



International Catholic Migration Commission



# Strengthening Protection of Migrant Workers and their Families with International Human Rights Treaties

## A Do-it-yourself Kit

ICMC serves and protects the needs of uprooted people; refugees, internally displaced persons and migrants, regardless of faith, race, ethnicity or nationality. We advocate for rights-based policies and durable solutions through a worldwide network of member organizations.

Strengthening Protection of Migrant Workers  
and their Families  
with International Human Rights Treaties

*A Do-it-yourself Kit*



International Catholic Migration Commission  
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# Web Links

International Catholic Migration Commission  
[www.icmc.net](http://www.icmc.net)

Global Ratification Campaign  
[www.migrantsrights.org](http://www.migrantsrights.org)

International Labour Organization  
[www.ilo.org/public/english/protection/migrant/index.htm](http://www.ilo.org/public/english/protection/migrant/index.htm)

Global Commission on International Migration  
[www.gcim.org](http://www.gcim.org)

December 18 – Portal for the Promotion and the Protection of the Rights of Migrants  
[www.december18.net](http://www.december18.net)

Office of the United Nations High Commissioner for Human Rights  
[www.ohchr.org](http://www.ohchr.org)

UNESCO  
[www.unesco.org/migration](http://www.unesco.org/migration)

ICMC also has a Power Point presentation of the Convention, available upon request at:  
[secretariat.ch@icmc.net](mailto:secretariat.ch@icmc.net)

# Acronyms and Abbreviations

<b>Africa Group</b>	United Nations African States Group	<b>ICMC</b>	International Catholic Migration Commission
<b>Asia Group</b>	United Nations Asian States Group	<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>Art(s).</b>	Article(s)	<b>ILO</b>	International Labour Organization
<b>CAT*</b>	Committee Against Torture	<b>GA</b>	United Nations General Assembly
<b>CAT*</b>	Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment	<b>GA Res.</b>	United Nations General Assembly Resolution
<b>CCPR/ICCPR</b>	International Covenant on Civil and Political Rights	<b>GCIM</b>	Global Commission on International Migration
<b>CEDAW*</b>	Committee on the Elimination of Discrimination Against Women	<b>GEP</b>	World Bank Global Economic Prospects
<b>CEDAW*</b>	Convention on the Elimination of All Forms of Discrimination against Women	<b>HRC</b>	Human Rights Committee
<b>CERD</b>	Committee on the Elimination of Racial Discrimination	<b>LAC Group</b>	United Nations Latin American and Caribbean States Group
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights	<b>MW</b>	Migrant Worker(s)
<b>CRC*</b>	Convention on the Rights of the Child	<b>MWC</b>	Migrant Workers Convention
<b>CRC*</b>	Committee on the Rights of the Child	<b>NGO</b>	Non-Governmental Organisation
<b>CMW</b>	Committee on Migrant Workers	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>DAW</b>	Division for the Advancement of Women	<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>DESA</b>	United Nations Department of Economic and Social Affairs	<b>SP</b>	States Parties
<b>ECOSOC</b>	United Nations Economic and Social Council	<b>UDHR</b>	Universal Declaration of Human Rights
<b>EE Group</b>	United Nations Eastern European States Group	<b>UN</b>	United Nations
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination	<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights	<b>UNICEF</b>	United Nations Children's Fund
		<b>WEOG</b>	United Nations Western European and Other States Group

\*This acronym is officially used for both the Convention and the related Committee.





# Foreword

The International Catholic Migration Commission (ICMC) is pleased to present this updated version of the “Do It Yourself Kit” that we first issued in 2004. Now that the Migrant Workers Convention has entered into force and its monitoring Committee has been established, governments, civil society and all migrants have an important instrument at their disposal. Our hope is to further the understanding and application of core international human rights treaties and standards to strengthen the protection of migrant workers and their families.

The Catholic Church has always advocated for the human rights of migrants, and has strongly supported the ratification of the Convention. In his address on the occasion of the fifth World Congress of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Pope John Paul II declared that:

“it is precisely in society and in culture that we must show respect for the dignity of man, of the migrant and of the refugee. In this regard, I once again urge States to adhere to the International Convention for the Protection of the Rights of Migrant Workers and their Families which took effect on 1 July 2003... Such protection of human persons must be guaranteed in every civil society...”

Speaking in the same spirit to the 60th Session of the UN Commission on Human Rights in 2004, Archbishop Silvano Tomasi urged a multi-pronged approach “to make human mobility a motor for progress even for its most vulnerable segments: international cooperation in the prevention and prosecution of trafficking and the rehabilitation of victims; less restrictive and more realistic immigration policies; concerted promotion of sustainable economic and social development in poor countries; a continued formation to a culture of human rights and respect of the dignity of every person.”

ICMC offers this new edition of the kit toward that objective and in view of a number of developments over the past two years (including ratification of the Convention by another nine States). It includes updated data on the overall UN human rights treaty supervisory system, background information on the current international context, succinct statistical data shedding light on aspects of the movement of persons, a focus on non-discrimination, and examples of positive State practices noted by various UN treaty monitoring bodies.

We would like to thank all those that have contributed to create this useful tool and especially Ms Mariette Grange and Ms Marie d’Auchamp, who have been the driving forces behind this document. Their commitment and the many inputs received have made this tool an excellent and practical reference for all.

**Johan Ketelers**  
Secretary General



# Introduction

We became aware of a right to have rights and a right to belong to some kind of organised community only when millions of people emerged who had lost and could not regain these rights.

*Hannah Arendt, "The Origins of Totalitarianism"*

According to United Nations figures, there are approximately 200 million international migrants in the world. This is barely 3 percent of the world population. Yet, it appears sizeable enough for migration issues to consistently make headlines in all world regions, to increasingly be used as ammunition in electoral campaigns, and to be the subject of a number of migration management initiatives at the regional and global levels. Few of these processes focus on the human rights of migrants. Yet, migrants are at the centre of the migration phenomenon.

States are legitimately concerned with issues of sovereignty, the preservation of the welfare of their own citizens, ensuring social cohesion and fighting against transnational organized crime. Likewise, they have collectively drafted an impressive body of international and regional human rights norms and standards and voluntarily entered into a series of obligations when ratifying some of these human rights treaties. As much as States want the rights, dignity and integrity of their own citizens

**Migrants contribute annually an estimated USD 2 trillion to the economies of the countries in which they work.**

*The World Bank, GEP, November 2005.*

to be respected at home and abroad, they must be encouraged to respect the rights of non-citizens present on their territory, including migrant workers and members of their families. Whereas irregular migration ranks very high in the media, the vast majority of migrants are legal residents in host countries. In the estimate of one widely respected international study, 90% of migrants in Europe were in regular status in 2000.<sup>1</sup>

This kit provides a technical tool to equip members of national administrations, non-governmental organisations and other interested stakeholders reporting or compiling background information on compliance with UN human rights norms and standards. The documents that are assembled here tap into and expand upon existing literature and research, offering concrete tools for mapping out and implementing respect for the human rights applicable to migrant workers and members of their families.

Migrants are not a threat, and migration is largely a positive experience. The report of the Global Commission on International Migration released in October 2005 concludes that "the international

<sup>1</sup> According to the Global Commission on International Migration, 10 per cent of Europe's migrants were in an irregular situation in 2000: *Migration in an Interconnected World: New Directions for Action*, GCIM Report 2005, p. 85.

community has failed to capitalize on the opportunities and to meet the challenges associated with international migration.” It also recommends new approaches to correct this situation. The 19-member independent Commission states that “the establishment of a coherent approach to migration requires states to demonstrate a greater respect for the provisions of the legal and normative framework affecting international migrants, especially the seven core UN human rights treaties.”

These treaties are referenced in this kit and contain concrete ingredients for integrated, well-designed and sustainable national integration policies. Their provisions contribute to creating societies and communities that welcome migrants; ensure that migrants respect the cultural identity of the inhabitants of host countries and comply with their laws and regulations; ensure equality and thus stability and social cohesion; combat racial and other forms of discrimination and exploitation; and impose sanctions on those who use violence, threats or intimidation against migrant workers and members of their families.

**Over the period 2000-2005, the net migration projected in Austria, Croatia, Germany, Greece, Italy, Slovakia and Slovenia reverses the trend of population decline.**

*The 2004 Revision of World Population Prospects, UN Population Division.*

United Nations human rights norms and standards and their implementation mechanisms form a unique machinery where states freely agree to come and report periodically. The United Nations is an exceptional endeavour in the history of humanity. It is still very new and there is room for improvement. As reform of the overall UN human rights treaty monitoring bodies is being discussed, it is important that stakeholders in the discussion be informed about its newest addition, the Migrant Workers Convention (ICRMW<sup>2</sup>), and its specific protection of the rights of millions of men, women and children.

The 2005 World Summit Outcome Document reflects the resolve of UN Member States to “integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system, as well as closer cooperation between the Office of the United Nations High Commissioner for Human Rights and all relevant United Nations bodies.”<sup>3</sup> A greater awareness of core human rights Conventions and their overall scope, including as applicable to migrants, goes in this direction.

As emphasized by the United Nations Secretary-General in his report on International Migration and Development to the 2005 session of the General Assembly: “The high-level dialogue on international migration and development will provide a unique opportunity for the international community to set the foundation for enhanced international cooperation in addressing the multifaceted issues raised by the

<sup>2</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), hereafter referred to as “the Convention” or the Convention on Migrant Workers.

<sup>3</sup> 2005 World Summit Outcome, United Nations General Assembly, A/RES/60/1.

international movement of people.”<sup>4</sup> In order to maintain the integrity of the process, it is imperative that the human rights of migrant workers and members of their families feature prominently in the policy issues discussed at the United Nations General Assembly High Level Dialogue on International Migration and Development that will take place in New York in September 2006.

**10 countries\* with the largest international migration figures\*\* (in thousands)**

1. USA	34,988
2. Russian Federation	13,259
3. Germany	7,349
4. Ukraine	6,947
5. France	6,277
6. India	6,271
7. Canada	5,826
8. Saudi Arabia	5,255
9. Australia	4,705
10. Pakistan	4,243

\* In year 2000.

\*\* The foreign-born or the foreign population (UN DESA).

**10 countries\* with the largest percentage of population from international migration\*\* (%)**

1. United Arab Emirates	73.8
2. Kuwait	57.9
3. Jordan	39.6
4. Israel	37.4
5. Singapore	33.6
6. Oman	26.9
7. Estonia	26.2
8. Saudi Arabia	25.8
9. Latvia	25.3
10. Switzerland	25.1

\* In year 2000.

\*\* The foreign-born or the foreign population (UN DESA).

This “do-it-yourself kit” responds to a dual need.

Though the number of ratifications of the Convention on Migrant Workers increased by 50% since its entry into force in July 2003, the level of ratification remains low. Thus, the kit is designed to facilitate a better understanding of the provisions of the Convention, and as an awareness-raising, advocacy and training tool to increase ratification.

Secondly, it is often stated that the Convention is not necessary since the rights of migrant workers are adequately covered in the six other core international human rights treaties. A point of fact is that 125 countries have ratified all six treaties. However, barely half of supervisory bodies’ conclusions on the States Parties reports on implementation of those treaties actually refer to migrants issues.<sup>5</sup> This kit offers short narrative sections and user-friendly table formats which cross reference key provisions relevant to migrant workers and their families in the seven core human rights treaties. It is designed to facilitate the identification and cross examination of related provisions across human rights treaties.

This piece of research also presents a bird’s-eye view of the human rights supervisory system. It compares the UN human rights treaty monitoring bodies, including membership, reporting schedules, working methods and costs and gives details about the contents and adoption of the relevant treaties. It provides concrete comparable data for informed decision-making on issues relating to the status and position of the Convention at a key juncture in the reform process of the treaty monitoring body system.

Such a synthesis of information on the Convention, and on its specificity, helps to dispel a number of myths and misunderstandings about:

<sup>4</sup> *International Migration and Development*, Report of the Secretary-General, 8 August 2005, A/60/205.

<sup>5</sup> *The United Nations Treaty Monitoring Bodies and Migrant Workers: a Samizdat*, published by December 18 and ICMC, November 2004. This document is available on the December 18 website and UNESCO website.

- Commonalities and specificity of the Convention with respect to the six other core international human rights treaties (See “A Short Walk through the Convention”; and Tables I, III and IV);
- Characteristics of the overall human rights treaty monitoring bodies (Table II);
- The context for its adoption and its overall scope (“Basic Facts about the Convention”).

The ICRMW is the one international human rights treaty adopted by the United Nations to protect a set of individuals who often find themselves in vulnerable situations because they are outside their state of origin. To date, it has 34 States Parties<sup>6</sup> bound to report on the implementation of the Convention to the United Nations Committee on Migrant Workers (CMW). In the meantime, and pending more universal ratification, a vast majority of the remaining 157 UN Member States periodically report to treaty monitoring bodies on implementation of the other six international human rights treaties which they have ratified. These treaty monitoring bodies monitor the States Parties’ respect for and implementation of civil and political rights; economic, social and cultural rights; women’s rights; children’s rights and freedom from torture and racial discrimination. The various human rights treaties all contain strong non-discrimination clauses, with most of their provisions expressly applicable to “everyone”; hence to female and male migrant workers and members of their families.

### Challenging perception on countries of origin

Estimation of the proportion of all native-born living abroad (%):

Ireland	24
Portugal	20
Ecuador	16.6
New Zealand	16
Luxembourg	12.8
Mexico	9.9
Switzerland	8.3
Philippines	8
Australia	5.9
Turkey	4

<sup>6</sup> Ratifications as of 1 March 2006: Algeria, Azerbaijan, Belize, Bolivia, Bosnia & Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda, Uruguay. Signatures as of 1 March 2006: Argentina, Benin, Bangladesh, Cambodia, Comoros, Gabon, Guinea-Bissau, Guyana, Indonesia, Liberia, Paraguay, Sao Tome and Principe, Serbia & Montenegro, Sierra Leone and Togo.

In this context, ICMC encourages human rights advocates, including migrants' rights advocates, to assist states in approaching the treaty monitoring system that is serviced by the Office of the High Commissioner for Human Rights (OHCHR) in an integrated manner, and to make full use of it. It is our hope that this "do-it-yourself kit" will encourage civil society to supply independent experts who are members of the various committees with focused, succinct, objective, reliable and well-targeted information on the situation of migrant populations in countries under scrutiny. ICMC also contributes this compilation to better inform government officials, parliamentarians, and members of

national human rights institutions involved in or tasked with implementing and reporting on the implementation of human rights provisions to protect migrant workers and members of their families.

Reportedly, the number of international migrants more than doubled since 1970, but the world population also significantly increased and the proportion of international migrants in the world population has remained remarkably stable over the last four decades (%):

1965	2.3
1970	2.2
1975	2.1
1985	2.2
2000	2.9
2005	3.0





# A Short Walk through the International Convention on Migrant Workers<sup>7</sup>

The international **legal framework** for the protection of human rights of migrants is very broad. A number of international treaties contain provisions that protect the human rights of all human beings, irrespective of their citizenship. These include the six main human rights treaties adopted by the United Nations from 1965 to 1989, as well as the founding document which served as a matrix for those: the Universal Declaration of Human Rights, adopted in 1948. All of them contain a number of rights that are applicable to non-citizens, as clearly spelled out in their consistent and respective non-discrimination clauses, notwithstanding duly specified restrictive clauses.

These human rights treaties are:

- The Convention on the Elimination of All Forms of Racial Discrimination (ICERD, adopted in 1965);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966);
- The International Covenant on Civil and Political Rights (ICCPR, 1966);
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979);
- The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984);
- The Convention on the Rights of the Child (CRC, 1989).

Together with the six treaties listed above, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is part of the United Nations “seven core human rights treaties.” It was adopted on 18 December 1990 and entered into force on 1 July 2003. The Convention reiterates a number of rights applicable to migrant workers and members of their families that are included in the six international human rights instruments listed above, and highlights a few specific ones.

It is the first universal codification of the rights of migrant workers and members of their families in a single instrument.<sup>8</sup> It provides a synthesis of the human rights of migrants organized as a tool kit to better address the specific vulnerability in which they find themselves when they are outside

## **The human rights framework**

States must protect the rights of migrants by strengthening the normative human rights framework affecting international migrants and by ensuring that its provisions are applied in a non-discriminatory manner.

*GCIM Report, October 2005.*

<sup>7</sup> This presentation should be read together with Table I detailing non-discrimination grounds, Table III comparing the main characteristics and provisions in the seven core international human rights instruments, and Table IV detailing the specificity of the Convention on Migrant Workers.

<sup>8</sup> Juhani Lonröth, “The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation,” in *International Migration Review*, Number 25, 1991.

The [Human Rights] Committee notes with satisfaction that [in Belgium] **children of illegal immigrants are entitled to education and medical care.** *Belgium, 1998, CCPR/C/79/Add. 99.*

their state of origin and at all stages of the migration process. Fifteen years after its adoption, in the context of migration management and related discussions on an international framework for migration law, it remains a cardinal instrument for protecting the invaluable and central element in the migration phenomenon: the human being.

Such a model for an international convention consolidating the rights of one specific group of persons has already been recognized and endorsed by the 182 States Parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 192 States Parties<sup>9</sup> to the 1989 Convention on the Rights of the Child.

At times, the Convention provisions read exactly as those of existing human rights instruments, except that the term “persons” or “individuals” have been replaced by the term “migrant workers and members of their families.” It also addresses specific protection needs, and gives additional guarantees to migrant workers rendered vulnerable by “their absence from their State of origin.”<sup>10</sup> Furthermore, the phrase “members of their families” affords protection to migrant workers’ spouses and their dependent children.

One of the objectives of the Convention is the incorporation of **minimum standards** that States Parties must apply to migrant workers and members of their families under their jurisdiction, including when they are working and living in an irregular situation.<sup>11</sup> Besides responding to the non-discrimination clauses in the various human rights treaties, the rationale for the Convention in recognizing and listing rights of undocumented migrant workers is explicitly stated in the preamble. The preamble recognizes that irregular migrants are frequently exploited and face serious human rights violations; that certain employers seek such labour in order to reap the benefits of unfair competition; that appropriate action should be encouraged to prevent and eliminate clandestine movements and trafficking in migrant workers while assuring the protection of their human rights; and that the recourse to the employment of irregular migrants will be discouraged if the fundamental human rights of all migrant workers are more widely recognized. This approach is key to the Convention and is perhaps the least understood by countries reluctant to ratify the Convention.

Most articles on **civil and political rights** included in Part III of the Convention reiterate corresponding articles in the International Covenant on Civil and Political Rights. Corresponding articles on the right to physical and moral integrity and the right to procedural guarantees can be found in the Convention against Torture. In addition, the Convention includes a small number of civil and political rights specific to the condition of migrant workers, such as the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their state of origin

<sup>9</sup> The Convention on the Rights of the Child (CRC) is the world’s most widely ratified human rights convention: 189 UN Member States have ratified it as well as three non-Member States: The Holy See (Observer State), Cook Islands and Niue.

<sup>10</sup> Preamble of the ICRMW.

<sup>11</sup> Part III of the ICRMW.

Years between the adoption and the entry into force of international human rights instruments:

CRC:	1
CEDAW:	2
CAT:	3
ICERD:	4
ICESCR:	10
ICCPR:	10
ICRMW:	13

whenever the rights recognized under the Convention are impaired (Art. 23), and protection against collective expulsion (Arts. 22 and 56). For instance, it is unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permits (Art. 21). Such rights had not explicitly

been articulated in previous human rights instruments as they inherently relate to the protection needs of migrant workers.

**Economic, social and cultural provisions** of the Convention are broadly derived from the International Covenant on Economic, Social and Cultural Rights. Upon termination of their stay in the state of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and their personal effects and belongings (Art. 32). In the event of death, States Parties shall facilitate, whenever necessary, the repatriation to the state of origin of the bodies of deceased migrant workers and members of their families (Art. 71). According to some scholars, in some cases, the Convention is more restrictive than the Covenant.<sup>12</sup>

The Convention recognizes **non-derogable rights**, such as the right to life (Art. 9); protection from torture or cruel, inhuman or degrading treatment or punishment (Art. 10); freedom of thought, conscience and religion (Art. 12); the right to liberty and personal security and protection against arbitrary detention (Art. 16); freedom from slavery, servitude or forced or compulsory labour (Art. 11) and the right to procedural guarantees (Art. 18). They form the core set of rights applicable to both documented and non-documented migrant workers and members of their families.

The Convention also recognizes the right to receive urgent medical care for **non-documented or irregular migrants** (Art. 28) and the right to maintain the cultural identity of all migrant workers and members of their families (Art. 31). All migrant workers can participate in and join trade unions and other associations for the promotion and protection of their economic, social, cultural and other interests (Art. 40). Children of migrant workers have a right to a name, to be registered at birth and to a nationality (Art. 29, corresponding to Arts. 7 and 8 of the Convention on the Rights of the Child). They also have the right of access to education on the basis of equality of treatment with nationals. Access to public pre-school educational institutions and schools shall not be refused by reason of the irregular situation of either parent (Art. 30).

<sup>12</sup> James A. R. Nafziger and Barry C. Bartel, "The Migrant Workers Convention: Its Place in Human Rights Law," in *International Migration Review*, Number 25, 1991, p. 781.

**Migrant workers in a regular situation** have access to specific rights such as the right to be fully informed by their states of origin and employment about conditions applicable to their admission and concerning their stay and the remunerated activities in which they may engage (Art. 37); they can form trade unions (Art. 40); they can participate in public affairs of their state of origin and vote or be elected at elections of that state (Art. 41); and – to some extent – may enjoy political rights in the state of employment (Art. 42). They enjoy the same opportunities and treatment as nationals in relation to various economic and social services (Art. 43). States shall take appropriate measures to ensure the protection of the unity of the families of migrant workers. States Parties may facilitate family reunification according to Article 44. Contrary to frequent assertions however, the Convention does not speak of a right to family reunification as such.<sup>13</sup> Documented migrants can choose their remunerated activity (Art. 49) and must enjoy the same protection as nationals against dismissals, and are entitled to similar unemployment benefits (Art. 54). Finally, they enjoy guarantees against expulsion (Art. 56).

**Migrant women** are protected from discrimination in the application of the Convention, which uses inclusive language. Article 1 states that “the present Convention is applicable, except otherwise provided hereafter, to all migrant workers and members of their families **without distinction of any kind such as sex...**”. Article 2 (1) defines a “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which **he or she** is not a national.” However, a major omission in the Convention is the lack of provisions addressing the specific problems faced by migrant women;<sup>14</sup> to a certain extent, this also applies to youth.

**The Convention is not only a catalogue of rights but also an instrument** migrants can use to exercise those rights. Moreover, Article 83 affords them an effective remedy when the rights recognized in the Convention are violated.

Finally, the Convention establishes a **treaty monitoring body**, made up of 10 independent experts “of high moral standing, impartiality and recognized competence in the field covered by the Convention” (Art. 72). This Committee on Migrant Workers (CMW) will examine the initial and periodic reports submitted by each State Party. The Convention explicitly refers to the possibility for the Committee to “invite the specialized agencies and organs of the UN, as well as intergovernmental organisations and other concerned bodies to submit written information” (Art. 74). In its deliberations, it can thus consider comments and materials provided by the International Labour Organization (Art. 74).

<sup>13</sup> By contrast, the Programme of Action of the First World Conference on Racism, 1978, § 13 (iii), recognised a “right to family reunification”.

<sup>14</sup> Shirley Hune, “*Migrant Women in the Context of the International Convention on the Protection of All Migrant Workers and Members of Their Families*,” in *International Migration Review*, No. 25, 1991, pp. 800-817.

The Committee [on the Elimination of Racial Discrimination] notes with satisfaction that Bolivia (...) is a **party to a range of international human rights instruments**, including (...) the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**. *Bolivia, 2003, CERD/C/63/CO/2*.

Following the practice of all other human rights treaty bodies, the CMW has encouraged NGOs to submit documentation and other information in order to

provide Committee members with as comprehensive a picture as possible about the implementation of the Convention in a particular country. Likewise, the Committee's guidelines for the preparation of state reports explicitly ask states to include information on cooperation with civil society regarding promotion and respect for migrants' rights as described in the Convention.<sup>15</sup>

The Committee can also receive **individual complaints**. To activate this mechanism States Parties need to formally recognize the competence of the Committee to do so, by making a declaration under Article 77. However, none of the current 34 States Parties have made this declaration.

One of the specificities of the Convention is that it not only defines the obligation of states with respect to migrants as individuals; according to Part VI, States Parties must also promote **sound, equitable, humane and lawful conditions for international migration**. This includes formulating and implementing policies regarding migration, exchanging information with other States Parties, providing information to employers and to workers on policies, law and regulations and providing information and appropriate assistance to migrant workers and members of their families (Art. 65). Article 66 regulates the right to undertake operations for the recruitment of workers for employment, which shall be restricted to public services. States must take measures regarding the orderly return of migrant workers and members of their families to their state of origin (Art. 67). States Parties shall also collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (Art. 68). Part VI of the Convention should be borne in mind when examining relevant recommendations of the Global Commission on International Migration.

Contrary to commonly held beliefs, violations of the human rights of migrant workers do not take place only in states of destination. They often begin in states of origin, with corruption, denial of fundamental rights and discrimination. During their journey, migrant workers are also often harassed and exploited in countries of transit. The Convention addresses all stages of the migration process. Pending more universal ratification, the text can act as a useful measuring rod against which to list the components – and test the overall level – of protection enjoyed by populations of migrants in countries of origin, transit and host countries.

<sup>15</sup> See *A Guide for Non-Governmental Organisations in the Implementation of the UN's Migrant Workers Convention*, International NGO Platform on the Migrant Workers' Convention (IPMWC), August 2005. This guide is available on the website of December 18.

**The Convention synthesizes a wide spectrum of rights** relevant to migrant workers and members of their families. Through ratification, states reaffirm a large number of the recognized principles and obligations already accepted and entered into by the 125<sup>16</sup> United Nations Member States that have ratified all six other main human rights treaties. The Convention offers a consolidated instrument for more effective protection of a group whose members are vulnerable due to their very absence from their state of origin.

It is paradoxical that with 182 ratifications for the Convention on the Elimination of All Forms of Discrimination against Women and 192 for the Convention on the Rights of the Child, the UN Secretary-General has only received 34 ratifications of the Convention on Migrant Workers so far. Further, the geographical distribution of the ratifying states<sup>17</sup> suggests that double-standards and a lack of political will may be at play with respect to the protection of the human rights of migrants.

Widespread ratification has been hampered by a number of objective initial factors, chief among them the very late dissemination of the text of the Treaty. It took six years for the first publication of the Office of the United

Nations High Commissioner for Human Rights on the Convention to be issued after adoption of the Convention by the General Assembly. In addition, unlike organised efforts supporting Conventions relating to other groups of persons, such as UNICEF with the Convention on the Rights of the Child, no UN agency put its full thrust in support of international ratification campaigns for the Convention on Migrant Workers. Against this backdrop, myths proliferated about the Convention. This initial and protracted lack of visibility is greatly to blame for the dearth of references to the existence of a UN Convention on Migrant Workers as late as three years after its entry into force. A recent case in point is the UN Human Development Report 2005, released in October 2005, which actually fails to list the Convention in its relevant human development indicators table (Table 31) on “human and labour rights instruments.”

To date, a number of official publications and public statements still feature erroneous information, for instance, challenging the position of the Convention as one of the United Nations core human rights treaties, misrepresenting the scope of some of its articles (e.g., on family reunification) and the

The Committee [on the Elimination of Racial Discrimination] welcomes the **setting up of complaint centres in all immigration control centres**, where foreign workers can file complaints in cases where their rights have been violated.  
*Republic of Korea, 1996, CERD/C/304/Add. 12.*

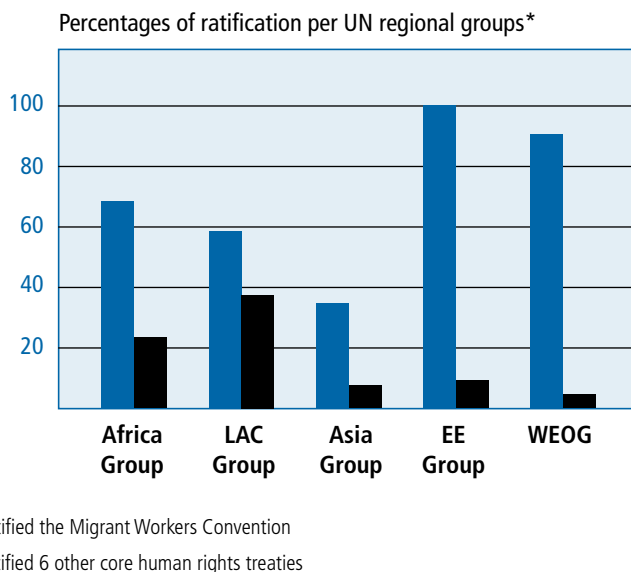
<sup>16</sup> As of March 2006.

<sup>17</sup> See *Percentages of ratification per UN regional groups*, p. 23, and *Basic Facts about the Convention*, p. 55.

scope of the protection of undocumented migrants, and referring to so-called “new rights” created in the Convention for migrants.

The **International Catholic Migration Commission** encourages state administrations, national Parliaments and national human rights institutions to study the Convention. Ratifying the Convention on Migrant Workers is a matter of social justice, and should be viewed by states as an opportunity to strengthen measures against racism, racial discrimination and xenophobia and to build social cohesion.

It can be argued that the Convention is long and therefore difficult to ratify. However, specialist analysis of existing research findings on obstacles to ratification demonstrates that lack of familiarity and misperceptions about the content of the Convention, including the actual scope of some of its articles, still constitute key factors to the low level of ratification, including from Western and other affluent states.



\* **Africa Group** – United Nations African States Group; **Asia Group** – United Nations Asian States Group; **EE Group** – United Nations Eastern European States Group; **LAC Group** – United Nations Latin American and Caribbean States Group; **WEOG** – United Nations Western European and Other States Group





## **Table I**

### **Evolution of Non-Discrimination Grounds in Core Human Rights Instruments**

## Table I Evolution of Non-Discrimination Grounds in Core Human Rights Instruments\*

\*Chronological introduction of new grounds in different instruments and conventions is highlighted in blue.

1945	United Nations Charter	<p><i>Article 1:</i> The Purposes of the United Nations are: [...] 3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to <b>race, sex, language, or religion.</b></p>
1948	Universal Declaration of Human Rights	<p><i>Article 2:</i> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as <b>race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.</b></p>
1965	International Convention on the Elimination of All Forms of Racial Discrimination	<p><i>Article 1:</i> In this Convention, the term “<b>racial discrimination</b>” shall mean any distinction, exclusion, restriction or preference based on <b>race, colour, descent, or national or ethnic origin</b> which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.</p>
1966	International Covenant on Economic, Social and Cultural Rights	<p><i>Article 2 (2):</i> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to <b>race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</b></p>

States undertake to guarantee that the rights recognized in the treaties they have ratified will be exercised without distinctions, as per their obligations to implement the relevant provisions of human rights conventions. Grounds for non-discrimination have broadened since the creation of the United Nations. The UN Charter foresaw that respect for human rights and for fundamental freedoms implies that no distinction should be made as to race, sex, language and religion. These four non-discrimination grounds were substantially expanded upon in the Universal Declaration on Human Rights, with eight additional grounds on which States Parties cannot discriminate. In the 42 years between the adoption of the UDHR and the adoption of the Convention on Migrant Workers, a total of 19 grounds have been defined on which States Parties to the respective conventions should not discriminate. Some of the grounds are to be found only in specific instruments, such as “descent” in the Convention on the Elimination of All Forms of Racial Discrimination, and “disability” in the Convention on the Rights of the Child.

This evolution reflects a growing awareness of the vulnerability of men, women and children, based on a number of characteristics. It responds to the need to protect them and foresee remedies in cases of discrimination. Over the years, the emphasis on non-discrimination has also been elaborated upon in successive world conferences and summits. The treaty monitoring bodies of the United Nations also publish their interpretations of the content of human rights provisions, known as “general comments <<http://www.ohchr.org/english/bodies/treaty/comments.htm>>” or “recommendations” on thematic issues. A number of these are directly relevant to non-discrimination: e.g., the Human Rights Committee’s General Comment 15 on “The position of aliens under the Covenant” (1986), the Committee on Economic, Social and Cultural Rights’ General Comment 14 on “The right to the highest attainable standard of health” (2000) and the Committee on the Elimination of Racial Discrimination’s General Recommendations 30 on “Discrimination against non citizens” (2004) and 31 on “Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System” (2005).

New instruments build upon existing ones and, pending consensus amongst UN Member States involved in drafting new treaties, expand to reflect changing contexts. At present for instance, a growing body of national legislation, and national and regional judicial decisions have incorporated grounds not yet incorporated in international human rights instruments (for instance “parental status”, “sexual orientation” and “pregnancy.”)

1966	International Covenant on Civil and Political Rights	<p><i>Article 2 (1):</i> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as <b>race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</b></p>
1979	Convention on the Elimination of All Forms of Discrimination against Women	<p><i>Article 1:</i> For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their <b>marital status</b>, on a basis of <b>equality of men and women</b>, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</p>
1989	Convention on the Rights of the Child	<p><i>Article 2 (1):</i> States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s <b>race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</b></p>
1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	<p><i>Article 7:</i> States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to <b>sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.</b></p>



## **Comparing main characteristics, monitoring mechanisms and provisions in the core International Human Rights Instruments**

### **Table II**

**Characteristics of the Core International Human Rights Instruments and Treaty Monitoring Bodies**

### **Table III**

**Related provisions in UN Human Rights Instruments**

**Table II** Characteristics of the Core International Human Rights Instruments and Treaty Monitoring Bodies<sup>1</sup>

		Instrument <sup>2</sup>									
Characteristics	UDHR	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	ICRMW			
	Universal Declaration of Human Rights	International Covenant on Economic, Social and Cultural Rights	International Covenant on Civil and Political Rights	International Convention on the Elimination of Racial Discrimination	Convention on the Elimination of All Forms of Racial Discrimination Against Women	Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment	Convention on the Rights of the Child	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families			
<b>Adoption</b>	10 Dec. 1948	16 Dec. 1966	16 Dec. 1966	21 Dec. 1965	18 Dec. 1979	10 Dec. 1984	20 Nov. 1989	18 Dec. 1990			
<b>UN reference (General Assembly Resolution)</b>	G.A. res. 217A (III)	G.A. res. 2200A (XXI)	G.A. res. 2200A (XXI)	G.A. res. 2106A (XX)	G.A. res. 34/180	G.A. res. 39/46	G.A. res. 44/25	G.A. res. 45/158			
<b>Adoption details</b>	Roll call vote: 48 in favour, 8 abstentions <sup>3</sup>	Recorded vote: 105 in favour, 0 against	Recorded vote: 106 in favour, 0 against	Roll call vote: 106 in favour, 1 abstention	Recorded vote: 130 in favour, 10 abstentions	Without vote	Without vote	Without vote			
<b>Ratifications needed for entry into force</b>	Proclaimed on day of adoption	35 States Art. 27	35 States Art. 49	27 States Art. 19	20 States Art. 27	20 States Art. 27	20 States Art. 49	20 States Art. 87			
<b>Entry into force</b>		3 January 1976	23 March 1976	4 Jan. 1969	3 Sept. 1981	26 June 1987	2 Sept. 1990	1 July 2003			
<b>States Parties<sup>4</sup></b>		153	155	170	182	141	192	34 <sup>5</sup>			
<b>Remaining signatories<sup>6</sup></b>		6	6	6	1	10	2	15 <sup>7</sup>			

<b>Length</b>	30 articles	31 articles	53 articles	25 articles	30 articles	33 articles	54 articles	93 articles	
<b>Structure:</b>									
<ul style="list-style-type: none"> <li>• Definition &amp; rights</li> <li>• Application, monitoring</li> <li>• Savings clause(s)</li> <li>• Signature, ratification, reservations, amendments, entry into force, dispute settlement</li> </ul>	Art. 1-15	Art. 1-7	Art. 1-16	Art. 1-16	Art. 1-16	Art. 1-16	Art. 1-41	Art. 1-71 <sup>8</sup>	
<b>Individual or group complaints/number of States bound by it</b>	31 articles	Declaration under Art. 14/ 47 States Parties	Op. Protocol/ 78 States Parties	Declaration under Art. 22/ 57 States Parties	Not permitted	Declaration under Art. 76	Not permitted	Declaration under Art. 77 <sup>12/</sup> 0 State Party	
<b>Complaint against other State Party</b>	Not permitted <sup>11</sup>	Article 11	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted	Not permitted	
<b>Reporting requirement: Initial Report after entry into force</b>	Art. 17 (1) Within 1 year	Art. 9 (1) Within 1 year	Art. 40 (1) Within 1 year	Art. 18 (1) Within 1 year	Art. 19 (1) Within 1 year	Art. 44 (1) Within 2 years	Art. 73 Within 1 year	Art. 73 Within 1 year	





**Working methods<sup>17</sup>**  
(see detail below)

"The treaties do not indicate how treaty bodies should approach the task of considering States parties' reports. However, all treaty bodies have adopted broadly the same approach, the main features of which are the "constructive dialogue" in which all committees engage with a delegation from the State party whose report they are considering, and the adoption of "concluding observations/comments", acknowledging progress made and indicating to the State party where further action is required. There is however considerable variation in the practice of each treaty body with respect to report consideration. [...] All committees have issued guidelines on reporting to provide guidance to States parties on the preparation of their reports. These are compiled in document HRI/GEN/2, which is revised regularly. [...] Following a request from the Secretary-General in his report "Agenda for

further change", the treaty bodies are currently considering a draft set of harmonized guidelines on reporting for all seven of the human rights treaties in an effort to streamline the treaty reporting process and to encourage the treaty bodies to function as a more unified system. The draft guidelines include proposals for an expanded version of the core document, which would incorporate a broader range of general information relevant to all or several of the treaty bodies. This document would be submitted in tandem with more targeted treaty-specific reports."<sup>18</sup>

**Designation of country Rapporteurs<sup>19</sup>**

Yes	Yes	Yes	Yes	Yes (2 rapporteurs)	Yes (2 rapporteurs)	Yes (2 rapporteurs)
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**Pre-sessional working groups**

Yes	For Individual Complaints	- -	Yes	Yes	For Individual Complaints	- -
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**Lists of questions/issues to States Parties**

Yes	Yes	Yes	Yes	Yes	Yes	Yes
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**Constructive dialogue with States<sup>20</sup>**

Yes	Yes	Yes	Yes	Yes	Yes	- -
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Table II Characteristics of the Core International Human Rights Instruments and Treaty Monitoring Bodies

Treaty Monitoring Body										
Characteristics	UDHR <sup>16</sup>	CESCR	HRC	CERD	CEDAW	CAT	CRC	CMW		
Information from other sources <sup>21</sup>		Yes	Yes	Yes	Yes	Yes	Yes <sup>22</sup>	Yes <sup>23</sup>		
Concluding observations <sup>24</sup>		Yes	Yes	Yes	Yes	Yes	Yes	--		
Follow-up of concluding observations <sup>25</sup>		Yes	Yes	Yes	--	Yes	--	--		
Days of General Discussion		Yes	--	Yes	--	--	Yes	Yes		
General Comments (number)		Yes (18)	Yes (31)	Yes (31)	Yes (25)	Yes (1)	Yes (7)	--		
Early warnings/Urgent appeals		--	Yes	Yes	--	--	--	--		
Yearly sessions		2	3	2	2	2	3	2 <sup>26</sup>		
Biannual budget (running cost, in USD) <sup>27</sup>		740,900	1,302,100	730,000	1,142,200 <sup>28</sup>	460,000	1,638,300	175,000		

## Table II Footnotes

- 1 Based on *Basic Human Rights Instruments*, Office of the High Commissioner for Human Rights/Geneva and International Training Centre of the ILO/Turin, Third edition, October 1998; *Migrant Workers in International Human Rights Law*, Ryszard Cholewinski, Clarendon Press Oxford, 1997; *The International Law of Human Rights*, Paul Sieghart, Oxford University Press, 1983; *The UN Human Rights Treaty System: Universality at the Crossroads*, Professor Ann F. Bayefsky, April 2001; *Procédures onusiennes de mise en oeuvre des droits de l'homme: limites ou défauts*, Agnès Dormenval, Publications de l'Institut Universitaire de Hautes Études Internationales - Genève, Presses Universitaires de France, 1991.
- 2 The United Nations constitutive instrument, its Charter signed in San Francisco on 26 June 1945, contains provisions for the subsequent elaboration and contents of the eight international human rights instruments listed in Table II.
- 3 In favour: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, The Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela. Abstaining: Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia.
- 4 As of March 2006, [www.ohchr.org/english/law/index.htm](http://www.ohchr.org/english/law/index.htm).
- 5 As of 1 March 2006: Algeria, Azerbaijan, Belize, Bolivia, Bosnia & Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay.
- 6 Among non-States Parties, as of March 2006.
- 7 As of 1 March 2006: Argentina, Bangladesh, Benin, Cambodia, Comoros, Gabon, Guinea-Bissau, Guyana, Indonesia, Liberia, Paraguay, Sao Tome and Principe, Serbia and Montenegro, Sierra Leone and Togo.
- 8 Articles 1-7: scope, definition, non-discrimination; 8-35 applicable to all migrant workers and members of families; 36-56 applicable to documented migrant workers and migrant families; 57-63 particular categories of migrant workers and migrant families; 64-71 "migration management."
- 9 Article 79 criteria for government admission of MW; 80-82 savings clauses; 83-84 right to remedy, legislative measures.
- 10 Article 88 (proposed by Finland during the drafting process) prohibits that States Parties exclude the application of any part of the Convention or any particular category of migrant workers. See also Footnote 64 in Table IV.
- 11 A draft Optional Protocol to the Covenant is under consideration, which could give the Committee competence to consider individual complaints. The Commission on Human Rights, in its Resolution 2002/24, decided to establish an open-ended working group to elaborate this Optional Protocol. The working group gave its first report in 2004.
- 12 It will become operative when 10 States Parties have made the necessary declaration under Article 77.
- 13 Article 73 (4): States Parties shall make their reports widely available to the public in their own countries.
- 14 In contrast to procedural reservations, normative reservations are those related to substantial matters.
- 15 Based on [www.bayefsky.com/report/finalreport.pdf](http://www.bayefsky.com/report/finalreport.pdf), April 2001. This report did not include reservations to the ICRMW.
- 16 Non-binding but part of customary international law.
- 17 To have an overall description of all Committees' working methods, see *Report on the Working Methods of the Human Rights Treaty Bodies relating to the State Reporting Process*, HRI/MC/2005/4, 25 May 2005, Fourth Inter-Committee Meeting of the human rights treaty bodies, Geneva, 20-22 June 2005. The information about working methods in the above table comes primarily from this document.
- 18 *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Reporting Process*, op. cit.
- 19 The identity of country rapporteurs is made public by CERD, CESCR, CAT and CRC.
- 20 Practice introduced by CERD in 1972.
- 21 All treaty bodies accept submissions of information from independent sources. These sources are UN specialised agencies, special procedures of the Commission on Human Rights, national human rights institu-
- tions and non-governmental organisations. For the practices of the Committees to receive information from these sources, see *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Reporting Process*, HRI/MC/2005/4, 25 May 2005, Fourth Inter-Committee Meeting of the Human Rights Treaty Bodies, Geneva, 20-22 June 2005, § 84-104. In particular, the participation of NGOs has developed extensively in all Committees. See *ibid.* § 96-104. CESCR and CRC have issued guidelines for NGOs to facilitate their interaction with them.
- 22 Article 45 of the CRC mentions UNICEF as a specific specialised agency to work with the Committee.
- 23 Article 74 of the ICRMW mentions the International Labour Organization as a specific agency to work with the CMW.
- 24 Concluding observations/comments are included in the respective committee's sessional or annual reports, in accordance with specific provisions of most of the treaties, and all committees publish their concluding observations as separate official documents in all official languages. These are posted on the OHCHR web site, and in the case of CEDAW, on the Division of the Advancement of Women (DAW) web site. *Ibid.* § 70.
- 25 All treaty bodies request States Parties to provide information on implementation of the recommendations in previous concluding observations/comments. But only HRC, CERD, CESCR and CAT have recently introduced formal procedures to monitor more closely the implementation of specific concluding observations. *Ibid.* § 72-76.
- 26 First session held 1-5 March 2004. One session a year was initially planned, but the Committee requested to meet twice in 2005 and twice in 2006.
- 27 Proposed programme budget for the biennium 2006-2007, General Assembly Sixtieth session, Document A/60/6 (Sect.23/Human Rights), 20 May 2005.
- 28 Proposed programme budget for the biennium 2006-2007, General Assembly Sixtieth session, Document A/60/6 (Sect.9/Economic and Social Affairs), 17 May 2005.

**Table III** Related provisions in UN Human Rights Instruments<sup>29</sup>

		Instrument									
		<b>UDHR</b> Universal Declaration of Human Rights	<b>ICESCR</b> International Covenant on Economic, Social and Cultural Rights	<b>ICCPR</b> International Covenant on Civil and Political Rights	<b>ICERD</b> International Convention on the Elimination of All Forms of Racial Discrimination	<b>CEDAW</b> Convention on the Elimination of All Forms of Discrimination Against Women	<b>CAT</b> Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment	<b>CRC</b> Convention on the Rights of the Child	<b>ICRMW</b> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW provisions applicable to	
<b>Contents</b>										Documented Migrant Workers <sup>30</sup>	Undocumented Migrant Workers <sup>30</sup>
<b>Non-discrimination; Equality before the law ; General policy</b>		Art. 2 Art. 7	Art. 2(2) Art. 2(3) Art. 3	Art. 2(1) Art. 3 Art. 26 General Comment No. 15: The position of aliens under the Covenant <sup>31</sup>	Art. 2(1) Art. 5 General Recommendations No. 30 & No. 31 <sup>32</sup>	Art. 2 Art. 9-16	--	Art. 2(1) Art. 2(2)	Art. 1(1) Art. 7 Art. 18 Art. 25 Art. 27	Yes	Yes
										Documented Migrant Workers <sup>30</sup>	Undocumented Migrant Workers <sup>30</sup>
<b>Right to work</b>		Art. 23	Art. 6(1) <sup>33</sup>	--	Art. 5(e-1)	Art. 11(1-a) Art. 16(g)	--	Art. 32(2-a)	Art. 49(2) Art. 52(1) <sup>34</sup>	Yes	No
										Documented Migrant Workers <sup>30</sup>	Undocumented Migrant Workers <sup>30</sup>

**Articles on Economic, Social and Cultural Rights**

**Articles on Non-discrimination, General Policy**

<b>Right to just and favourable conditions of work; Free choice of employment</b>	Art. 23 (1-3)	Art. 6(1) Art. 7	--	Art. 5(e-i)	Art. 11(1-b) Art. 11(1-c) Art. 11(2)	--	Art. 32(1) Art. 32(2-b-c) Art. 36	Art. 25 Art. 51 <sup>35</sup> Art. 54 Art. 55 Art. 52(1) Art. 53(1) <sup>36</sup>	Yes <sup>37</sup>	Yes (Art. 25) <sup>38</sup>
<b>Right to social security</b>	Art. 22 Art. 25	Art. 9	--	Art. 5(e-iv)	Art. 11(1-e) Art. 13(a) Art. 14(2-c)	--	Art. 26	Art. 27	Yes <sup>39</sup>	Yes <sup>40</sup>
<b>Right to public health</b>	Art. 25(1)	Art. 12	--	Art. 5(e-iv)	Art. 11(1-f) Art. 12 Art. 14(2-b)	--	Art. 24 Art. 27	Art. 43(e) Art. 28 Art. 45(1-c) Art. 70	Yes	Yes (Art. 28) <sup>41</sup>
<b>Right to education and training</b>	Art. 26	Art. 6(2) Art. 13 Art. 14 Art. 15	--	Art. 5(e-v)	Art. 10 Art. 11(1-c) Art. 14(2-d)	--	Art. 17 Art. 28 Art. 29	Art. 30 Art. 43 Art. 45	Yes	Yes <sup>42</sup>
<b>Right to marry, found a family, choice of spouse</b>	Art. 16	Art. 10	Art. 23	Art. 5(d-iv)	Art. 16	--	--	-- <sup>43</sup>	--	--
<b>Protection of the family (women, children); Family as the fundamental unit of the society</b>	Art. 16(3) Art. 25(2)	Art. 10 Art. 11(1)	Art. 23(1) Art. 23(4) Art. 24	--	Art. 4(2) Art. 5(b) Art. 11(2)	--	Art. 9 Art. 16 Art. 20 Art. 22	Art. 44 Art. 45 Art. 50(1)	Yes	No

Table III Related provisions in UN Human Rights Instruments

Instrument										
	UDHR	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	ICRMW	ICRMW provisions applicable to	
Contents	Articles on Economic, Social and Cultural Rights									
Family reunification, integrity of the family	--	--	--	--	--	--	Art. 9 Art. 10(1) Art. 22(2)	Art. 44(2) Art. 50	Yes <sup>44</sup>	Undocumented Migrant Workers <sup>30</sup> No
Right to housing, adequate standard of living	Art. 25(1)	Art. 11(1)	Art. 12(1) <sup>45</sup>	Art. 5(e-iii)	Art. 14(h) Art. 15(4)	--	Art. 27	Art. 43 (1-d) <sup>46</sup> Art. 43(3)	Yes	No
Right to own property, to inherit, and to obtain financial credit	Art. 17	--	--	Art. 5(d-v) Art. 5(d-vi)	Art. 13(b) Art. 14(2-g) Art. 15(2) Art. 16(1-h)	--	--	Art. 15	Yes <sup>47</sup>	Yes <sup>48</sup>
Cultural right, participation in cultural life	Art. 27(1)	Art. 15(a)	--	Art. 5(e-vi)	Art. 13(c)	--	Art. 30 Art. 31(2)	Art. 26 Art. 31(1) Art. 43(g) Art. 45(d) Art. 67(2)	Yes	Yes <sup>49</sup>
Right to rest and leisure	Art. 24	Art. 7(d)	--	--	Art. 13(c)	--	Art. 32(1)	Art. 25(a)	Yes	Yes

## Articles on Civil and Political Rights

	Articles on Civil and Political Rights										Documented Migrant Workers <sup>30</sup>	Undocumented Migrant Workers <sup>30</sup>
<b>Right to life</b>	Art. 3	--	Art. 6	--	--	--	--	Art. 6	Art. 6 Art. 37(a)	Art. 9	Yes	Yes
<b>Right to physical and moral integrity (prohibition of torture)</b>	Art. 5	--	Art. 7 Art. 10(1)	Art. 5(b)	--	Art. 1	Art. 16	Art. 37(a) Art. 19	Art. 10 Art. 16(2)	Art. 10 Art. 16(2)	Yes	Yes
<b>Prohibition of slavery, forced labour and traffic in persons</b>	Art. 4	Art. 10(3)	Art. 8	--	Art. 6	--	--	Art. 11 Art. 32 Art. 34 Art. 35 Art. 36	Art. 11	Art. 11	Yes	Yes
<b>Right to an effective remedy, equality before courts</b>	Art. 8	--	Art. 2(3)	Art. 6	Art. 2(c)	Art. 13 Art. 14	Art. 13 Art. 14	Art. 37(d) Art. 39	Art. 16(9) Art. 83 Art. 84	Art. 16(9) Art. 83 Art. 84	Yes	Yes
<b>Right to procedural guarantees</b>	Art. 6 Art. 7 Art. 10 Art. 11(1)	--	Art. 14 Art. 15 Art. 16 Art. 26	Art. 5(a)	Art. 15(2) Art. 15(3)	Art. 12 Art. 13 Art. 14 Art. 15	Art. 12 Art. 13 Art. 14 Art. 15	Art. 12(2) Art. 37(d) Art. 40	Art. 16(5-8) Art. 18 Art. 19 <sup>50</sup> Art. 24	Art. 16(5-8) Art. 18 Art. 19 <sup>50</sup> Art. 24	Yes	Yes



Table III Related provisions in UN Human Rights Instruments

Instrument										
	UDHR	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	ICRMW	ICRMW provisions applicable to	
Contents									Documented Migrant Workers <sup>30</sup>	Undocumented Migrant Workers <sup>30</sup>
	<b>Articles on Civil and Political Rights</b>									
Right to liberty and security of person; safeguards against arbitrary arrest and detention	Art. 3 Art. 9	--	Art. 9 Art. 10 Art. 11	Art. 5(b)	--	--	Art. 37(b)	Art. 16 Art. 17 Art. 20	Yes	Yes
Expulsion and extradition, non-refoulement	--	--	Art. 13	--	--	Art. 3	--	Art. 22 Art. 56	Yes <sup>51</sup>	Yes
Right to freedom of movement	Art. 13(1)	--	Art. 12(1)	Art. 5(d-i)	Art. 15(4)	--	--	Art. 39	Yes	No
Right to leave any country including own and to return	Art. 13(2)	--	Art. 12(2) Art. 12(4)	Art. 5(d-ii)	--	--	Art. 10	Art. 8	Yes	Yes
Right to privacy	Art. 12	--	Art. 17	--	--	--	Art. 16	Art. 14	Yes	Yes

<b>Right to freedom of thought, conscience and religion</b>	Art. 18	--	Art. 18 Art. 27	Art. 5(d-vii)	--	--	Art. 14	Art. 12	Yes	Yes
<b>Freedom of opinion and expression</b>	Art. 19	--	Art. 19 Art. 20	Art. 5(d-viii) Art. 4(a) Art. 4(c)	--	Art. 13	Art. 12 Art. 13	Art. 13	Yes	Yes
<b>Right to peaceful assembly</b>	Art. 20(1)	--	Art. 21 Art. 22	Art. 5(d-ix)	--	--	Art. 15	--	--	--
<b>Freedom of association</b>	Art. 20 (1-2)	--	Art. 22(1-2)	--	--	--	Art. 15	Art. 40	Yes	No
<b>Freedom to form and join trade unions</b>	Art. 23(4)	Art. 8	Art. 22(1-3)	Art. 5(e-ii)	--	--	--	Art. 26 Art. 40	Yes	Yes <sup>52</sup>
<b>Right to name and identification</b>	Art. 15	--	Art. 24(2-3)	Art. 5(d-iii)	Art. 9	--	Art. 7 Art. 8	Art. 29	Yes <sup>53</sup>	Yes <sup>54</sup>
<b>Political rights and access to public services</b>	Art. 21	--	Art. 25 <sup>55</sup>	Art. 5(c)	Art. 7 Art. 8	--	Art. 18(2-3) Art. 23(3-4) Art. 26	Art. 41 <sup>56</sup> Art. 42(3)	Yes <sup>57</sup>	No
<b>Rights of vulnerable groups, minorities</b>	Art. 25(2)	--	Art. 24 Art. 27	--	--	--	Art. 22 Art. 23 Art. 30	Art. 60 Art. 62	Yes <sup>58</sup>	Yes <sup>59</sup>

Table III  
Footnotes

- 29 Based on: "The ILO and the New UN Convention on Migrant Workers/The Past and the Future," Roger Bohning, in *International Migration Review*, 25, 1991; *Migrant Workers in International Human Rights Law*, Ryszard Cholewinski, Clarendon Press Oxford, 1997; "Setting Norms in the United Nations System: The Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families in Relation to ILO Standards on Migrant Workers," M. Hasenau, in *International Migration Review* 25, 1991; *The International Law of Human Rights*, Paul Sieghart, Oxford University Press, 1983; *The International Dimensions of Human Rights*, Karel Vasak, General Ed., Revised and edited for the English edition by Philip Alston, UNESCO, Greenwood Press, 1982; *Achieving Dignity: Campaigner's Handbook for the Migrants Rights Convention*, prepared by Migrants Rights International and reviewed by the Steering Committee for the Global Campaign for Ratification of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- 30 See definitions p. 54.
- 31 "1. Reports from States Parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (Art. 2(1)). In general, the rights set forth in the Convention apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. 2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens." General Comment No. 15. The position of aliens under the Convention, CCPR, 11/04/1986. See Annex II.
- 32 General Recommendation No. 30: Discrimination Against Non Citizens, CERD, 1/10/04 (see Annex III); and General Recommendation No. 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, CERD, A/60/18.
- 33 Art. 6(1) establishes a right to work "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts", and States Parties "will take appropriate steps to safeguard this right." (See CESCR General Comment No. 18 on the Right to Work (Art. 6), E/C.12/GC/18, and particularly paragraphs 18 and 23.
- 34 The Convention does not refer to a "right to work" as such, but refers to the right for migrant workers to freely choose their remunerated activity, subject to some restrictions.
- 35 Spells out the rights of migrant workers who are not permitted to choose work activity.
- 36 Rights of family members to choose work.
- 37 Ibid., Ryszard Cholewinski, p. 161: "The ICRMW provisions governing
- does not include the UDHR's protection of an adequate standard of living.
- 47 The Convention contains no express provision guaranteeing the right to acquisition of private property. Some scholars argue that equal treatment accorded by Article 43(1)(d) to regular migrant workers with nationals in respect of "access to housing" should include access to the purchase of private accommodation. Articles 1 and 7 also secure rights without distinction of any kind. Article 15 protects all migrants from being arbitrarily deprived of their property. If such property or assets are expropriated under the legislation of the state of employment, migrants have "the right to fair and adequate compensation."
- 48 Ibid.
- 49 Only within Article 31 on respect for cultural identity of migrant workers and Article 26, with respect to taking part in activities of associations.
- 50 Article 19(1) provides for "humanitarian considerations" in sentencing.
- 51 Article 56 gives additional protection to documented migrant workers, including with respect to humanitarian considerations and length of residence.
- 52 See footnote 31.
- 53 Applicable only to children.
- 54 Ibid.
- 55 These rights are restricted to "citizens" only, as opposed to many ICPR provisions that apply to "all persons" or "everyone".
- 56 Article 41 describes the right to participate in public affairs of the state of origin and to vote and to be elected at elections of that State.
- 57 The Convention urges States Parties to establish participatory mechanisms enabling migrants to articulate their interests to the State authorities. Further, Article 42(2) requests states of employment to facilitate, in accordance with their national legislation, the consultation or participation of migrant workers in decisions concerning the life and administration of local communities. This could be interpreted as granting migrants a right to participate in local elections.
- 58 Some particular categories included in Part V of the Convention might qualify as vulnerable groups. While the Convention clearly protects women as migrant workers and as members of a migrant worker's family, the specific problems faced by migrant women are not explicitly addressed. It fails to protect migrant women as victims of prostitution and sexual and other forms of abuse. The Convention also fails to give special attention to migrant youth, including second or third-generation migrants.
- 59 It could be argued that Part III of the Convention, relating to human rights of all migrants, does in fact afford protection to a vulnerable section of migrant workers and their families, inasmuch as it protects irregular migrants.
- equal work, and employment conditions are quite advanced compared with other international standards in this area. They have a wider coverage than equivalent ILO standards because they guarantee rights to migrant workers directly as against their employers as well as against the state. Rights, therefore, are paramount, in contrast with state duties to prevent the discriminatory practices of public authorities or to promote equal opportunity with regard to work and employment conditions found in ILO Provisions."
- 38 Only Article 25 applies to undocumented workers, which includes equality of treatment and other conditions of work (i.e., overtime, hours of work, weekly rest, holidays with pay, safety, health). Article 25(3) stipulates, "States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity." This reflects the concern in the Preamble which reads: "Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized [...]".
- 39 Article 27 provides for the same treatment as nationals subject to requirements provided for by the applicable legislation. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing the amount of contributions made.
- 40 Ibid.
- 41 Only Article 28 is applicable to undocumented migrant workers, and with respect to "any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health [...] such as emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment."
- 42 Article 30 guarantees a basic right of access to education without limitation by reason of irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.
- 43 Marital status is referred to in Art. 44(2) on family reunification.
- 44 Under Art. 44(2), which is phrased as a mere recommendation, States are under an obligation to take measures that they deem appropriate and fall within their competence to facilitate the reunification of migrant workers with their families.
- 45 Includes freedom to choose own residence.
- 46 Although Article 43 of the Convention provides documented migrant workers with certain rights regarding education, housing and services, it

**Table IV**

**Annotated Provisions Specific to the Migrant  
Workers Convention**

**Table IV Annotated Provisions Specific to the Migrant Workers Convention**

	Articles	Comments	Applicable to Documented Migrant Workers <sup>60</sup>	Applicable to Undocumented Migrant Workers <sup>60</sup>
<b>Applicability</b>	<b>Art. 1</b>	The grounds for non-discrimination are broader than those in the UDHR and in the ICESCR and ICCPR. This is in keeping with the notion that new instruments should build upon existing ones and, if necessary, expand to reflect changing contexts. New grounds in the Migrant Workers Convention (MWC) include: conviction, nationality, age, and economic position. The definition of “migrant worker” (MW) is broad and includes protection of persons who are planning to or are actually working outside their own country, or are ending work abroad and returning to their homelands. The MWC applies to all MW residing and working in the territory of a State Party regardless of whether the country from which they came has ratified the Convention. <sup>61</sup>	Yes	Yes
<b>Dissemination</b>	<b>Art. 73</b>	A similar provision exists in Article 44(6) of the CRC.	--	--
<b>Definitions of:</b> – migrant workers; – states (origin, employment, transit)	<b>Arts. 2-6</b>	Not all migrants are MW. For the first time an international instrument provides a comprehensive definition of a MW centered on engagement in a “remunerated activity.” According to records from the drafting debates, the term “has been engaged” would include persons who have contracted an occupational disease which only manifests itself after they have left the country of employment, unemployed MW seeking employment and those who have been victims of work accidents and remain in the country of employment to collect disability benefits. The Convention clearly protects women as MW and members of the families of migrant workers and uses inclusive language.	Yes	Yes
<b>Members of the family</b>	<b>Art. 4</b>	In a forward step, the Convention considers MW as social entities as well as economic entities and favours the reunification of families of MW. This is a compromise definition and is broad enough to encompass most family situations. The application of the definition of “members of the family” however, rests with the state of employment. <sup>62</sup>	Yes	Yes
<b>Documented and undocumented MW</b>	<b>Art. 5</b>	The Convention recognizes that “the human problems involved in migration are even more serious in the case of irregular migration.” It identifies the need to encourage appropriate action “to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental rights” (Preamble).	Yes	Yes

Particular categories of MW	Arts. 57-63	The Convention provides definitions for specific categories of migrant workers, such as "frontier workers," "seasonal workers," "itinerant workers," "project-tied workers," "specified employment workers" and "self-employed workers" (Art. 2). The "self-employed worker" category recognizes the large number of migrant workers who operate a small family business. The MWC covers many categories of MW excluded from other international conventions; in particular, frontier workers and self-employed workers, who are excluded from the two major ILO conventions. Art. 2 (2-g) creates a special category: "specified-employment workers," referring to MW taking up employment for a "restricted and defined period of time." <sup>63</sup>	Yes	No
Persons excluded from the Convention	Art. 3	Exclusion of investors reflects the concern of developing countries who wanted to confine the MWC to the protection of the most vulnerable migrants. <sup>64</sup> Refugees and stateless persons were excluded as they are protected under other international instruments.	--	--
Right to urgent medical care	Art. 28	Art. 28 applies to both regular and irregular migrant workers and members of their families for whom no "emergency" healthcare can be refused. See also ICESCR Art. 12 and ICERD Art. 5(c).	Yes	Yes
Transfer of earnings, savings and belongings; import and export duties; taxation	Arts. 32; 47	The freedom to transfer earnings and savings is of extraordinary importance for migrant workers, many of whom support members of their families and dependents left behind who are reliant upon these earnings. "The freedom to transfer earnings and savings contains a considerable improvement of the rights of MW." <sup>65</sup> Official estimates of remittances to their home countries by migrant workers exceeded USD 126 billion (between USD200 and 300 billion for informal remittances) in 2004, <sup>66</sup> while total global overseas development assistance stood at USD 78.6 billion. <sup>67</sup>	Yes	Yes <sup>68</sup>
Exemption from import and export duties and taxes	Arts. 46; 48(a)	The exemption from import and export duties along with the transfer of earnings (Articles 46, 48(a) and 47), serve to protect migrant workers and/or members of their families from being penalized because of their status or change in status. <sup>69</sup>	Yes	No
Protection from destruction of ID and other documents	Art. 21	According to the Convention, residency should not be forced, e.g., Art. 8, which grants migrant workers and their families the right to leave any state, including the state of origin, and the right to enter and remain in the state of origin subject to certain specified restrictions. Art. 21, protects migrant workers from employers who require them to submit their passports or other travel documents in order to force the migrant worker to stay in their employment for the duration of their contract. <sup>70</sup>	Yes	Yes

Table IV Annotated Provisions Specific to the Migrant Workers Convention

	Articles	Comments	Applicable to Documented Migrant Workers <sup>60</sup>	Applicable to Undocumented Migrant Workers <sup>60</sup>
<b>Protection against (collective) expulsion</b>	<b>Arts. 22; 56</b>	The Convention establishes protection for migrant workers against arbitrary expulsion when, for example, an employment contract ends. Articles 22 and 56 of the Convention prohibit measures of collective expulsion and impose certain procedural steps to be taken when issuing an expulsion decision. Migrant workers also have the right to return home if they so wish. <sup>71</sup> See also ICCPR Art. 13 on conditions for expulsion of lawfully residing aliens.	Yes	Yes <sup>72</sup>
<b>Authorization to stay</b>	- -	No specific provision included, but Art. 50(1) imposes an obligation on States Parties “in the case of death of a migrant worker or dissolution of marriage... to favorably consider granting family members of that migrant worker residing in that state on the basis of family reunion an authorization to stay.”	Yes	No
<b>Right to information on conditions for migration</b>	<b>Arts. 37; 68.1 (a)</b>	When preparing to migrate, ideally, migrant workers should be able to acquire a basic understanding of the language, culture, and legal, social and political structures of the states to which they are going. Article 37, for example, establishes the right of migrant workers and members of their families who have the proper documentation to be informed preferably before their departure, or at the time of their admission to the state of employment, of all conditions applicable to their admission, as well as of the requirements they must satisfy in the state of employment and the authority to which they must address themselves for any modification of those conditions. <sup>73</sup>	Yes	Yes (only Art. 68.1)
<b>Right to be informed on rights arising from the Convention and states’ obligations to inform</b>	<b>Art. 33</b>	All states must inform all migrant workers about their rights. This Article is one of the few provisions in the Convention that defines the specific responsibility of states of origin vis-à-vis migrant workers and members of their families.	Yes	Yes
<b>Employment and residence authorizations</b>	<b>Arts. 49; 53</b>	The Convention ties the right of residence to the employment of the migrant worker. For migrant workers in a regular situation, the Convention provides protection for those who lose their employment prior to the expiration of their work permit. This protection varies between migrants who can choose freely their activity and those who cannot, though neither group will be regarded as irregular nor will they lose their residence authorization.	Yes	No
<b>Authorization to be temporarily absent without loss of status</b>	<b>Art. 38</b>	In absence of such a provision, numerous migrant workers reportedly hesitate to visit their families, attend funerals, etc., for fear of losing their work authorizations: they are de facto forced to remain inside the host country. Such an article is in keeping with current analyses whereby more flexibility for documented migrants to travel between their countries of origin and host countries would help migrants maintain ties with their countries of origin.	Yes	No

Protection in case of change of family status	Art. 50	The main objective of Art. 50(1) is to ensure that family members of a migrant worker do not find themselves in an irregular situation as a consequence of his or her death or divorce.	Yes	No
Respect for cultural identity and links with state of origin	Art. 31	This further strengthens provisions on cultural rights of migrants found in other articles (Arts. 26, 43, 45 and 67) by emphasising the importance of enabling them to maintain links with their state of origin.	Yes	Yes
Right to recourse to consular or diplomatic protection	Arts. 16; 23; 65(2)	<p>The Vienna Convention on Consular Relations (168 ratifications) expands the contents of this protection, in particular:</p> <p>"Article 36: Communication and Contact With Nationals of the Sending State</p> <p>1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: [...] (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."</p>	Yes	Yes
Recruitment of workers for employment	Art. 66	"Overall, the Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families throughout the entire migration process. In particular, it seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation." <sup>74</sup>	Yes	No
Obligation to comply with laws and regulations of states of transit and employment	Art. 34	See UDHR Art. 29 " 1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."	Yes	Yes



Table IV Annotated Provisions Specific to the Migrant Workers Convention

	Articles	Comments	Applicable to Documented Migrant Workers <sup>60</sup>	Applicable to Undocumented Migrant Workers <sup>60</sup>
<p>Conditions of international migration</p> <p>PART VI, entitled: “Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families”</p>	<p><b>Arts. 64-70</b></p>	<p>This Section is of special interest in view of international developments and discussions on migration management and global governance:</p> <ul style="list-style-type: none"> <li>• Part VI of the Convention focuses primarily on the elimination of irregular migration.</li> <li>• Art. 64 promotes co-operation and consultation between states as a means to prevent the occurrence of the phenomenon of irregular migrant workers.</li> <li>• Arts. 65 and 66 establish the administrative machinery to deal with questions of migration as well as provide safeguards for recruitment.</li> <li>• Art. 70 provides for the minimum of protection of migrant workers and their families concerning their working and living conditions and complements the equal treatment approach contained in Arts. 25 and 43.<sup>75</sup></li> </ul>	Yes	Yes
<p>Repatriation of bodies of deceased migrants; compensation relating to death</p>	<p><b>Art. 71</b></p>	<p>This article typifies the need for specific provisions related to the situation of migrant workers and their families. At the same time, the inclusion in the Convention of this kind of Article has unduly contributed to the perception that the Convention i) creates new rights and ii) is too long.</p>	Yes	Yes
<p>Sanctions for organizing clandestine movements</p>	<p><b>Art. 68 (1-b)</b></p>	<p>A key provision of Art. 68 calls for collaboration to prevent and to suppress illegal or clandestine movements and employment. Its purpose is the prevention of trafficking of workers across frontiers, i.e., the organization of labour migration in violation of international or national labour law.<sup>76</sup> See also CRC Arts. 11 and 35. The Convention contains no articles specifically dealing with women’s vulnerability to sexual abuses and exploitation. This article will have to be interpreted in light of more recent relevant international norms relating to protection of trafficked persons.</p>	No	Yes
<p>Sanctions on employers of irregular migrants</p>	<p><b>Art. 68(2)</b></p>	<p>The Convention recommends that states take measures to eliminate employment of irregular migrants, including with sanctions on employers. These sanctions should not adversely affect the rights of migrant workers arising from employment.</p>	No	Yes

<b>Orderly return of migrants</b>	<b>Art. 67(1)</b>	This article should be read together with Articles 22 and 56 on expulsions. It emphasises the need for cooperation between states in the adoption of measures regarding the orderly return of migrants.	Yes	Yes	
<b>Measures to counter irregular migration</b>	<b>Art. 69(1)</b>	Art. 69(1-2) encourages the regularization of an irregular situation but not only by expelling migrant workers and members of their families but above all by [considering] legalizing their stay. <sup>77</sup>	No	Yes	
<b>Regularization of undocumented</b>	<b>Arts. 35; 69(2)</b>	Although the Convention does not provide for a right to regularization (Art. 35), it details elements to be taken into account when States Parties consider the possibility of regularization, i.e., circumstances of entry, duration of stay, and family situation.	No	Yes	

**Table IV** Footnotes

<sup>60</sup> See definitions on p. 54.

<sup>61</sup> A broad proposal on reciprocity applicable to the whole MWC was submitted by Italy and supported by France, Italy and Germany. It was opposed by Mediterranean and Scandinavian countries (WESCA group) as well as Algeria, Australia, Canada, China, Colombia, Morocco, Mexico, the Netherlands and the former Yugoslavia. See *Report of the Open-ended Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families*; UN Doc. A/C.3/39/4 (11 October 1984).

<sup>62</sup> S. Hune, "Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," in *International Migration Review*, 25, 1991.

<sup>63</sup> Some governments are increasingly using the term "service providers." The coining of new terms and definitions will have to be examined by members of the relevant treaty monitoring body, the UN Committee on Migrant Workers, in light of definitions in the Convention. No definition of MW should allow the "commodification" of migrants.

<sup>64</sup> The proposal was originally put forward by the Mexican delegation, see *Report of the Open-ended Working Group on the Elaboration*

*of an International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*; UN Doc. A/C.3/39/4 (11 October 1984). See also Footnote 10 in Table II.

<sup>65</sup> M. Hasenau, "Setting Norms in the United Nations System: The Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families in Relation to ILO in Standards on Migrant Workers," in *International Migration Review*, 25, 1991.

<sup>66</sup> *When Money Really Matters - Remittances Vital to South Asia*, The World Bank, July 19, 2005. In 2004, remittances to developing countries exceeded USD126 billion, up by nearly 48.7 percent from 2001: "Actual amounts are probably much larger because flows through informal channels such as hawala elude official data collection." Indeed, remittances through informal channels are estimated to have amounted, in 2004, to between USD 200 and 300 billion.

<sup>67</sup> Statistical Annex of the 2004 *Development Cooperation Report*, OECD. "World Bank estimates for remittance flows to developing countries in 2004 totaled \$122 billion; however, this number is expected to change upwards in the next few years as the formulas used to calculate remittance flows are modified."

<sup>68</sup> Only within the provisions of Article 32.

<sup>69</sup> S. Hune, "The Origins and Importance of the Convention"

in *Proclaiming Migrants Rights*, World Council of Churches and Churches Committee for Migrants in Europe, (Feb. 1991).

<sup>70</sup> R. Cholewinski, *Migrant Workers in International Human Rights Law, Their Protection in Countries of Employment* (1997), Clarendon Press, Oxford.

<sup>71</sup> See "The Rights of Migrant Workers, Fact Sheet No. 24," 1996. This Fact Sheet has been replaced by another version (The International Convention on Migrant Workers and its Committee, Fact Sheet No. 24 (Rev. 1)) but it is still available at [www.ohchr.org/english/about/publications/docs/fs24.htm](http://www.ohchr.org/english/about/publications/docs/fs24.htm)

<sup>72</sup> Only within the provisions of Article 22.

<sup>73</sup> Op. cit., *The Rights of Migrant Workers*, Fact Sheet No. 24, 1996.

<sup>74</sup> See *Achieving Dignity: Campaigner's Handbook for the Migrants Rights Convention*, prepared by Migrants Rights International and reviewed by The Steering Committee for the Global Campaign for Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Fourth printing, November 2002, Geneva.

<sup>75</sup> M. Hasenau, *ibid.*

<sup>76</sup> Op. cit.

<sup>77</sup> Loc. cit.



# Basic Facts about the Migrant Workers Convention

# Basic facts about the Migrant Workers Convention

## What is the ICRMW?

- It is the first universal codification of the rights of migrant workers and members of their families.
- It was adopted on 18 December 1990 by the General Assembly of the United Nations.
- It draws on principles and standards included in the Universal Declaration of Human Rights of 1948; on subsequently adopted human rights covenants and treaties; and labour law (ILO Conventions).

## The reasons for and context of its adoption

### Reasons for its adoption

- Importance and extent of the international migration phenomenon
- Situation of vulnerability in which migrant workers and members of their families frequently find themselves outside of their State of origin and at all stages of the migration process;
- Need to improve the situation of migrant workers and their families by highlighting existing norms and elaborating additional ones;
- Necessity to harmonize the attitudes of States relative to the treatment of migrant workers and their families by means of accepting fundamental principles;
- Need to bear in mind the human problems involved in irregular migration and to encourage appropriate action in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights.

### Historical context and main actors

- The first debates and studies began in the 1970s, led by Mexico, Algeria, Egypt, Morocco and the former Yugoslavia (leaders of the G 77 non-aligned States).
- Mediterranean and Nordic countries played a decisive role, including Finland, Greece, Italy, Norway, Spain, and Sweden.
- Other Western European States, advocating for “zero immigration” policies, were little supportive.

## The Convention at a glance

### 93 articles divided into 9 parts and a preamble

- Part 1: Scope and definitions (Arts. 1-6)
- Part II: Non-discrimination with respect to rights (Art. 7)
- Part III: Human rights of all migrant workers and members of their families (Arts. 8-35)
- Part IV: Other rights of migrant workers and members of their families who are documented or in a regular situation (Arts. 36-56)
- Part V: Provisions applicable to particular categories of migrant workers and members of their families (Arts. 57-63)
- Part VI: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (Arts. 64-71)
- Part VII: Application of the Convention (Arts. 72-78)
- Part VIII: General provisions (Arts. 79-84)
- Part IX: Final provisions (Arts. 85-93)

## Who does the Convention protect?

### • All migrant workers

Migrant worker refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. (Article 2)

### • Members of their families

Members of the family refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned. (Article 4)

- Frontier workers
- Seafarers
- Seasonal workers
- Project-tied workers

(Article 2)

- Workers on offshore installations
- Itinerant workers
- Specified-employment workers
- Self-employed workers

## Who does the Convention NOT protect?

- Diplomats and international civil servants
- Investors
- Refugees and stateless persons (unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned)
- Students and trainees
- Seafarers and offshore workers who have not been able to take up a residence and engage in a remunerated activity in the state of employment

*(Article 3)*

## Non-discrimination

The Convention is applicable . . . without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. *(Article 7)*

## Scope of the Convention

The Convention provides protection to the persons mentioned above:  
. . . during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence. *(Article 1)*

## Documented and undocumented migrant workers

According to Article 5 of the Convention, "Migrant workers are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party."

Under the Convention, migrant workers are considered as non-documented or in an irregular situation if they do not comply with the above-mentioned conditions.

*(Article 5)*

## States Parties - as of March 2006

**Ratifications:** 34 countries have ratified the Convention (geographical distribution according to the UN regional groups):

### Africa Group

Algeria  
Burkina Faso  
Cape Verde  
Egypt  
Ghana  
Guinea  
Lesotho  
Libyan Arab Jamahiriya  
Mali  
Morocco  
Senegal  
Seychelles  
Uganda

### Western European and Other States (WEOG)

Turkey

### Eastern Europe (EE) Group

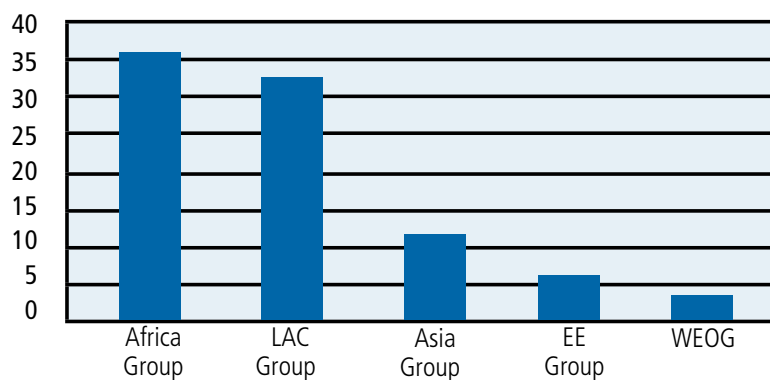
Azerbaijan  
Bosnia & Herzegovina

### Asia Group

Kyrgyzstan  
Philippines  
Sri Lanka  
Syrian Arab Republic  
Tajikistan  
Timor-Leste

### Latin America & Caribbean (LAC) Group

Belize  
Bolivia  
Chile  
Colombia  
Ecuador  
El Salvador  
Guatemala  
Honduras  
Mexico  
Nicaragua  
Peru  
Uruguay



■ Percentage per regional group of total ratifications of the ICRMW

**Signatures:** Argentina, Bangladesh, Benin, Cambodia, Comoros, Gabon, Guinea-Bissau, Guyana, Indonesia, Liberia, Paraguay, Sao Tome and Principe, Serbia & Montenegro, Sierra Leone and Togo.





## **Annex I**

### **Text of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Adopted by General Assembly resolution 45/158 of 18 December 1990

## Preamble

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and

eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

## **Part I: Scope and Definitions**

### **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

### **Article 2**

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a

remunerated activity in a State of which he or she is not a national.

2.

(a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

3.

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

### Article 3

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

### Article 4

For the purposes of the present Convention the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

### Article 5

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

### Article 6

For the purposes of the present Convention:

(a) The term “State of origin” means the State of which the person concerned is a national;

(b) The term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term “State of transit,” means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

## Part II: Non-discrimination with Respect to Rights

### Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## Part III: Human Rights of All Migrant Workers and Members of their Families

### Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

### Article 9

The right to life of migrant workers and members of their families shall be protected by law.

### Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

## Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall

include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputation of others;

(b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

## Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

## Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

## Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbi-

trary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

## **Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with

humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

## **Article 18**

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:



(a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

## **Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by

law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

## **Article 20**

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

## **Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

## **Article 22**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of

national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

### **Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

### **Article 24**

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

### **Article 25**

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

### **Article 26**

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

### **Article 27**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

## Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

## Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

## Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

## Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

## Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

## Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

- (a) Their rights arising out of the present Convention;
- (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them

to comply with administrative or other formalities in that State.

2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

## Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

## Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

## Part IV: Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation

## Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in Part III.

## Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy

in the State of employment and the authority to which they must address themselves for any modification of those conditions.

### **Article 38**

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

### **Article 39**

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### **Article 40**

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

### **Article 41**

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

### **Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

### **Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

## Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States 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.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

## Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

## Article 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption

from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

## Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

## Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

## Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity

prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

#### **Article 50**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

#### **Article 51**

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

#### **Article 52**

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

#### **Article 53**

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

#### **Article 54**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:



- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;
- (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

### **Article 55**

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

### **Article 56**

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

## **Part V: Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families**

### **Article 57**

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part III and, except as modified below, the rights set forth in part IV.

### **Article 58**

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the

rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

### **Article 59**

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

### **Article 60**

Itinerant workers, as defined in article 2, paragraph 2 (e), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

### **Article 61**

1. Project-tied workers, as defined in article 2, paragraph 2 (f) of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 45, paragraph 1 (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately

protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multi-lateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

#### **Article 62**

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

#### **Article 63**

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

### **Part VI. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

#### **Article 64**

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

#### **Article 65**

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia :

(a) The formulation and implementation of policies regarding such migration;

(b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

#### **Article 66**

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multi-lateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.



## Article 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

## Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

## Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and

bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

## Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

## Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

## Part VII: Application of the Convention

### Article 72

1.

(a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2.

(a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each

State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5.

(a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 73**

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

### **Article 74**

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to inter-governmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

## Article 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

## Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations

under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant

to the issue between them. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

### **Article 77**

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 78**

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

## **Part VIII: General provisions**

### **Article 79**

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

### **Article 80**

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the

specialized agencies in regard to the matters dealt with in the present Convention.

#### **Article 81**

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

#### **Article 82**

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

#### **Article 83**

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### **Article 84**

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

## **Part IX: Final provisions**

#### **Article 85**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

#### **Article 88**

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

#### **Article 89**

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.

3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation

becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

#### **Article 90**

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

#### **Article 91**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States

thereof. Such notification shall take effect on the date on which it is received.

#### **Article 92**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

#### **Article 93**

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.



## **Annex II**

**CCPR General Comment No. 15:  
The position of aliens under the Covenant:  
11/04/86**



## CCPR General Comment No. 15:

### The position of aliens under the Covenant: 11/04/86

Twenty-seventh session, 1986

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure

that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.

5. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

6. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

7. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members

of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

8. Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3. Since such restrictions must, inter alia, be consistent with the other rights recognized in the Covenant, a State party cannot, by restraining an alien or deporting him to a third country, arbitrarily prevent his return to his own country (art. 12, para. 4).

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (arts. 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow,

in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

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## **Annex III**

### **CERD General Recommendation No. 30: Discrimination Against Non Citizens: 1/10/04**

## **CERD General Recommendation No. 30: Discrimination Against Non Citizens: 1/10/04**

### **The Committee on the Elimination of Racial Discrimination,**

Recalling the Charter of the United Nations and the Universal Declaration of Human Rights, according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms enshrined therein without distinction of any kind, and the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,

Recalling the Durban Declaration in which the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, recognized that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices,

Noting that, based on the International Convention on the Elimination of All Forms of Racial Discrimination and general recommendations XI and XX, it has become evident from the examination of the reports of States parties to the Convention that groups other than migrants, refugees and asylum-seekers are also of concern, including undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live, even where such persons have lived all their lives on the same territory,

Having organized a thematic discussion on the issue of discrimination against non-citizens and received the contributions of members of the Committee and States parties, as well as contributions from experts of other United Nations organs and specialized agencies and from non-governmental organizations,

Recognizing the need to clarify the responsibilities of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination with regard to non-citizens,

Basing its action on the provisions of the Convention, in particular article 5, which requires States parties to prohibit and eliminate discrimination based on race, colour, descent, and national or ethnic origin in the enjoyment by all persons of civil, political, economic, social and cultural rights and freedoms,

Affirms that:

### **I. Responsibilities of States parties to the Convention**

1. Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

4. Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph

4, of the Convention relating to special measures is not considered discriminatory;

5. States parties are under an obligation to report fully upon legislation on non-citizens and its implementation. Furthermore, States parties should include in their periodic reports, in an appropriate form, socio-economic data on the non-citizen population within their jurisdiction, including data disaggregated by gender and national or ethnic origin;

Recommends,

Based on these general principles, that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures:

## **II. Measures of a general nature**

6. Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in article 5, without discrimination;

7. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens;

8. Pay greater attention to the issue of multiple discrimination faced by non-citizens, in particular concerning the children and spouses of non-citizen workers, to refrain from applying different standards of treatment to female non-citizen spouses of citizens and male non-citizen spouses of citizens, to report on any such practices and to take all necessary steps to address them;

9. Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin;

10. Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping;

## **III. Protection against hate speech and racial violence**

11. Take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens;

12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis

of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large;

## **IV. Access to citizenship**

13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

14. Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;

16. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;

17. Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party;

## **V. Administration of justice**

18. Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence;

19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards;

20. Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law;

21. Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights;

22. Introduce in criminal law the provision that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment;

23. Ensure that claims of racial discrimination brought by non-citizens are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny;

24. Regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin so that once a non-citizen has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment;

## **VI. Expulsion and deportation of non-citizens**

25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies;

26. Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account;

27. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment;

28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life;

## **VII. Economic, social and cultural rights**

29. Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health;

30. Ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party;

31. Avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education;

32. Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices;

33. Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects;

34. Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault;

35. Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated;

36. Ensure that States parties respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services;

37. Take the necessary measures to prevent practices that deny non-citizens their cultural identity, such as legal or de facto requirements that non-citizens change their name in order to obtain citizenship, and to take measures to enable non-citizens to preserve and develop their culture;

38. Ensure the right of non-citizens, without discrimination based on race, colour, descent, and national or ethnic origin, to have access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks;

39. The present general recommendation replaces general recommendation XI (1993).

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The treaty body system (...) constitutes the bedrock of the human rights framework of the United Nations.

Louise Arbour  
United Nations High Commissioner for Human Rights  
22 June 2005

As long as migrant workers, migrants' advocates and governments continue working towards universal ratification, we can only move closer towards migrant workers' and their families' enjoyment of dignity and freedom from discrimination.

Migrant Forum in Asia  
1 July 2003



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