

Labor or Love: A Human Rights-Based Analysis of Israel’s International Migration Policy on Restricting Foreign Workers’ Family Life

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I. INTRODUCTION

Migrants enrich societies through cultural diversity, by introducing new practices, ideas[,] and technology, fostering understanding and respect among peoples, and contributing to demographic balance and the [labor] force in aging societies. For many, migration is a positive and empowering experience, but many others endure human rights violations, discrimination, and exploitation.

— Navi Pillay¹

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1. Navi Pillay, United Nations High Commissioner for Human Rights, Address at the Fourth Global Forum on Migration and Development (Nov. 10, 2010) (transcript available at <https://newsarchive.ohchr.org/en/NewsEvents/>)

The complex relationship between international migration law and international human rights law has long been the subject of scholarly debate and discussion.² This dynamic can be attributed to movements across international borders, which have been influenced by several push and pull factors.³ As a result, these movements are highly regulated by States.⁴ Border control is traditionally viewed as the State's exclusive prerogative as an exercise of its sovereign powers.⁵ Thus, while nationals generally have an inherent right to enter or to return to their country of origin, States can set conditions and other requirements for the entry and continuous stay of non-nationals or foreigners within their territory.⁶

However, the exercise of this State power is not without any limitations.⁷ The European Court of Human Rights explained in *Abdulaziz, Cabales and Balkandali v. United Kingdom*⁸ that the State's right to regulate the migration of non-nationals is subject to its treaty obligations.⁹ Furthermore, immigration control policies must be crafted in such a way that will not

Pages/DisplayNews.aspx?NewsID=10521&LangID=e (last accessed Apr. 30, 2022) [<https://perma.cc/9VK2-EAHQ>]).

2. See generally Vincent Chetail, *The Human Rights of Migrants in General International Law: From Minimum Standards to Fundamental Rights*, 28 GEO. IMMIGR. L.J. 225, 225-26 (2013) (citing Franciscus de Victoria, *The First Reflection: On the Indians Lately Discovered*, in DE INDIS ET DE IVRE BELLI RELECTIONES 151, ¶ 386 (Ernest Nys ed., 1917); HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES 253, ¶ XXIV (James Brown Scott ed., 1925); & EMER DE Vattel, THE LAW OF THE NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS, WITH THREE EARLY ESSAYS ON THE ORIGIN AND NATURE OF NATURAL LAW AND ON LUXURY 224, ¶ 225 (Béla Kaposy & Richard Whatmore eds., 2008)).
3. DEEPAK NAYYAR, CROSS-BORDER MOVEMENTS OF PEOPLE 20 (2000).
4. Guy S. Goodwin-Gill, *International Law and Human Rights: Trends Concerning International Migrants and Refugees*, 23 INT'L MIGRATION REV. 526, 542 (1989).
5. See *id.* at 530 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)).
6. Chetail, *supra* note 2, at 246.
7. *Id.*
8. *Abdulaziz, Cabales and Balkandali v. United Kingdom*, App. No. 9214/80, 1985 Y.B. EUR. CONV. ON H.R. 184 (Eur. Comm'n on H.R.).
9. *Id.* ¶ 67.

unreasonably impede migrants' fundamental rights.¹⁰ As such, international human rights treaties impose obligations and duties upon States Parties to "respect, protect, promote, and fulfill" all rights of persons,¹¹ including migrants, within their jurisdiction.¹² These obligations arguably limit the seemingly wide discretion given to States in enforcing migration laws.¹³

The advent of globalization has amplified the movement of goods, services, and people across international borders.¹⁴ For a developing country like the Philippines, labor force exportation drives economic growth.¹⁵ In

10. See Chetail, *supra* note 2, at 253–54.

Migration is framed by general international law. This has always been the case even if the triviali[z]ation of immigration control has contributed to obscuring the role of international norms to such an extent that this field is frequently confused with domestic jurisdiction. This article makes clear that the human rights of migrants are an integral part of public international law and mirror its broader evolution.

The main challenge remains in its implementation at the domestic level. This is arguably not so different from many other branches of international law which are at the crossroads of state sovereignty and individuals' rights

Chetail, *supra* note 2, at 253–54.

11. Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria, Communication 155/96, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 44 (Oct. 27, 2001), <https://www.escri-net.org/sites/default/files/serac.pdf>.

12. See Goodwin-Gill, *supra* note 4, at 536 (citing Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmbl. & art. 1, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights pmbl., *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; International Covenant on Civil and Political Rights pmbl., *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Convention on the Elimination of All Forms of Racial Discrimination pmbl., *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD]; & American Convention on Human Rights art. 1, ¶ 2, *signed* Nov. 22, 1969, 1144 U.N.T.S. 144).

13. See Goodwin-Gill, *supra* note 4, at 537.

14. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 9 (2002).

15. See Maruja M.B. Asis, Migration Policy Institute, The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return, *available at* <https://www.migrationpolicy.org/article/philippines-beyond-labor-migration->

2017, it was estimated that “more than 10 million Filipinos — or about 10% of the population — are working and/or living abroad.”¹⁶ Today, about 4.8 million Filipinos have permanent residence status in other countries, while 4.2 million are temporary migrants, and about 1.2 million have irregular migration status.¹⁷ According to the Philippine Statistics Authority’s (PSA) 2019 Survey on Overseas Filipinos, 2.2 million Filipinos “worked abroad at any time during the period [of] April to September 2019[.]”¹⁸ Elementary occupations, which generally involve tasks such as “cleaning, restocking supplies[,] and performing basic maintenance in apartments, houses, kitchens, hotels, offices[,] and other buildings; washing cars and windows; helping in kitchens and performing simple tasks in food [preparation,]” among others,¹⁹ comprised the largest percentage of overseas Filipino workers (OFWs) at 39.6%.²⁰ These occupations are followed by the service and sales industry at 17.5%,²¹ and then by the plant and machine operation and assembly industry at 12.2% of the total number of OFWs recorded in the same period.²² The increasing demand for domestic workers or caregivers has resulted in the feminization of migration,²³

toward-development-and-possibly-return (last accessed Apr. 30, 2022) [<https://perma.cc/9XL7-SYVC>].

16. *Id.*

17. Benjamin Pulta, Proposed OFW Department Will Benefit 10M Pinoys Abroad, *available at* <https://www.pna.gov.ph/articles/1140484> (last accessed Apr. 30, 2022) [<https://perma.cc/4W7G-AUQV>].

18. Philippine Statistics Authority, 2019 Survey on Overseas Filipinos (Report No. 1-A), at 15, *available at* <https://psa.gov.ph/sites/default/files/2019%20Survey%20on%20Overseas%20Filipinos.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/5PQW-VBTR>] [hereinafter Philippine Statistics Authority, 2019 Survey].

19. Philippine Statistics Authority, 2012 Philippine Standard Occupational Classification (PSOC), *available at* <http://202.90.134.34/classification/psoc/?q=psoc/major> (last accessed Apr. 30, 2022) [<https://perma.cc/K7GA-X923>].

20. Philippine Statistics Authority, 2019 Survey, *supra* note 18, at 17, fig. 5.

21. *Id.*

22. *Id.*

23. *See generally* Guy Standing, *Global Feminization Through Flexible Labor: A Theme Revisited*, 27 *WORLD DEV.* 583, 583 (1999). “Feminization arises because available employment and labor options tend increasingly to characterize activities associated, rightly or wrongly, with women and because the pattern of

evidenced by 56% of total number of OFWs recorded in 2019 being females.²⁴ Despite a global pandemic, remittances from Filipinos working abroad were recorded at ₱31.4 billion, which accounted for 8.9% of the country's gross domestic product in 2021.²⁵

Western Asia is the top destination for Filipino migrant workers, with Saudi Arabia receiving the largest share of the Filipino labor force.²⁶ Israel is among the countries in this region where Filipino caregivers are in high demand.²⁷ In 2016, a total of 84,458 foreign workers were documented by Israel, with 49,156 employed in the nursing or care work industry.²⁸ The Philippines is the top source of caregivers in Israel, with 17,131 regular Filipino migrants and 5,698 irregular Filipino migrants having been recorded in the same year.²⁹ Other foreign caregivers originate from India, Moldova, Sri Lanka, and Nepal.³⁰

employment tends to result in an increasing proportion of women occupying the jobs." *Id.*

24. Philippine Statistics Authority, 2019 Survey, *supra* note 18, at 16.
25. Ben O. de Vera, *Cash Remittances to PH Hit New High of \$31.4B in 2021*, PHIL. DAILY INQ., Feb. 16, 2022, available at <https://business.inquirer.net/341015/cash-remittances-to-ph-hit-new-high-of-31-4b-in-2021> (last accessed Apr. 30, 2022) [<https://perma.cc/7G4B-SB8Y>].
26. Philippine Statistics Authority, 2019 Survey, *supra* note 18, at 40, tbl. 1.3.
27. Shashank Bengali, *As the Conflict Kills Foreign Workers, the Philippines Says It Will Pause Sending Migrants to Israel*, N.Y. TIMES, available at <http://web.archive.org/web/20210521034427/https://www.nytimes.com/2021/05/20/world/middleeast/israel-hamas-philippines-workers.html>.
28. Israeli Population and Immigration Authority, United Nations High Commissioner for Refugees, Statistics of Foreigners in Israel, at *7, tbl. C.1, available at <https://www.unhcr.org/il/wp-content/uploads/sites/6/2020/07/PIBA-2016-Summary-English-stats.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/R4Q9-T5BX>].
29. *Id.* at *9, tbl. C.1.2.
30. *Id.*

Despite heavy reliance on foreign workers, Israel ironically stands firm as a “non-immigration state” for non-Jewish migrants.³¹ Current policies make it virtually impossible for long-term foreign workers and their children born in Israel to be naturalized³² or to secure permanent residency rights.³³ Furthermore, Israel’s coronavirus (COVID-19) pandemic response has had a significant impact on the full enjoyment of rights by non-nationals, including migrant workers.³⁴ This raises the question of whether such a restrictive and exclusionary immigration policy finds support under international human rights law.

This Article aims to examine Israel’s immigration policies on regulating the entry and continued stay of migrant workers in its territory through a human rights perspective. A brief overview of Israel’s migration regime will establish the context of select domestic legal framework to set up a human rights-based analysis through the lens of women’s rights, the best interest of the child, and the right to family life as enshrined in international law.

31. Sarah S. Willen, *Perspectives on Labour Migration in Israel*, 19 REVUE EUROPÉENNE DES MIGRATIONS INTERNATIONALES 243, ¶ 10 (2003) (citing Adriana Kemp & Rebecca Rajjman, *Foreigners in a Jewish State: The New Politics of Labor Migration to Israel*, 3 SOTZIOLOGIA YISRAELIT 79, 81 (2000)).

32. See, e.g., Entry Into Israel Law, 5712-1952, SH No. III p. 354 (Isr.).

33. See generally Caroline Rozenholc, *Foreign Workers, the Impact of a Non-Jewish Migration on Israeli Citizenship*, 21 BULLETIN DU CENTRE DE RECHERCHE FRANÇAIS À JÉRUSALEM 1, 4-6 (2010).

This [Israeli immigration] policy seemed to have had a double goal: first, to decrease the number of illegal migrants; second, to avoid the rooting of families and the creation of a ‘second generation’ in Israel. With this policy, the government openly started fighting against the durable settling of non-Jewish families in the country.

Id. at 5.

34. Tally Kritzman-Amir, *Flattening the Curve, Constitutional Crisis and Immigrants’ Rights Protections: The Case of Israel*, in MIGRATION IN THE TIME OF COVID-19: COMPARATIVE LAW AND POLICY RESPONSES 86 (Jaya Ramji-Nogales & Iris Goldner Lang eds., 2021). During the pandemic, “[t]he treatment of non-Jewish migrants [by Israel] was impacted by the government through a different sort of calculus, with a single focus on the immediate, over-simplified perception of utility to the Israeli employers and the Israeli economy, and little attention to the needs and rights of the migrants.” *Id.*

II. AN OVERVIEW OF ISRAEL'S LABOR MIGRATION POLICY

Israel began opening its borders to international labor migrants in 1993³⁵ after the entry of Palestinians for work purposes was prohibited.³⁶ This was a direct result of the first Intifada, or the Palestinian uprising, which occurred in the late 1980s.³⁷ The Israeli government restricted Palestinians' entry into the occupied territories on the basis of national security, which resulted in labor shortages in the construction and agriculture industries.³⁸ Thus, the recruitment of migrant workers to replace Palestinian workers considerably increased when the Israeli government introduced a "guest worker visa" scheme in the early 1990s.³⁹ Industries such as construction, agriculture, restaurant management and services, and care work for elderly and disabled persons were permitted to engage the services of foreign workers.⁴⁰

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35. Hila Shamir, *What's the Border Got to Do with It? How Immigration Regimes Affect Familial Care Provision — A Comparative Analysis*, 19 AM. U. J. GENDER, SOC. POL'Y & L. 601, 633 (2011).
36. *Id.* at 633-34 (citing GUY MUNDLAK, *FADING CORPORATISM: ISRAEL'S LABOR LAW AND INDUSTRIAL RELATIONS IN TRANSITION* 194 (2007); REBECA RAJMAN & ADRIANA KEMP, *MIGRANTS AND WORKERS: THE POLITICAL ECONOMY OF LABOUR MIGRATION IN ISRAEL* 67-72 (2008); & Nelly Elias & Adriana Kemp, *The New Second Generation: Non-Jewish Olim, Black Jews and Children of Migrant Workers in Israel*, 15 ISR. STUD. 73, 73 (2010)).
37. LEILA FARSAKH, *PALESTINIAN LABOUR MIGRATION TO ISRAEL: LABOUR, LAND AND OCCUPATION* 72 (2005).
38. Shamir, *supra* note 35, at 634 (citing FARSAKH, *supra* note 37, at 76-90). See also Sarah S. Willen, *Birthing "Invisible" Children: State Power, NGO Activism, and Reproductive Health Among "Illegal Migrant" Workers in Tel Aviv, Israel*, 1 J. MIDDLE E. WOMEN'S STUD. 55, 62 (2005).
39. See Shamir, *supra* note 35, at 634 (citing Adriana Kemp, et al., *Contesting the Limits of Political Participation: Latinos and Black African Migrant Workers in Israel*, 23 ETHNIC & RACIAL STUD. 94, 99 (2000)).
40. Shamir, *supra* note 35, at 634 (citing Moshe Semyonov, et al., *Labor Market Competition, Perceived Threat, and Endorsement of Economic Discrimination Against Foreign Workers in Israel*, 49 SOC. PROBS. 416, 419 (2002)).

However, Israel's migration regime is consistently geared towards ensuring that the stay of non-Jewish migrants in its territory remains temporary.⁴¹ First, only persons of Jewish descent are eligible for Israeli nationality by virtue of the 1950 Law of Return⁴² and the 1952 Nationality Law.⁴³ While naturalization is allowed in specific circumstances,⁴⁴ it requires permanent residence status,⁴⁵ which is generally unavailable for migrant workers, whose work visas allow them to stay in the country for a maximum period of 63 months.⁴⁶ Special rules were then established to meet the increasing demand for live-in caregivers.⁴⁷ Now, they may be allowed to stay in Israel beyond the 63-month period in the event that they annually extend their work permit under the condition that they continue working for the same employer.⁴⁸ However, should they exceed the allowable period, they will be required to leave Israel immediately — otherwise, they will be detained and deported.⁴⁹

41. See Shamir, *supra* note 35, at 636 (citing Zeev Rosenhek, *Migration Regimes, Intra-State Conflicts, and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State*, 47 SOC. PROBLEMS 49, 53, & 54 (2000)).

42. Law of Return, 5710-1950, SH No. 51 p. 159 (Isr.).

43. Nationality Law, 5712-1952, SH No. 95 p. 146 (Isr.).

44. *Id.* § 5.

45. *Id.* § 5 (3).

46. Deby Babis, *The Implications of Migration Policies on Migrant Worker Mixed Families: The Case of Filipinos in Israel*, 30 ASIAN & PAC. MIGRATION J. 143, 147 (2021).

47. *Id.* at 147-48 (citing Population and Immigration Authority, Procedure for Handling Applications for Extension of Licenses B/1 in the Nursing Industry for Special and Exceptional Humanitarian Reasons Under Section 3 a) b1) of the Entry Into Israel Law, at A2, available at https://www.gov.il/BlobFolder/policy/permit_extension_b1_procedure/he/5.3.0006.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/7L7R-9Q76>]) & Population and Immigration Authority, Foreign Workers' Rights Handbook, at 13-14, available at https://www.gov.il/BlobFolder/generalpage/foreign_workers_rights_booklets/he/foreign_workers_handbook_2021_en.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/M93M-RWUU>].

48. Population and Immigration Authority, *supra* note 47, at 14.

49. *Id.* at 11.

Second, a “no family” policy has been implicitly ingrained in Israel’s regulations to prevent foreign workers from laying down roots in the country.⁵⁰ This means that migrant workers are prohibited from bringing any family member, including their spouse and children.⁵¹ The policy even goes as far as denying work permits for new applicants who have first-degree relatives already working in Israel.⁵² This policy is summarized by Shamir —

Migrant workers can enter the country on a guest-worker visa only if they do not have a close family member (spouse, parent[,] or child) who is also a guest-worker in Israel. Similarly, if two migrant workers get married in Israel, one of them is required to leave the country, and[, until recently,] if a *woman [gave] birth to a child[.] she [had to] leave the country with the newborn within twelve weeks of the birth and [was] able to return to Israel, for the remaining period of her visa[.] only if she [returned] alone.*⁵³

Eventually, the constitutionality of the procedure for pregnant migrant workers was challenged in the case of ‘*Kav LaOved’ and Others v. The Ministry of Interior*.⁵⁴ The petition presented the case of a Filipina migrant worker and how Israel’s “no family policy” greatly impacted her right to family life.⁵⁵ The approval of her work permit in Israel was subject to a mandatory pregnancy test.⁵⁶ During the duration of her employment contract, she was impregnated by her partner, a Thai migrant worker.⁵⁷ After her child’s birth, the Ministry of Interior informed her that her work permit would be terminated and that she

50. Shamir, *supra* note 35, at 639 (citing The 14th Knesset, Protocol of the Knesset Committee for Foreign Workers Protocol, available at <http://web.archive.org/web/20130527232832/http://www.knesset.gov.il/protocols/data/html/zarim/2004-11-03.html> & HANI BEN-YISRAEL & ODED FELER, LOVE HAS NO COUNTRY (2006)).

51. Shamir, *supra* note 35, at 639 (citing Entry Into Israel Law, § 12).

52. Babis, *supra* note 46, at 148.

53. Shamir, *supra* note at 35, at 639 (emphasis supplied).

54. HCJ 11437/05 ‘Kav LaOved’ — Worker’s Hotline and Others v. The Ministry of Interior and Others 64(3) P.D. 122 (2011) (Isr.).

55. Adriana Kemp & Nelly Kfir, *Wanted Workers but Unwanted Mothers: Mobilizing Moral Claims on Migrant Care Workers’ Families in Israel*, 63 SOC. PROBS. 373, 383 (2016).

56. *Id.*

57. *Id.*

would only be allowed to stay in Israel for 12 weeks on a tourist visa.⁵⁸ Subsequently, she was offered the option of leaving the country with her newborn child or sending her child back to her home country alone as a condition for retaining her regular status under a worker's permit.⁵⁹ Ultimately, the Filipina migrant worker was forced to send her infant child to the Philippines and live separately — deprived of the right to rear and care for her child.⁶⁰

In 2011, the High Court of Justice declared the policy unconstitutional for violating international human rights treaties ratified by Israel that guarantee the rights of female migrant workers to gender equality and family life.⁶¹ Furthermore, it stressed that the policy “forces upon her a choice between two evils ... between continued employment while realizing her legitimate financial expectations and realizing her right to motherhood. Constructing the alternatives in such a way is, first and foremost, a violation of the foreign workers' right to parenthood.”⁶²

Thus, the Ministry of Interior amended the procedure and issued Regulation 5.3.0023⁶³ as a means to “protect” the right of female migrant workers to parenthood. Under the revised directive, a female migrant worker who gave birth during her first 63 months⁶⁴ of working in Israel has two options.⁶⁵ First, she can take her infant child out of Israel, return without the child, and continue working

58. *Id.*

59. *Id.*

60. *Id.*

61. The Supreme Court of Israel cited the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, and Various International Labor Organization Conventions. ‘*Kav LaOved*’ – *Worker’s Hotline and Others*, 64(3) P.D.

62. *Id.*

63. Population and Immigration Authority, זרה בהריון ובעובדת זרה, אשר ילדה בישראל, ¶ A.1 available at https://www.gov.il/BlobFolder/policy/procedure_pregnant_foreign_worker_in_israel_2013/he/5.3.0023.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/DMV7-WM5X>] (provides for the procedure for treating a pregnant foreign worker and a foreign worker who gave birth in Israel) [hereinafter Regulation 5.3.0023].

64. This is the duration of the validity of a work visa.

65. Regulation 5.3.0023, *supra* note 63, ¶ A.2.

with her employer.⁶⁶ Second, she can remain in Israel with her child for the unexpired period of her work permit, leave Israel with the child upon its termination, and return to Israel without the child under a new work permit.⁶⁷ However, the second option is subject to the condition that the mother shall be able to balance her employment duties with care for her child, and that such is allowed by her employer.⁶⁸ The procedure also emphasized that while both mother and child may be granted temporary stay, this grant does not afford them any other additional rights,⁶⁹ which rules out any possibility of applying for naturalization.⁷⁰ Finally, should the child stay in Israel for the unexpired term of the work permit, one parent may no longer be entitled to stay in the country in the event that the father of the child is also a foreign national working and living in the territory.⁷¹

Although it seems that, on its face, the new policy passes as a genuine attempt to give migrant workers a substantial chance of family reunification, a closer look would reveal that nothing much has changed. Israel's stance as a "non-immigration state" for non-Jewish migrants remains at the core of its labor migration policies.⁷² Ultimately, both options presented in the directive would lead to the separation of the family — it is only a question of when the separation will occur.

Needing to provide for their families back home, and not wanting to part with their children, many Filipina migrant workers are left with no choice other than to breach the terms of their original 63-month work permits and to remain in Israel as undocumented or irregular migrants.⁷³ As a result,

66. *Id.* See also DAPHNA HACKER, LEGALIZED FAMILIES IN THE ERA OF BORDERED GLOBALIZATION 179 (2017).

67. Regulation 5.3.0023, *supra* note 63, ¶ A.2. See also HACKER, *supra* note 66, at 179.

68. Regulation 5.3.0023, *supra* note 63, ¶ A.4. See also HACKER, *supra* note 66, at 179.

69. Regulation 5.3.0023, *supra* note 63, ¶ A.3. See also HACKER, *supra* note 66, at 179.

70. HACKER, *supra* note 66, at 179.

71. Regulation 5.3.0023, *supra* note 63, ¶ D.3. See also HACKER, *supra* note 66, at 179.

72. Willen, *supra* note 32, ¶ 10 (citing Kemp & Rajjman, *supra* note 32, at 81).

73. Shamir, *supra* note 35, at 640. She explains that

[t]he combination of reduced bargaining power of documented migrant workers in the Israeli labor market (first through the binding system, and then through the sector-binding system), the high debts migrants often incur to travel to Israel, and the 'no family' policy creates plenty of incentives for migrant workers to violate the conditions of their visa and remain in Israel 'illegally.'

children whose parents are both migrant workers are also pushed to live clandestinely and undocumented in the country.⁷⁴ In 2019, Israel amended its immigration policy to allow the deportation of undocumented children.⁷⁵ Since then, Israeli authorities have begun rounding up Filipina workers and their Israel-born children for deportation.⁷⁶ They claim that they are only targeting women who have overstayed, but reports show that many of these women's permits were not renewed because they both became pregnant and gave birth in Israel.⁷⁷ While the operations of many institutions, including courts, were suspended due to the outbreak of the COVID-19 pandemic in early 2020, it has since been reported that court hearings for the deportation of 39 families, who are predominantly Filipino, had resumed in June 2021.⁷⁸

III. THE IMPACT OF ISRAEL'S "NO FAMILY POLICY" ON THE FUNDAMENTAL RIGHTS OF MIGRANT WORKERS

At the onset, it is important to highlight that Israel is a State Party to several human rights treaties in the framework of international law. This includes, among others, the International Covenant on Civil and Political Rights (ICCPR),⁷⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁰ the Convention on the Elimination of All Forms of

Id.

74. See *id.* & Babis, *supra* note 46, at 148.

75. Babis, *supra* note 46, at 162.

76. *Israel Begins Deportation of Filipina Workers, Children*, MIDDLE EAST MONITOR, July 25, 2019, available at <https://www.middleeastmonitor.com/20190725-israel-begins-deportation-of-filipina-workers-children> (last accessed Apr. 30, 2022) [<https://perma.cc/98M8-K8KE>].

77. Lee Yaron, *Israel to Deport 100 Filipinas with Their Israeli-Born Children This Summer*, HAARETZ, June 13, 2019, available at <https://www.haaretz.com/israel-news/2019-06-13/ty-article/.premium/israel-to-deport-100-filipinas-with-their-israeli-born-children-this-summer/0000017f-e5df-da9b-a1ff-edff4b980000> (last accessed Apr. 30, 2022) [<https://perma.cc/9YRH-3U5P>].

78. Sue Surkes, *Court Hearings to Resume for Dozens of Filipino Carers, Kids Facing Deportation*, TIMES OF ISRAEL, May 10, 2021, available at <https://www.timesofisrael.com/court-hearings-set-to-resume-for-filipino-carers-kids-under-deportation-order> (last accessed Apr. 30, 2022) [<https://perma.cc/RR94-LPK3>].

79. ICCPR, *supra* note 12.

80. ICESCR, *supra* note 12.

Discrimination Against Women (CEDAW),⁸¹ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁸² and the Convention of the Rights of Child (CRC).⁸³

Despite playing host to thousands of migrant workers, Israel has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).⁸⁴ Nonetheless, it must be emphasized that Israel cannot unduly deny migrant workers their inherent rights and dignity even if it is not a State Party to certain treaties. First and foremost, migrant workers should be treated as humans, and not as mere workers performing services for the sole benefit of Israeli citizens. The principles of universality of human rights and non-discrimination, as embodied in Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR) respectively, and the concepts of indivisibility and interdependence of rights, guarantee the full protection of migrant workers.⁸⁵

Moving forward, a rights-based approach will be employed in analyzing the impact of Israel's international labor migration policies on the full enjoyment by migrant workers of their inherent rights.

A. On Women's Rights and Gender Equality

CEDAW General Recommendation No. 26 on Women Migrant Workers⁸⁶ highlights that although implementing immigration control policies is within the sovereign power of States, the exercise of such authority must be "in full compliance with their obligations [under] human rights treaties [that] they

81. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

82. ICERD, *supra* note 12.

83. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

84. SRINI SITARAMAN, STATE PARTICIPATION IN INTERNATIONAL TREATY REGIMES 129–30 (2009). *See generally* International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *adopted* Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter ICRMW].

85. UDHR, *supra* note 12, arts. 1 & 2.

86. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 26 on Women Migrant Workers*, U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008).

have ratified or acceded to.”⁸⁷ As a State Party to the CEDAW, Israel is duty-bound “[t]o adopt appropriate legislative and other measures, ... prohibiting all discrimination against women[.]”⁸⁸ More specifically, the CEDAW prohibits any kind of discrimination against women on the ground of maternity⁸⁹ and obliges States Parties to ensure their effective right to work by prohibiting dismissal on the basis of pregnancy, among others.⁹⁰ Furthermore, countries of destination should lift discriminatory restrictions in relation to migrant workers’ pregnancy.⁹¹

By giving the mother options for a “suitable” living arrangement for her child,⁹² Regulation 5.3.0023 might seem compatible with the international law obligations enumerated above. However, the care work industry is highly gendered,⁹³ almost exclusively employing female migrant workers.⁹⁴ The nature of their work requires them mainly to stay in their employers’ homes,⁹⁵ limiting their opportunities to find more flexible jobs that would enable them to care for their own children.

The options under Regulation 5.3.0023 may be rendered illusory if the father is also a foreigner. It must be remembered that if this is the case, then either parent may be forced to leave Israel.⁹⁶ This poses a problem if the mother opts to stay in Israel for the remainder of her work permit, while the father chooses otherwise. Should the father decide to leave Israel, then it will be virtually impossible for the mother to comply with the condition that she must be able to balance her work and maternal obligations.

87. *Id.* ¶ 3.

88. CEDAW, *supra* note 81, art. 2 (b).

89. *Id.* art. 11 (2).

90. *Id.* art. 11 (2) (a).

91. Committee on the Elimination of Discrimination Against Women, *supra* note 86, ¶ 26 (a) (citing CEDAW, *supra* note 81, art. 2 (f)).

92. Regulation 5.3.0023, *supra* note 63, ¶ A.2. See also HACKER, *supra* note 66, at 179.

93. Shamir, *supra* note 35, at 609 (citing Sophie Bowlby, et al., “Doing Home”: Patriarchy, Caring, and Space, 20 WOMEN’S STUD. INT’L F. 343, 345-46 (1997) & Erving Goffman, *The Arrangement Between the Sexes*, 4 THEORY & SOC’Y 301, 302 (1977)).

94. See Shamir, *supra* note 35, at 609.

95. *Id.* at 610.

96. Regulation 5.3.0023, *supra* note 63, ¶ D.3. See also HACKER, *supra* note 66, at 179.

Furthermore, the imposed condition perpetuates the gender-based stereotype that females are limited to caregiving roles.⁹⁷ To recall, the Regulation only requires the mother to exhibit her caregiving abilities.⁹⁸ Thus, the Regulation is silent with respect to whether the same will be applied in the event that the father opts to stay in Israel instead of the mother. The rationale behind the Regulation is possibly due to the expectation that mothers should have child custody.⁹⁹

Without a doubt, the pandemic aggravated the ability of migrant care workers to comply with the option of remaining in Israel with their children.¹⁰⁰ Government-imposed lockdowns restricted the movement of caregivers since Israeli employers prohibited the former from visiting their family and friends.¹⁰¹ As a result, civil society groups documented that many care workers were unable to take days off or get rest.¹⁰² Further, COVID-19 also posed a grave threat to the already fragile health of the typically elderly and disabled Israeli employers.¹⁰³ Thus, caregivers were expected to give their full attention and support to their employers, leaving the former with less time for their own families.¹⁰⁴

B. Best Interest of the Child

The Convention on the Rights of the Child provides that “[i]n all [State] actions concerning children, ... the best interests of the child shall be a primary consideration.”¹⁰⁵ This concept is “aimed at ensuring both the full and

97. See, e.g., *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 736 (2003).

98. See Regulation 5.3.0023, *supra* note 63, ¶ A.4.

99. Cf. *Pablo-Gualberto v. Gualberto V*, G.R. No. 154994, 461 SCRA 450, 476 (2005) (citing *Briones v. Miguel*, G.R. No. 156343, 440 SCRA 455, 464 (2004)).

100. See, e.g., *Kritzman-Amir*, *supra* note 34, at 81-82.

101. Maayan Niezna, et al., *Underlying Conditions: The Commodification of Migrant Workers Under COVID-19*, 6 J. MOD. SLAVERY 133, 142-43 (2021).

102. *Id.*

103. Niezna, et al., *supra* note 101, at 142-43.

104. *Id.* at 143.

105. CRC, *supra* note 83, art. 3 (1).

effective enjoyment of all the rights recognized in the [CRC] and the holistic development of the child.”¹⁰⁶

Article 8 (1) of the CRC obliges States Parties to respect the right of the child to preserve his or her identity.¹⁰⁷ Furthermore, States Parties are duty-bound to “provide appropriate assistance and protection[]” in situations “[w]here a child is illegally deprived of some or all of the elements of his or her identity,”¹⁰⁸ which includes the right to birth registration, a name, nationality, and parental or familial relations.¹⁰⁹ Together, these concepts comprise the cornerstone of a child’s right to identity.¹¹⁰ It is imperative for the best interest of the child that the right to identity is safeguarded, since it is fundamental to the “claim, guarantee, and enjoyment” of all other rights.¹¹¹

Meanwhile, in the context of international migration, “States should ensure that their legislation, policies, measures[,] and practices guarantee child-sensitive due process in all ... administrative or judicial proceedings[.]”¹¹² States should likewise guarantee the child’s basic right to “liberty and freedom from immigration detention[]” at all times, regardless of his/her parents’ migration

106. Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)*, ¶ 4, U.N. Doc. CRC/C/GC/14 (May 29, 2013) (citing Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6)*, ¶ 12, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003)).

107. CRC, *supra* note 83105, art. 8 (1).

108. *Id.* art. 8 (2).

109. *Id.* art. 7 (1).

110. *See id.* art. 8 (1).

111. Usang Maria Assim, *Civil Rights and Freedoms of the Child*, in INTERNATIONAL HUMAN RIGHTS OF CHILDREN 400 (Ursula Kilkelly & Ton Liefwaard eds., 2019).

112. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families & Committee on the Rights of the Child, *Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*, ¶ 15, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (Nov. 16, 2017) [hereinafter Joint General Comment No. 4].

status.¹¹³ It further highlights that “child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice.”¹¹⁴

Israel’s policies are rife with protection issues that are inconsistent with the child’s best interest. To prevent migrants from securing permanent legal residence status through their children born in Israel, whom immigration authorities label “anchor babies,”¹¹⁵ Israel has drafted plans to cease issuing birth certificates.¹¹⁶ In addition, children of migrant workers are not eligible to obtain an identity card upon reaching the age of 16, which is a right that has been made exclusive only to Israeli children.¹¹⁷ In theory, children may derive nationality from their parents by virtue of the *jus sanguinis* principle.¹¹⁸ But in reality, birth registration or securing any form of official documentation is vital to prove the child’s link to a State,¹¹⁹ which is key to the full realization

113. *Id.* ¶ 5 (citing CRC, *supra* note 83, art. 37; ICRMW, *supra* note 84, arts. 16 & 17; UDHR, *supra* note 12, arts. 3 & 9; & ICCPR, *supra* note 12, art. 9).

114. Joint General Comment No. 4, *supra* note 112, ¶ 12.

115. Mary Giovagnoli, Immigration Impact, “Anchor Baby” Added to New American Heritage Dictionary, available at <https://immigrationimpact.com/2011/12/02/anchor-baby-added-to-new-american-heritage-dictionary> (last accessed Apr. 30, 2022) [<https://perma.cc/5FLR-KEGP>]. An anchor baby is a “child born to a noncitizen mother in a country that grants automatic citizenship to children born on its soil, especially such a child born to parents seeking to secure eventual citizenship for themselves and often other members of their family.” *Id.*

116. See Harriet Sherwood, *Israel to Stop Issuing Birth Certificates to Babies Born to Foreigners*, GUARDIAN, Nov. 20, 2013, available at <https://www.theguardian.com/world/2013/nov/20/israel-birth-certificates-foreigners> (last accessed Apr. 30, 2022) [<https://perma.cc/KHX7-H86C>] & Ilan Lior, *Israel to Stop Issuing Birth Certificates to Children of Foreigners*, HAARETZ, Nov. 20, 2013, available at <https://www.haaretz.com/.premium-no-birth-certificates-for-migrants-1.5292400> (last accessed Apr. 30, 2022) [<https://perma.cc/MAJ8-FK7A>].

117. Deby Babis, et al., “Now I Am Also Israeli”: From Illegality to Legality — Life Experiences and Identities of Migrant Workers’ Children After Receiving Civil Status in Israel, 56 INT’L MIGRATION 1, 4 (2017).

118. ONUMA YASUAKI, INTERNATIONAL LAW IN A TRANSCIVILIZATIONAL WORLD 220, n. 36 (2017).

119. Assim, *supra* note 111, at 400. See also UNICEF, Birth Registration for Every Child by 2030: Are We on Track?, at 6, available at <https://data.unicef.org/wp->

of a child's right to acquire a nationality and prevent statelessness.¹²⁰ This establishes their legal identity from which all other rights and entitlements spring.¹²¹ However, being undocumented and non-citizens themselves, children of migrant workers have “no rights[] [and] no status,” and are thus “completely ignored” by the Israel government.¹²²

Children born in Israel to foreign parents are especially vulnerable to the government's massive deportation drive.¹²³ In fact, the Ministry of Interior announced that the deportation of Filipina workers with school-aged children would push through even during the school year.¹²⁴ Deportation will be especially detrimental to the children who: (1) identify as Israelis, (2) speak only Hebrew, (3) study at Israeli schools with friends, and are (4) unaware of the Filipino culture.¹²⁵

content/uploads/2019/12/Birth-registration-for-every-child-by-2030-brochure-English.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/PBE7-MAVY>].

120. Assim, *supra* note 111, at 400.

121. UNICEF, *supra* note 119, at 6.

122. Eloise Blondiau, *Filipino Workers Spend Decades Caring for Israeli Families. Now They Risk Deportation for Having Children*, AMERICA, Sept. 6, 2019, available at <https://www.americamagazine.org/2019/09/04/filipino-catholics-face-deportation-from-israel> (last accessed Apr. 30, 2022) [<https://perma.cc/HP9G-RJFM>].

123. *Id.*

124. Lee Yaron, *In Policy Reversal, Israel Could Deport Foreign Workers, Israeli-Born Children During School Year*, HAARETZ, Sept. 2, 2019, available at <https://www.haaretz.com/israel-news/.premium-israel-could-now-deport-foreign-workers-israeli-born-children-during-school-year-1.7775149> (last accessed Apr. 30, 2022) [<https://perma.cc/D6ZB-HL9T>] & Amir Alon, *Israel Kicks Off Operation to Deport Foreign Workers, Children*, YNETNEWS, July 29, 2019, available at <https://www.ynetnews.com/articles/0%2C7340%2CL-5559615%2C00.html> [<https://perma.cc/8TXL-266N>].

125. See, e.g., The Times of Israel Staff, *Filipino Couple and Israel-Born Daughters Lose Appeal, to Be Deported*, TIMES OF ISRAEL, Aug. 22, 2019, available at <https://www.timesofisrael.com/filipino-couple-and-israel-born-daughters-lose-appeal-to-be-deported> (last accessed Apr. 30, 2022) [<https://perma.cc/L5NK-XGFF>]; Sam Sokol, *Israel's Crackdown on Filipino Workers Is Driving Some Families into Hiding*, TIMES OF ISRAEL, Sept. 24, 2019, available at <https://www.timesofisrael.com/israels-crackdown-on-filipino-workers-is-driving-some-families-into-hiding> (last accessed Apr. 30, 2022)

Moreover, detaining families as a precursor to authority-implemented deportation proceedings is clearly violative of the child's best interest. Unfortunately, in the past, minor children have been arrested with their undocumented parents who have worked for many years in Israel.¹²⁶ Sheila Velasco, a Filipino caregiver arrested with her young daughters, narrated, "The children were crying[.] ... In the jail, they didn't sleep or eat and asked a lot of questions about why they didn't go to school and why they closed the door and needed to lock our cell."¹²⁷

Deportation also unduly interferes with children's right to education as recognized in the CRC.¹²⁸ It is not in their best interest to be uprooted from their home and school life in Israel and placed in a foreign environment. It would be challenging for a child to fully develop in a new environment considering that (1) they are of tender age, (2) can only speak Hebrew, (3) are unfamiliar with the culture of the Philippines, and (4) are traumatized by the harrowing experience of being deported.

C. Right to Family Life

The right to respect for family life is regarded as "an indispensable component of international migration law[.]"¹²⁹ The International Bill of Human Rights recognizes every person's right to marry and to found a family.¹³⁰ The UDHR

[<https://perma.cc/PR6R-HWEU>]; CRC, *supra* note 86, art. 28 (1); & Vincent Chetail, *The Transnational Movement of Persons Under General International Law — Mapping the Customary Law Foundations of International Migration Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND MIGRATION 41 (Vincent Chetail & Céline Bauhoz eds., 2014) (citing Jens Vedsted-Hansen, *Migration and the Right to Family and Private Life*, in GLOBALISATION, MIGRATION, AND HUMAN RIGHTS: INTERNATIONAL LAW UNDER REVIEW 689-72 (Vincent Chetail ed., 2007)). See Alon, *supra* note 124.

126. See, e.g., The Times of Israel Staff, *supra* note 125.

127. Sokol, *supra* note 125.

128. CRC, *supra* note 83, art. 28 (1).

129. Chetail, *supra* note 125, at 41 (citing Jens Vedsted-Hansen, *supra* note 124, at 689-72)).

130. UDHR, *supra* note 12, art. 16 (1) & ICCPR, *supra* note 12, art. 23 (2). The International Bill of Human Rights consists of five treaties, one of which is the Universal Declaration of Human Rights, which provides that "[m]en and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family." UDHR, *supra* note 12, art. 16 (1).

underscores that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹³¹ The exact same provision is reflected in Article 23 (1) of the ICCPR.¹³² In addition, there is recognition that “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”¹³³ As a signatory to these, Israel is obliged to ensure that these standards are reflected in its policies.

In *Kav LaOved*, the High Court of Justice of Israel cited Article 8 (1) of the European Convention on Human Rights (ECHR) to further elucidate the right to family life.¹³⁴ The ECHR guarantees that “[e]veryone has the right to respect for his private and family life, his home[,] and his correspondence.”¹³⁵ It echoed the European Court of Human Rights in *Berrehab v. The Netherlands*,¹³⁶ where it was decided that separating a person and his family by revoking a work permit, as well as the expulsion of a migrant worker while his or her family remained in the country, constituted both an unjustified violation of family life contrary to Article 8 of the ECHR and a breach of the duty to protect the right to family life and to refrain from interfering with the same.¹³⁷

The right of a child to family life is also protected under the CRC.¹³⁸ A broad interpretation is given to the term “family” so as to include “biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom[.]”¹³⁹ There might be instances where the right of migrants to family unity may be in conflict with

131. UDHR, *supra* note 12, art. 16 (3).

132. ICCPR, *supra* note 12, art. 23 (1).

133. ICESCR, *supra* note 12, art. 10 (1).

134. ‘*Kav LaOved*’ — *Worker’s Hotline and Others*, 64(3) P.D. (citing Convention for the Protection of Human Rights and Fundamental Freedoms art. 8 (1), *opened for signature* Nov. 4, 1950, E.T.S. No. 5 [hereinafter ECHR]).

135. ECHR, *supra* note 134, art. 8 (1).

136. *Berrehab v. The Netherlands*, 138 Eur. Ct. H.R. (ser. A) (1988).

137. *Id.* ¶¶ 21–23.

138. CRC, *supra* note 83, art. 16 (1).

139. Committee on the Rights of the Child, *supra* note 109, ¶ 59.

a State's legitimate interest in implementing immigration policies.¹⁴⁰ However, the Committees advise States Parties that separating a family through deportation of family members from their territory, or refusal to allow them to enter or remain there, "may amount to arbitrary or unlawful interference with family life."¹⁴¹ Furthermore, it is in the best interest of the child to prevent family separation and preserve family unity as essential components of the child's protection system.¹⁴² Article 9 of the CRC prohibits such separation, unless there has been a determination that it is necessary for a child's best interest, such as in instances of neglect or abuse.¹⁴³

Despite the recognition of the right to family life of migrant workers in *KavLaOved*, subsequent rulings by courts have failed to apply the same standard to migrants who become undocumented precisely because of the unreasonable "no family policy." For instance, a domestic court in Tel Aviv denied an appeal in a deportation proceeding involving a Filipina mother and her two Israel-born children, aged 10 and 12.¹⁴⁴ An Israeli newspaper reported that the Court of Appeals judge

rejected the mother's claims that her deportation was a violation of her right to family life, and would harm her children. 'The plaintiff failed to prove that the minors are dependent on her and that the three comprise a family unit in the simple sense of the word[.]' ... [Further,] '[t]here is nothing to stop her and her children from living together in her country of origin, the Philippines, forming a family unit there.'¹⁴⁵

Israel's aim to prevent non-Jews from permanently settling in its territory has led to undue interference in the development of family life of migrants.¹⁴⁶ This strict policy has forced documented migrant workers to choose between keeping their legal status in Israel or risking it for the sake of preserving their

140. Joint General Comment No. 4, *supra* note 112, ¶ 28.

141. *Id.*

142. Committee on the Rights of the Child, *supra* note 109, ¶ 60.

143. CRC, *supra* note 83, art. 9 (1).

144. Lee Yaron, *Court Allows Deportation of Filipina Without Her Israeli-Born Children*, HAARETZ, Sept. 10, 2019, available at <http://web.archive.org/web/20210414142138/https://www.haaretz.com/israel-news/.premium-israeli-court-allows-deportation-of-mom-without-her-children-1.7830020>.

145. *Id.*

146. See generally HACKER, *supra* note 66, at 177-78.

family life. This leads to a critical violation of the fundamental rights of migrant workers, succinctly summarized below —

Migrant workers who come to Israel are mostly young people in their twenties and thirties. They come for a period of around five years; in the case of caregivers it may be an even longer period. [The Population and Immigration Authority] expects these employees to check their humanity at the door throughout their time in Israel, to avoid establishing any human relationships that might lead to intimate relationships or domestic partnership. Developing such relationships, according to the Ministry of Interior, leads to revocation of legal status, detention, and deportation. Migrant workers are expected to serve as working machines during their time in Israel, and nothing more.¹⁴⁷

The establishment of intimate relationships between migrant workers temporarily residing in Israel is not explicitly prohibited by the government.¹⁴⁸ However, the different policies and measures previously discussed, when pieced together, implicitly forbid foreign workers from forming such relations that would lead to the establishment of a family.

IV. THE PHILIPPINE COUNTERPOINT:

FROM COMMODIFICATION TO PROTECTION OF MIGRANT WORKERS

The commodification of overseas employment began in 1972 under the martial law regime of former President Ferdinand E. Marcos, Sr.¹⁴⁹ To address the country's economic issues, growing unemployment rate, and ballooning national debt, Filipino workers were marketed to destination countries as an “internationally attractive labor force,” representing “a cheap and docile workforce prevented from unionizing or striking.”¹⁵⁰ Thus, “to protect the welfare of families, dependents[,] and beneficiaries of Filipino workers abroad[,]”¹⁵¹ and to ensure the mandatory remittance of foreign exchange

147. Adv. Yonatan Berman, *The Labyrinth: Migration, Status and Human Rights*, at 36, available at <https://law.acri.org.il/en/wp-content/uploads/2016/01/The-Labyrinth-English.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/2AHR-BQNN>].

148. *Id.* at 35.

149. See Mark Maca, *Education in the ‘New Society’ and the Philippine Labour Export Policy (1972-1986)*, 7 J. INT’L & COMP. EDUC. 1, 5 (2018).

150. JAMES A. TYNER, *MADE IN THE PHILIPPINES* 30 (2004).

151. Office of the President, *Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers Abroad and for Other Purposes*,

earnings,¹⁵² Marcos, Sr. issued Executive Order No. 857 in 1982.¹⁵³ Under this order, Filipino migrant workers were required to remit a certain percentage — ranging from 50% to 70% — of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the Philippines exclusively through official financial institutions of the Philippine government¹⁵⁴ to strengthen the country's balance of payments.¹⁵⁵

The order also punished migrant workers for non-compliance with the mandatory remittance policy by excluding them from the list of eligible workers for employment¹⁵⁶ and the non-renewal of their passports,¹⁵⁷ which unduly interfered with their right to work. While the order's punitive provisions were eventually repealed in 1985,¹⁵⁸ the policy of mandatory remittance remained,¹⁵⁹ highlighting the income-driven approach to labor migration.

While considered modern-day heroes and heroines,¹⁶⁰ Filipino migrant workers have become more vulnerable to human rights violations, as they are

Executive Order No. 857, Series of 1982 [E.O. No. 857, s. 1982], whereas cl. para. 2 (Dec. 13, 1982).

152. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 22 (1974) (as amended).

153. E.O. No. 857, s. 1982.

154. *Id.* § 2.

155. TYNER, *supra* note 150, at 32.

156. E.O. No. 857, s. 1982, § 9.

157. *Id.* § 3.

158. Office of the President, Amending Section 5(a) of Executive Order No. 857 Entitled “Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers Abroad and for Other Purposes”, Executive Order No. 935, Series of 1984 [E.O. No. 935, s. 1984], § 1 (Feb. 28, 1984).

159. *Id.* whereas cl. para. 1. Under E.O. No. 935, s. 1984, “Filipino overseas contract workers are mandated by existing law to remit to the Philippines [70%] of their foreign exchange earnings[.]” *Id.*

160. DUNCAN ALEXANDER MCKENZIE, *THE UNLUCKY COUNTRY: THE REPUBLIC OF THE PHILIPPINES IN THE 21ST CENTURY* 137 (2012).

exposed to xenophobia,¹⁶¹ discrimination,¹⁶² exploitation,¹⁶³ and even violence¹⁶⁴ in countries of destination. The grave social costs that burden Filipino migrant workers cannot be quantified by any economic indicator. This tragic reality was, however, personified by Flor R. Contemplacion, a Filipino migrant worker in Singapore who was hanged to death in 1995.¹⁶⁵ Despite evidence that she was coerced to confess to committing the crime,¹⁶⁶ she was found guilty of the murder of two individuals: (1) another Filipino domestic worker, Delia Maga, and (2) a Singaporean boy.¹⁶⁷

Contemplacion's case was not an isolated incident. A few months after her death, Sarah Balabagan — a 16-year old Filipina working in the United Arab Emirates — similarly faced trial for the murder of her male employer despite the fact that she acted in self-defense.¹⁶⁸ While the death penalty was not meted out, she was, nevertheless, vulnerable to the death row phenomenon and was ultimately sentenced to 100 cane lashings and one year of imprisonment.¹⁶⁹

Public outcry over the appalling treatment and working conditions of migrant workers abroad and the lack of protection or support mechanisms

161. See, e.g., Maria Angela C. Villalba, Philippines: Good Practices for the Protection of Filipino Women Migrant Workers in Vulnerable Jobs, at iii, available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_117953.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/5WMJ-ZPMU>].

162. *Id.*

163. MCKENZIE, *supra* note 160, at 137.

164. Cristina Eloisa Baclig, *OFW Burden Grows Heavier as Relief, Justice Fall Through System Gaps*, PHIL. DAILY INQ., July 29, 2021, available at <https://newsinfo.inquirer.net/1466537/ofw-burden-grows-heavier-as-relief-justice-fall-through-system-gaps> (last accessed Apr. 30, 2022) [<https://perma.cc/6KE4-WZAA>].

165. JOSEPH CHINYONG LIOW, *DICTIONARY OF THE MODERN POLITICS OF SOUTHEAST ASIA* 134 (2015).

166. Daiva Stasiulis & Abigail B. Bakan, *Flor Contemplacion: A Study in Non-Citizenship*, 3 PUB. POL'Y 19, 27 (1999).

167. LIOW, *supra* note 165, at 134.

168. HANS GÖRAN FRANCK, *THE BARBARIC PUNISHMENT: ABOLISHING THE DEATH PENALTY* 128 (2021).

169. *Id.*

provided by the Philippine government pressured local legislators to fast-track the passage of the Migrant Workers and Overseas Filipino Act¹⁷⁰ and the ratification of the International Convention on the Protection of Rights of All Migrant Workers and Members of their Family in the same year.¹⁷¹

These legislative milestones marked a major shift in the Philippines' labor migration policy, veering the country away from traditional market-driven considerations and towards placing greater emphasis on the protection of the welfare of Filipino migrant workers. While remittances from OFWs significantly contributes to the national economy, the Philippines officially does “not promote overseas employment as a means to sustain economic growth and achieve national development.”¹⁷² It has also underscored the obligation to “uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers,”¹⁷³ and to provide them with “adequate and timely social, economic[,] and legal services[.]”¹⁷⁴ More recently, Republic Act No. 11641 was passed,¹⁷⁵ leading to the creation of the Department of Migrant Workers,¹⁷⁶ a government agency mandated “to

170. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042, § 2 (a) (1995) (as amended).

171. See Department of Foreign Affairs, Philippines Calls on Parliament to Address Plight of Domestic Workers, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/4360-philippines-calls-on-parliamentarians-to-address-plight-of-domestic-workers> (last accessed Apr. 30, 2022) [<https://perma.cc/QX8U-TQBE>].

172. Migrant Workers and Overseas Filipinos Act of 1995, § 2 (c).

173. *Id.* § 2 (a).

174. *Id.* § 2 (b).

175. An Act Creating the Department of Migrant Workers, Defining Its Powers and Functions, Rationalizing the Organization and Functions of Government Agencies Related to Overseas Employment and Labor Migration, Appropriating Funds Therefor, and for Other Purposes [Department of Migrant Workers Act], Republic Act No. 11641 (2021).

176. *Id.* § 4.

protect the rights and promote the welfare of [all] OFWs, regardless of status and of the means of entry into the country of destination.”¹⁷⁷

In 2018, the Philippines and Israel entered into a bilateral labor agreement to establish a government-to-government arrangement that would facilitate and rehabilitate the process of temporary employment of Filipino home-based caregivers.¹⁷⁸ One of the identified areas of cooperation between the States Parties was the promotion and protection of the labor rights of Filipino caregivers especially in the “process of recruitment, selection, placement, arrival, employment[,] and return.”¹⁷⁹

While this was a positive step towards mitigating and eliminating exploitative schemes in the process of recruiting Filipino migrant workers, there was nothing in the agreement that covered the protection of rights relating to other aspects of their human experience, such as the right to found a family.

The Department of Foreign Affairs (DFA) of the Philippines has voiced its concern about the “deportation of Filipino mothers and their children[.]”¹⁸⁰ While assurances were made with respect to orderly and humane repatriation, these promises do not address the root causes of the issue — Israel’s discriminatory “no family policy.” Moreover, while the Philippine government has remained steadfast in its commitment to provide assistance for the reintegration of deported families into local communities,¹⁸¹ there is a high probability that Filipino mothers would eventually have to look for employment abroad due to the lack of opportunities at home, thus having to leave again and be separated from their children.

V. CONCLUSION

This Article has examined Israel’s obligations under international human rights law focusing on women’s rights, the best interest of the child, and the right to

177. *Id.* § 5.

178. Agreement on the Temporary Employment of Filipino Home-Based Caregivers, Phil.-Isr., pmbl., Sept. 3, 2018, 18 P.T.S. 113 (entered into force June 28, 2019).

179. *Id.* art. 2, ¶ 3.

180. Department of Foreign Affairs, Statement: On the Deportation of Filipino Migrants from Israel, *available at* <https://dfa.gov.ph/dfa-news/statements-and-advisories/update/19667-statement-on-the-deportation-of-filipino-migrants-from-israel> (last accessed Apr. 30, 2022) [<https://perma.cc/35MB-RR2P>].

181. *Id.*

family. The Author, however, admits that this facial examination barely scratches the surface of the complex issues regarding the situation of migrant workers in Israel. Nevertheless, despite the inherent challenges faced by the Author,¹⁸² the Article's analysis suggests that the migration policies imposed on foreign workers are violative of their fundamental rights and expose them to further exploitation.

Since the early 1990s, Israel has been dependent on migrant workers to take on work in certain industries that are undesirable to its citizens, such as caregiving,¹⁸³ agriculture,¹⁸⁴ and construction.¹⁸⁵ Unfortunately, from the Israeli government's perspective, foreign men and women who enter State territory on a temporary basis as migrant workers do so for one sole purpose — to work.¹⁸⁶ Thus, the State has put in place an unreasonably restrictive labor migration regime that has permeated the most fundamental rights of migrant workers to ensure that they can never permanently settle in the country.

Economic globalization has revealed how international migration can be a source of great opportunities for growth and, at the same time, magnify issues of vulnerability and exploitation.¹⁸⁷ Those from developing countries, who hope to improve their families' situations and own personal circumstances, are enticed to work abroad where there is a high demand for low-skilled labor. In the process, they end up leaving the comfort of their own families for work in foreign countries to take care of strangers as caregivers or domestic helpers. However, with the undeniable benefits for both the country of origin and destination, it is sometimes easy to forget the human face of labor migration, especially given that foreign currency remittances accrue to the benefit of the home country.

182. All Israeli regulations and jurisprudence available online are in Hebrew.

183. See Babis, *supra* note 46, at 147.

184. *Id.*

185. *Id.*

186. Hanny Ben Israel & Oded Feller, No State for Love: Violations of the Right to Family of Migrant Workers in Israel, at 2, *available at* <https://law.acri.org.il//pdf/RighttoFamily.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/P4WU-AZBH>].

187. Office of the United Nations High Commissioner for Human Rights, Improving Human Rights-Based Governance of International Migration, at 8, *available at* https://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvin_gHR_Report.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/J2YW-NY5S>].

The Philippines, as the country of origin, is equally duty-bound to protect Filipino workers who work abroad. At this point, the Philippine government cannot force Israel to amend or relax its “no family policy” without violating the latter’s sovereignty.¹⁸⁸ However, it may take advantage of the developments in its own domestic laws to strengthen and enforce protection mechanisms for repatriated OFWs and their families. Concrete policies to address the push factors that drive Filipinos to work abroad and live separately from their families must also be formulated and implemented.

Israel, as part of its obligation to respect, protect, and fulfill human rights,¹⁸⁹ should ensure that its migration legislation and policies are compliant, both in writing and in practice, with international human rights treaties that they have ratified. Even though Israeli citizens and foreign workers are substantially distinct from each another, fundamental rights remain universal and indivisible. The exercise of Israel’s sovereign power to enforce migration laws should not work to strip migrant workers of their humanity and dignity once they are granted permission to enter the territory. A fair balance between the interests of Israel and its foreign labor force must be reached in enforcing migration laws that are compatible with the standards of international human rights law.

188. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Merits, Judgment, 1986 I.C.J. 14, ¶ 202 (June 27). “The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference[.]” *Id.* This precept of international law is a “corollary of the principle of the sovereign equality of States.” *Id.*

189. *Social and Economic Rights Action Center and Center for Economic and Social Rights*, Afr. Comm’n H.P.R. ¶ 44.