere and to everyone (including migrants); *indivisibility*, i.e. there is no hierarchy of rights and certain types of rights cannot be separated from others; *inalienability*, i.e. human rights cannot be denied to any human being, nor can they be given up voluntarily; and *equality and non-discrimination*, i.e. all individuals are equal as human beings. Human rights derive from a 'common humanity' and the 'inherent dignity of each human person' rather than from citizenship of a particular country.

The large gap between the rights of migrant workers stipulated in international human rights treaties and labour conventions (the 'ideal') and the rights that migrant workers are granted by governments of receiving countries in practice (the 'real') raises the question of how UN agencies and other international organisations can become more effective in protecting migrant rights in practice. In particular, after more than twenty years since the adoption of the CMW, during which fewer than 50 countries have ratified the treaty, the time has come for more explicit debates about the desirability of identifying and promoting a list of 'core migrant rights' that is shorter than the comprehensive set of rights demanded by the CMW and thus has a greater probability of being accepted and implemented by a greater number of countries, including especially high-income that are major receivers of migrant workers. The identification of core rights is likely to be contested. Few people will disagree that – with the important exception of the right to vote – civil and political rights should be all included among the core rights. But people and countries will disagree about the extent to which economic and social rights should be included. It is not my intention in this paper to take a position on precisely what the core rights should be – a highly normative question. I am arguing for open and reasoned debate about the desirability of core rights as a way of providing more effective protection of the rights of migrant workers in practice.

Importantly, there is a significant precedent within the UN system. In 1998, the ILO passed the Declaration on Fundamental Principles and Rights at Work, commonly known as 'core labour standards' (CLS). The Declaration 'commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation'.⁸ According to the ILO's World Commission on the Social Dimensions of Globalization (ILO 2004), the core labour standards 'provide a minimum set of global rules for labor in the global economy.'

The 1998 ILO Declaration thus identified a short list of fundamental rights that are given pre-eminence over other ILO conventions. Its rationale was partly to 'reconcile the globalisation of the economy and the defence of workers' fundamental rights'.⁹ The CLS were adopted in the context of dwindling numbers of ratifications of ILO conventions and a general criticism that the ILO's labour standards were not effective enough in protecting workers' rights in a rapidly globalising economy. According to Witte (2008, p.17), 'under the circumstances, business as usual was not a viable option for the ILO. A bold move was needed for the organization to regain its relevance and credibility; new instruments were required to demonstrate that the organization and its stakeholders were serious

⁸ See <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>.

⁹ See <http://www.mngt.waikato.ac.nz/departments/Strategy%20and%20Human%20Resource%20Management/Airaanz/old/conference/newscastle2000/Vol3/michelotti.pdf>.

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

about addressing the issue of labor standards in the globalized economy. The Declaration on Fundamental Principles and Rights at Work, passed in 1998, was part of these efforts to reposition the ILO. Rather than taking the approach to promoting the ILO's entire body of labor standards, the Declaration focuses on a number of essential conventions, labelled 'core labour standards.' (p.17).

The adoption of CLS naturally generated significant debate. While some critics voiced concerns that the CLS would detract from the importance of the wider set of ILO conventions and that it is a mistake to separate out and focus on a small set of 'core rights' (see especially Alston, 2004; Alston and Heenan, 2004), others praised the CLS as an important and 'pragmatic' step toward more effective protection of workers' rights in the global economy (see, for example, Maupain, 2005; Langille 2005). Maupain (2005) and Langille (2005) argue that the CLS have had a number of positive effects on, for example, compliance with the fundamental ILO conventions and on the effectiveness of advocacy work around labour rights. A more recent analysis of the effects of the CLS on international and/or multilateral institutions and agreements (including especially trade agreements) concluded that, while many problems with compliance remain, 'some important steps towards compliance with CLS have taken place, even among institutions and agencies that previously declared the standards to be beyond their areas of concern or responsibility.' (Bakvis and McCoy 2008, p.2)

To avoid unintended confusion, the CMW clearly plays an important role in the global governance of migrant rights. I am suggesting to *complement* (not replace!) the CMW with a list of core rights that are strongly based on a realistic approach that takes account of the current situation and states' practices. This is not to justify national governments' behaviour but to identify a more pragmatic list of rights that has a greater chance of being accepted – and implemented – by nation states than the CMW.

Importantly any discussion around 'core rights' needs to include low-income countries that are major migrant-sending countries. As discussed at the end of section 2 of this paper, the governments of most sending countries have dual objectives of (i) increasing the number of migrant workers, while at the same time (ii) protecting their rights while working abroad. To include the perspectives of sending countries shifts the lens from a pure focus on migrant rights to a broader discussion of migrants' rights and greater opportunities for better access to labour markets of higher income countries. Many sending countries argue – and many development campaigners agree – that the debate about migrant rights needs to be set within the broader debate about how to facilitate 'more migration for development'. This is discussed in the next section.

4. Increasing migration for development while protecting migrant rights: the role of new and improved temporary migration programmes

4.1. Developmental benefits of liberalising international labour migration

Richard Freeman (2006) estimates that the wages of workers in high-income countries typically exceed those of workers in similar jobs in low-income countries by four to twelve times (Freeman, 2006). A more recent study finds that the ratio of wages earned by workers in the USA to wages earned by 'identical' workers (with the same country of birth, years of schooling, age, sex and rural/urban residence) abroad ranges from 15.45 (for workers born in Yemen) to 1.99 (workers born in the Dominican Republic) with a median ratio of 4.11 (Clemens, Montenegro and Pritchett 2009). These international wage differences mean that migrants can significantly raise their productivity and make very large financial gains from employment abroad. The wage differences and relative income gains are largest for low-skilled workers whose international movement is most restricted.

There is thus a very strong economic rationale for workers in low- and middle-income countries – especially low-skilled workers whose international movement is currently most restricted – to seek better access to labour markets in higher-income countries. Importantly, better access to employment opportunities in high-income countries has the potential not only to increase the economic status of workers and their families but also to improve other dimensions of human development such as education and health. Based on an in-depth analysis of the impact of migration on human development, the Human Development Report 2009 concluded that 'outcomes in all aspects of human development, not only income but also education and health, are for the most part positive – some immensely so, with people from the poorest places gaining the most.' (UNDP 2009, p. v.) This is why 'opening up existing migration barriers' was among the report's core recommendations for national and international policy-makers.

Low-income countries have strong economic incentives to send more workers to take up employment in higher income countries. The World Bank (2005) estimates that increasing the share of migrants in high-income countries by 3% would generate a global real-income gain of over US\$350 billion, exceeding the estimated gains from global trade reform by about 13% (World Bank, 2005). If migrants transfer some of their benefits back to their home countries - in the form of remittances, investment, and/or knowledge - migrant-sending countries can reap a significant share of these global gains. According to the World Bank¹⁰, remittance flows to developing countries amounted to about US\$351 billion in 2011 (more than triple the figure in 2002). Global remittance flows are more than twice as large as total overseas development assistance (ODA) and represent the largest source of foreign exchange for numerous countries.

Importantly, the determinants and dynamics of remittances may be one of the factors that can encourage some sending countries to develop a preference for temporary over permanent labour emigration. Migrants on temporary residence permits – especially those with families in their home countries – can be expected to remit more of their wages than migrants with permanent residence status abroad. Although the overall empirical evidence on this issue is mixed, there is some evidence that remittances initially increase but eventually decrease with a migrant's duration of stay in the host

¹⁰ See <http://siteresources.worldbank.org/TOPICS/Resources/214970-1288877981391/MigrationandDevelopmentBrief17.pdf> [Accessed 26 January 2012].

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

country, reflecting the counteracting forces of wage increases (which increase remittances) on the one hand and increased detachment from the home country and family reunification (lowering remittances) over time (see, for example, Carling, 2008). Acquiring the right to permanent residence will benefit migrants' human development but the associated decline in remittances (and, if migrants are highly skilled, the potential permanent loss of human capital) could lower human development in migrants' countries of origin. Of course, the impact of rights on remittances is just one type of effect that may be outweighed by other beneficial impacts for sending countries. The research on this issue is limited.

It is also important to emphasise that more low-skilled migration does not automatically translate into faster development in the migrants' countries of origin. The effects of remittances, and emigration more generally, can be mixed both in theory and practice (ILO, 2004) (also see for example Lucas, 2005). Research and the experiences of countries of large-scale emigration – such as Egypt, Mexico, and the Philippines – suggest that promoting labour emigration is not in itself an effective development strategy (ILO, 2004). Nevertheless, it is clear that, if used effectively, remittances and other transfers migrants make to their home countries can be of significant benefit to migrants' families and/or to the overall economies of migrants' countries of origin.

4.2. Making temporary migration programmes work

The design of new and expanded temporary migration programmes for low-skilled migrant workers needs to learn from past policy mistakes. There is no doubt that many of the past large-scale temporary labour migration programmes, most notably the *Bracero* programme in the USA (1942–64) and the *Gastarbeiter* programme in Germany (1955–73), failed to meet their stated policy objectives and instead generated a number of adverse, unintended consequences. There is a plethora of studies providing empirical evidence for the 'policy failures' of past guest worker programmes. For overviews, see, for example, Castles (1986) and Martin and Teitelbaum (2001). The three most important adverse impacts included:

- the exploitation of migrant workers in both recruitment and employment;
- the emergence of labour market distortions, and the growth of a structural dependence by certain industries on continued employment of migrant workers and, perhaps most importantly from the receiving country's point of view,
- the non-return and eventual settlement of many guest workers. The slogan 'there is nothing more permanent than temporary foreign workers' has been a popular summary statement of the perceived failure of past guest-worker programmes.

A rapidly growing number of academic and policy studies are dedicated to explaining these adverse consequences and identifying new policies that might help avoid them in new and improved programmes (see e.g. Ruhs, 2006; 2003; Martin 2003; Abella 2006) While the scope of this paper does not allow a detailed discussion, the analysis below highlights three key policies that are, in my view, key to the design and implementation of more effective temporary migration programmes, especially for low-skilled migrant workers.¹¹

1. Protecting temporary migrant workers from exploitation

One of the primary sources of migrants' vulnerability while employed under a TMP is the requirement that they work solely for the employer specified on their work permit. Migrants may then find it difficult or impossible to escape unsatisfactory working conditions (unless they are willing and

¹¹ My discussion of these issues draws from my previous work, especially Ruhs 2006 where some of the issues are discussed in more detail.

financially able to return home). This problem may be exacerbated by some employers' illegal practices of retaining migrant workers' passports and providing 'tied accommodation', i.e. accommodation provided by the employer on the condition that – and as long as – the migrant keeps working for that employer.

Effective protection of migrants' rights thus requires at least some portability of temporary work permits, enabling migrants to change employers as necessary. It is important to recognise, however, that – from the receiving country's perspective – at least some restrictions on the right to free choice of employment are necessary to enable them to use temporary labour migration programmes as a means to respond to labour shortages in specific sectors and/or occupations. Without this restriction, much of the receiving country's rationale for establishing a temporary labour migration programmes is significantly reduced (i.e. if migrants were free to take up any available job, there would be no guarantee that they would work in the areas experiencing shortages).

Rather than insisting on the right to free choice of employment for migrant workers in the host country, a more realistic policy objective would be to facilitate the portability of temporary work permits *within a defined job category and after a certain period of time*. The duration of the period after which permits become portable requires a realistic assessment of the time needed for employers to cover at least part of their recruitment costs. In this connection, it is important to note that it may not be desirable for employers to be given a guarantee that they can recover *all* their migrant worker recruitment costs. Indeed, such a policy could significantly reduce the risks associated with hiring migrant workers relative to those associated with recruiting local workers (who may leave the employer at any time, i.e. also before the employer's investment in the workers has been recovered). This, in turn, could encourage employers to recruit migrant workers over local workers (Anderson and Ruhs, 2010).

2. Managing employers' demand for migrant labour

The key to addressing the issue of unintended distortions in the labour market is to recognise that employers' demand for migrant labour needs to be critically evaluated and actively managed and regulated by the government. In theory, an individual employer may respond to perceived staff shortages in different ways. These include: (i) increasing wages and/or improving working conditions to attract resident workers who are either inactive, unemployed, or employed in other sectors, and/or to increase the working hours of the existing workforce; this may require a change in recruitment processes and greater investment in training and skills development; (ii) changing the production process to make it less labour intensive by, for example, increasing the capital and/or technology intensity; (iii) relocating to countries where labour costs are lower; (iv) switching to production (provision) of less labour-intensive commodities and services; and (v) employing migrant workers.

Of course, not all of these options will be available to all employers at all times. For example, most construction, health, social care and hospitality work cannot be off-shored. An employer's decision on how to respond to a perceived labour shortage will depend in part on the relative cost of the feasible alternatives. If there is ready access to cheap migrant labour, employers may not consider the alternatives to immigration as a way to reduce staff shortages. Although migrants are often a cost-attractive option for employers, they may not be a 'sensible' choice for the overall economy. There is clearly the danger that the recruitment of migrants to fill perceived labour and skills needs in the short run exacerbates shortages and thus entrenches certain low-cost and migrant-intensive production systems in the long run, potentially reducing their competitiveness over time (Migration Advisory Committee 2008; Martin and Ruhs, 2011).

The key policy implication of this discussion is that, to prevent employers from developing a structural dependence on an ever-increasing number of migrant workers, policies need to create the

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

right incentives for employers to consider the alternatives. While there are no clear ‘best practice’ policies, there are at least three different but overlapping policy approaches to achieving this goal: labour market tests; expert committees and shortage occupation lists; and economically oriented work-permit fees.

Labour market tests: Labour market tests aim to ensure that migrant workers are only admitted after employers have seriously and unsuccessfully searched for local workers to fill the existing vacancies. The weakest form of labour market test requires employers to ‘attest’ that they have unsuccessfully sought local workers (as it is the case for Tier 2 of the UK’s points-based system) and/or that they will pay migrant workers prevailing (rather than legal minimum) wages in the given occupation (as it is the case for the H1-B programme in the USA). Labour market tests that rely on employer attestation typically do not involve any pre-admission checks (i.e. to see whether the employer has made genuine efforts to recruit local workers) but instead rely on post-admission enforcement. A stronger type of labour market test, which I argue is necessary for effective low-skilled labour immigration programmes, involves some sort of ‘certification’ of employers’ claims that no local workers are available to do the job. For example, in Ireland, employers need to advertise their vacancies with FAS, a national public employment and training agency, for a minimum of eight weeks. If no match can be found after that time, FAS issues a letter to the employer to this effect, which enables the employer to proceed with a work permit application for a national from outside the European Economic Area (EEA). Other European countries operate similar systems (see Ruhs, 2011). Although some of these certification-based tests have worked better than others, effective implementation has proved challenging in a wide range of contexts and different countries. The key challenge is that, in some occupations (especially but not only in low-wages sectors), employers have a clear preference for migrant workers and have shown considerable ‘skill’ in getting around the formal requirements of the labour market test. A common problem in the design of certification-based labour market tests is that, even when the public employment institution tasked with the certification of labour market tests identifies and recommends a local worker to fill the vacancy, employers simply say that the worker is ‘unsuitable’ and this is where the process often ends. In the worst case scenario, neither the employer nor the local worker (encouraged/required by the public employment body to apply for the job) is really interested in engaging in an employment relationship. In this case, the labour market test requirement simply becomes a bureaucratic procedure for employers and local workers, which clearly does not meet the original aims of the test i.e. to protect local workers’ right to preferential access to the national labour market (Ruhs, 2012b).

Expert committees and shortage occupation lists: A second and potentially complementary policy approach is to use expert committees to draw up shortage occupation lists. Australia, Canada and Spain have special government units or independent advisory bodies to analyse labour shortage complaints. The UK went further, establishing the Migration Advisory Committee (MAC) to advise the government if there were skilled labour shortages that can be “sensibly” remedied by migrant workers from outside the EEA. The MAC was created to develop objective analyses of labour shortages and appropriate policy responses. The MAC recommends a list of ‘shortage occupations’. For an occupation to be included it needs to satisfy three criteria: the job needs to be skilled; there needs to be a shortage; and it must be sensible to address the shortage by recruiting migrants from outside the EEA. To analyse each of these questions, the MAC uses a combination of top-down indicators (e.g. changes in relative wages and unemployment rates in different occupations) and bottom-up evidence from employers, trades unions, government departments, civil society organisations (CSOs) and experts (for more discussion of the work and impacts of the MAC, see Martin and Ruhs, 2011).

Economically-oriented work permit fees: In order to create the right incentive structure, employers could be required to pay a fee for each migrant worker recruited and employed. The rationale would

be to encourage employers to seek and recruit local workers who can be employed without paying the fee and therefore to seriously consider alternative responses to perceived labour shortages. The revenues collected from this tax could then be used to fund enforcement, integration assistance, cover social costs and/or compensate resident workers for their income losses.

Singapore has been among the very few countries to use economically oriented fees to ‘micro-manage’ the inflow and employment of temporary migrant workers. Singapore’s so-called ‘foreign-worker levies’ are payable by the employer per migrant employed. The levies are regularly reviewed, specific to the migrant’s skill level and sector of employment, and rise with the share of migrants employed at a company. For example, in 2007/08 the monthly levy for employing a skilled migrant in Singapore’s construction sector was S\$150; the corresponding levy for employing an unskilled construction worker from abroad was S\$470.

3. Measures to facilitate return

It is clear that any temporary labour immigration programme needs to include a number of policies to facilitate and maintain the general expectation of temporary status. First, policies are required to prevent a situation in which foreign workers decide to overstay a temporary work permit because their savings target could not be achieved within the period of its validity. This requires strict enforcement against employers and recruiters who provide foreign workers with misleading information about employment conditions and living costs in the receiving country, and against employers who engage in ‘contract substitution’. This refers to the illegal practice whereby the migrant worker is issued with a new contract specifying lower conditions of work and/or pay upon arrival in the country of employment despite having signed an authorised contract prior to departure (ILO, 1999).

Second, to avoid illegal overstaying out of ‘economic necessity’, temporary work permits must be issued for a period that allows migrant workers – especially those in low-wage occupations – to generate the net financial gains necessary to make migration financially worthwhile. While this assessment will vary across different workers, at the minimum it means covering migration costs and generating some income gains from employment abroad. Some of the past programmes failed partly because the work permit they issued was too short. For example, in 2003 the United Kingdom introduced a low-skilled guest worker programme (the ‘Sector-based Scheme’, SBS) that issued one-year work permits for employing migrants in low-wage occupations in the hospitality and food processing sectors. It is highly questionable whether it makes any financial sense to expect Bangladeshi workers – the leading recipients of SBS permits – to work in a low-wage job in the United Kingdom for one year only. Unsurprisingly, the SBS programme was closed after a few years partly because of concern about overstaying.

Third, migrant workers with a valid work permit need to be given the right and opportunity to travel freely – or at the least without excessive restrictions – between their home country and their country of temporary residence. This will help migrants maintain networks in their home country, and thereby increase the probability of their return.

Fourth, financial return incentives could include the transfer of migrant workers’ social security payments to their countries of origin. A study of the portability of pension and health care benefits for international migrants concludes that only 20% of migrants worldwide currently work in host countries where full portability of pensions benefits (but not necessarily of healthcare benefits) to their home countries is assured. Indeed, the lack of portability of long-term social security benefits in many countries may hinder return migration and probably contributes to the informal employment of migrants in host countries (Holzmann, Koettl and Chernetsky, 2005).

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

Fifth, host countries could also open special savings accounts offering migrant workers the opportunity to save part of their wages at special, high-interest rates on condition that the savings would be released to migrant workers only upon their return to their home countries. Finally, there is also a need for clear and effective procedures for punishing employers who employ migrant workers without valid work permits and for deporting migrant workers who illegally overstay their temporary work visas. The latter is likely to require the cooperation of sending countries. The latter could, for example, take measures to regulate their migrant worker recruitment industries and assist the return of migrant workers deported by the authorities of the receiving country.

4.3. Debates and governance of temporary migration programmes

The vast majority of labour immigration programmes in high-income countries admit migrants on a temporary basis. Permanent migration programmes, i.e. admission policies that grant migrant workers permanent residence status on arrival, are rare and mainly used in the traditional settlement countries (Australia, Canada and New Zealand) and limited to skilled and highly-skilled workers (Ruhs, 2011). On this basis, it seems clear that temporary labour migration programmes are the most realistic way of increasing low-skilled labour migration from low- to high-income countries.

All temporary migration programmes involve a trade-off between providing more legal opportunities for employment abroad while at the same time restricting at least some of the rights of migrant workers. This means that, whatever the policy design, temporary migration programmes necessarily create a pool of workers whose rights are more restricted than those of permanent immigrants and citizens of the host country.

A key policy question in the debate about new temporary migration programmes is what restrictions on migrants' rights – if any – should be tolerated in order to facilitate greater liberalisation of international labour migration, especially of low-skilled workers who would have to gain most from employment abroad. There is no easy answer to this normative question. Different people with different normative starting points will respond in different ways. Most UN agencies have so far insisted on the comprehensive set of rights demanded by the international conventions and are reluctant to engage in explicit debate about potential restrictions that might be tolerated if they led to more labour migration with beneficial impacts for development.

It is not surprising that the World Bank, with its focus on economic development, has been less reluctant to advocate and support new low-skilled labour immigration programmes. The Bank actively supported the development of the 'Recognised Seasonal Employer (RSE)' programme in New Zealand launched in 2007 and the 'Pacific Seasonal Worker Pilot Scheme (PSWPS)' in Australia. Both are low-skilled immigration programmes for employing agricultural workers from the Pacific Islands. World Bank evaluations of these programmes show very large financial benefits – and improvement in a range of human development indicators – for participating migrants and their families in their countries of origin (Gibson and McKenzie, 2011; and McKenzie and Gibson, 2010).

The debate about new temporary migration programmes for low-skilled migrant workers requires open and explicit debate about the costs and benefits as well as trade-offs involved for the various parties. Given that migrants and their countries of origin are meant to be among the key beneficiaries of any new programmes, the involvement of sending countries and organisations representing the interests of migrant workers are of critical importance.

What would be the best international platform to facilitate debates among receiving countries, sending countries and migrant organisations about new temporary migration programmes that would enable far greater numbers of low-skilled workers from low-income countries to work abroad while effectively protecting a set of core rights? Given the complexity and wide range of the issues involved –

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

including the important link between rights and development – it is unlikely that any *one* of the existing international institutions can provide such a platform. What is required is an ‘umbrella platform’ that brings together different UN agencies with different priorities- including especially the OHCHR, ILO (both of which focus on rights) and the UNDP (which focuses on development) – as well as the World Bank and potentially other development organisations including those based in the ‘global south’.

5. Conclusion: Migrant rights and labour migration in the post-2015 development framework

The liberalisation of international labour migration, especially of low-skilled workers whose international movement is currently most restricted, has the potential to generate very large benefits for migrants as well as for the development of low-income countries. There is, therefore, a very strong case for including international labour migration and migrant rights in the post-2015 development framework. While greater opportunities for international labour migration is not necessarily a 'development goal' in itself, international migration and migrant rights could clearly be integrated in a MDG-type framework. For example, under the existing MDG framework, it could have been included under MDG8 ('develop a global partnership for development') which currently discusses trade and capital flows but not migration. Any debate about migration and development must consider both how to improve low-income countries' access to the labour markets of higher income countries and the protection of the *rights* of migrants. The only realistic way to increase low-skilled labour migration from low- to high-income countries is through temporary migration programmes that restrict at least some of the rights of migrant workers.

The rights restrictions inherent in all temporary migration programmes create a tension with the very comprehensive set of rights demanded in the 1990 UN Convention on the Rights of Migrant Workers. As a way to bridge the 'real' and the 'ideal', there is a strong case for more open and explicit debate on a list of 'core rights' that might have a greater chance of being accepted and implemented by high-income countries. What exactly these core rights should be – and how they could be effectively protected under new and improved temporary migration programmes – are important questions for debates that must involve all sides including migrant-sending countries, migrant-receiving countries as well as organisations representing the interests of migrants.

The following three questions might be a useful starting point for this debate (for a more detailed discussion including analysis of specific rights, see Ruhs, 2013):

- a. Restrictions of what rights would result in more opportunities for legal labour migration to high-income countries? (see e.g. Ruhs, 2011)
- b. What rights are most important for ensuring a positive impact of migration on the human development of migrants and their families as well as on the development of their countries of origin? (see e.g. Ruhs, 2010; 2008)
- c. What rights should never be restricted regardless of the consequences for the legal opportunities for labour migration and impacts on development?

The European Union can play an important role in facilitating and contributing to this debate. First, many EU member states have extensive experiences with temporary migration programmes. The EU could initiate a concerted effort to review past experiences, including the reasons for policy failures, and engage third countries in a discussion about new and better programmes that are firmly based on a set of core rights for migrant workers and that create benefits for the development of migrants' countries of origin. This discussion would also need to involve a critical review of the EU's current 'Mobility Partnerships' which have been criticised for prioritising the control of irregular migration over the creation of more opportunities for more legal migration.

Second, the EU could take the lead role in promoting and supporting a new global migrant rights database that would provide objective and rigorous measures of the rights of migrant workers in different countries and thus create a much stronger evidence for international monitoring of migrant rights.

Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

Third, at a global level, the EU could push for more open and explicit debates about ‘core rights’ for migrant workers and about new temporary migration programmes that would help increase opportunities for legal labour migration to high-income countries as well as benefits the development of migrants’ countries of origin. The EU could play an instrumental role in trying to bring together different UN and other international agencies concerned with migration, rights and development to provide a platform for debate.

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Towards a post-2015 development agenda: What role for migrant rights and international labour migration?

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Appendix – Explanation of migrant rights analysed in Figure 3.1

Vote	Right to vote in local/regional elections
Stand for election	Right to stand for elections in local/regional elections
Associate	Right to form trade unions and other associations
Identity documents	Right not to have identity document confiscated by anyone, other than a public official duly authorised by law
Protection of criminal courts	Right to equal treatment and protections (with citizens) before criminal courts and tribunals
Free choice of employment	Right to free choice of employment
Equal pay	Right to equal pay
Equal conditions	Right to equal employment conditions and protections
Join unions	Right to join unions
Redress (employment)	Right to redress if the terms of employment contract have been violated by the employer
Unemployment benefits (equ)	Right to equal access to unemployment benefits
Public retirement pension schemes (equ)	Right to equal access to public retirement pensions schemes
Public education and training (equ)	Right to equal access to public educational institutions and services
Public incl. social housing (equ)	Right to equal access to public housing incl. social housing schemes
Public health services (equ)	Right to equal access to public health services
Time limit on residence	Time restrictions on legal residence permit
Security of residence: Employment	Impact of loss of employment on residence status
Security of residence: Criminal convictions	Impact of criminal convictions on residence status
Direct access to citizenship	Right to apply for citizenship (without first having to switch to another residence status)
Redress (residence)	Right to address in case of withdrawal or non-renewal of residence permit or in case of a deportation order
Family reunion	Right to family reunion
Spouse's rights to work	Spouse's right to work (without having to apply for permission)
Redress (family reunion)	Right to judicial remedy to challenge the refusal by the authorities to allow family formation/reunification

Note: For more discussion and analysis, see Ruhs 2011