



The Rights of Migrant Workers in a Broader European and International Context

**Workshop on Establishing Labour Migration
Policies in Countries of Origin and Destination and
international collaboration in the Western Balkans
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Presentation content

- **International legal framework**
- **Regional legal frameworks**
- **Supplementary ways of protecting migrant workers' rights**
 - **Action at the national level**
 - **Bilateral agreements/ arrangements**
 - **Non-binding global and regional consultative processes**
- **Conclusions**

International legal framework

- **International human rights law**
- **ILO international labour standards**
 - see ILO presentation
- **UN Convention on Migrant Workers 1990**
 - This instrument is also one of the core international human rights treaties

International human rights law

- **Universal principle of non-discrimination**
 - Human rights applicable to nationals and non-nationals alike with few exceptions (e.g. political rights)
- **Some rights of particular relevance to migrant workers and their families, for example:**
 - Right to leave own country and enter/ return to that country
 - Rights to freedom of assembly and association
 - Rights to equal work and employment conditions
 - Rights to education and health
 - Right to family life
- **Important role of human rights treaty bodies**

Convention on Migrant Workers 1990

- Adopted by UN General Assembly – 18 December 1990
- Entry into force – 1 July 2003
- 40 States parties to date:
 - **Albania**, Algeria, Argentina, Azerbaijan, Belize, Bolivia, **Bosnia and Herzegovina**, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Jamaica, Kyrgyzstan, Lesotho, Libya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timor-Leste, Turkey, Uganda, Uruguay
- Not yet ratified by a single industrialized destination country

Convention on Migrant Workers 1990

General features

- **Comprehensive** instrument applicable to the whole migration process and regulating the legal status of migrant workers and their families
- Protects the basic rights of **all** migrant workers and their families (lawfully resident and irregular migrants) on the basis of **equality** with nationals (Part III)
- Grants regular migrants a number of additional rights on the basis of **equality** with nationals (Part IV)

Convention structure

- **Part I** – Scope and definitions
- **Part II** – Non-discrimination with respect to rights
- **Part III** – Human rights of all migrant workers
- **Part IV** – Other rights of regular migrants
- **Part V** – Rights of particular categories of migrant workers
- **Part VI** – State cooperation/ obligations in promoting sound, equitable, humane and lawful migration conditions
- **Part VII** – Application of Convention
- **Part VIII** – General Provisions
- **Part IX** – Final Provisions

Groups of migrants covered

- **Migrant workers and members of their families**
 - Family members defined to include common law spouses, dependent children and other dependent persons
- **Persons **to be engaged** or who **have been engaged** in employment**
- **Lawfully resident and irregular migrants**
- **Specific groups of (temporary) migrant workers**
 - e.g. seasonal workers/ project-tied workers
- **But not certain categories of foreigners**
 - e.g. diplomats, international organization officials, students or trainees, refugees, investors

Rights covered

➤ Civil and political rights

- Freedom from cruel, inhuman or degrading treatment – Art 10
- Freedom from slavery, forced labour – Art 11
- Procedural protection against individual expulsion applicable to all migrant workers – Art 22

➤ Employment rights

- Rights to equal work/ employment conditions with nationals – Arts 25, 54
- Irregular status does not preclude employment rights – Art 25(3)
- Trade union rights (freedom of association) – Arts 26, 40

➤ Economic, social and cultural rights

- See next slide

Economic, social and cultural rights

- **All migrant workers and their families (including irregular migrants)**
 - **Emergency medical care - Art 28**
 - **Equal access with nationals to education - Art 30**
 - **Primary education not to be refused to children of irregular migrants**
 - **Respect for cultural identity - Art 31**
- **Lawfully resident migrant workers and families only**
 - **Equal access with nationals to housing - Art 43(1)(d)**
 - **Equal access to social and health services - Art 43(1)(e)**
 - **Family reunification - Art 44**
 - **Access to employment – Arts 52, 53**

Migrant-specific rights

- **Effective protection by the State against violence, physical injury, threats and intimidation – Art 16(2)**
- **Prohibition on confiscation and destruction of identity and travel documents (e.g. passports) – Art 21**
- **Recourse to protection and assistance of consular/ diplomatic authorities of State of origin – Art 23**
- **Transfer of earnings and savings (remittances) – Art 32**
- **Free provision of information on Convention rights and conditions of admission and, as far as possible, in a language migrants can understand – Art 33**

Inter-state cooperation (Part VI)

➤ Obligations upon States to

- consult and cooperate to promote sound, equitable and humane migration conditions - Art 64(1)
- collaborate to prevent and eliminate irregular migration - Art 68
- punish traffickers, smugglers and those who exploit migrant workers (e.g. employers) - Art 68(1)-(2)
 - see also Trafficking and Smuggling Protocols supplementing UN Convention against Transnational Organized Crime 2000 (Palermo Convention)

“State sovereignty” clause

(Part VIII, Art 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.”

Application of Convention (Part VII)

➤ Migrant Workers Committee

<http://www2.ohchr.org/english/bodies/cmw/>

- 9 sessions held to date, commencing in March 2004
- States parties are required to submit initial reports (after one year) and then periodic reports (after 5 years) on application / implementation of Convention
 - Committee issues Concluding Observations
- Optional individual and inter-State complaint mechanisms
 - Mexico has made a declaration under Article 77 recognizing the competence of the Committee to receive and consider individual complaints (but this mechanism can only come into force once 10 states parties have made such a declaration)

Obstacles to ratification

➤ Practical/ administrative

- Inadequate knowledge
- Implementation
 - Length and complexity of instrument
 - Requires resources and coordination between different government departments

➤ Legal/ Political

- Explicit safeguards for irregular migrant workers
- Argument that migrant workers' rights are adequately protected by other human rights instruments
- Relevance – i.e. changes to labour migration landscape in the era of globalization
- General lack of political will

Regional legal frameworks

- **Africa**
 - African Charter on Human and Peoples' Rights 1981
 - Free movement regimes (e.g. ECOWAS, SADC)
 - **AU Migration Policy Framework for Africa 2006**
- **Americas**
 - American Convention on Human Rights 1969
- **Asia**
 - **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (13 January 2007)**
- **Europe**
 - Council of Europe standards
 - European Union
 - Free movement of EU workers regime
 - Developing EU law and policy on asylum and migration from third countries

American Convention on Human Rights

- **Advisory Opinion OC-18-03 of the Inter-American Court of Human Rights on the juridical condition and rights of undocumented migrants (17 September 2003)**
 - Request by Mexico for an authoritative opinion
 - Migratory status of a person cannot constitute a justification in depriving him/ her of the enjoyment and exercise of his/ her human rights, including those related to work and that the migrant, upon taking up a work related role, acquires rights by virtue of being a worker that should be recognised and guaranteed independently of his or her regular or irregular situation in the State of employment
- **Yean and Bosico v. Dominican Republic (8 September 2005)**
 - Discriminatory application of nationality and birth registration laws resulting in violations of rights of children of irregular migrants

Council of Europe standards

- **European Convention on Human Rights 1950**
 - Article 8 – right to respect for family and private life
 - Article 14 – non-discrimination (including nationality)
- **European Social Charter 1961/ Revised Charter 1996/ Collective Complaints Protocol 1995**
- **European Convention on the Legal Status of Migrant Workers 1977**
 - Only applicable to lawfully resident migrant workers from other Contracting parties
 - Equal treatment with nationals in defined areas
 - Ratified by 11 States parties
 - **Albania**, France, Italy, Moldova, Netherlands, Norway, Portugal, Spain, Sweden, Turkey, Ukraine
 - only Albania, Moldova, Turkey and Ukraine are not EU/EEA countries

Supplementary ways of protecting migrant workers' rights

- **UN Special Rapporteur on the human rights of migrants**
- **By engaging in global and regional cooperation processes (RCPs) on labour migration**
 - e.g. GFMD and Colombo Process (see slides below)
- **ILO Multilateral Framework on Labour Migration**
 - see ILO presentation
- **Through national provisions in countries of origin**
 - e.g. regulation and close supervision of private recruitment
- **By emphasizing legal status of workers in bilateral agreements and arrangements**
 - equitable standard employment contracts before departure
 - equal work and employment conditions with nationals

UN Special Rapporteur on the human rights of migrants

- **Thematic rapporteurship set up in 1999 (and renewed on 2 occasions) by Commission on Human Rights (now Human Rights Council) with following functions**
 - **To request and receive information from all relevant sources on violations of rights of migrants**
 - **To formulate recommendations to prevent/ remedy violations**
 - **To promote effective application of relevant norms/ standards**
 - **To take account of gender perspective and to give special attention to occurrences of multiple discrimination and violence against migrant women**
 - **To give particular emphasis to recommendations on practical solutions (e.g. identifying best practices)**
- **To date, 8 general reports issued and 18 country visits conducted - all examine situation of migrant workers**

Global Forum on Migration & Development - GFMD

- **Origins in UN General Assembly's High-Level Dialogue on Migration and Development in September 2006**
 - **States-driven process outside the UN system but with link through UN SG's Special Representative for Migration**
 - **First Forum held in Brussels on 9-11 July 2007**
 - **Second Forum held in Manila on 27-30 October 2008**
 - **Three Roundtables**
 1. **Migration, Human Rights and Development**
 2. **Secure Legal Migration can achieve stronger development impacts**
 3. **Policy and Institutional Coherence and Partnership**
 - **Civil Society days**
 - **GFMD website**
- http://government.gfmd2008.org/forum_info/gfmd_philippines2008.html**

Colombo Process

- **Regional consultative process on overseas employment and contractual labour for countries of origin in Asia**
- **11 member countries**
 - Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Viet Nam
- **IOM serves as Secretariat and provides technical support**
 - Ministerial-level meetings in Colombo 2003, Manila 2004, Bali 2005 and Abu Dhabi 2008
- **One thematic area includes protection of migrant workers and support services to migrant workers**
 - Regulatory frameworks and related measures to prevent malpractices and abuses in recruitment (e.g. close supervision of recruitment)
 - Establishment and operation of Migrant Welfare Funds
 - Pre-departure orientation services
- **In 2005, principal destination countries participated**
- **Abu Dhabi Declaration 2008**
- **Website <http://www.colomboprocess.org/>**

Conclusions

- **Greater awareness of application of human rights to all migrant workers and their families**
 - **Enhanced by the work of human rights treaty bodies and the UN Special Rapporteur on the human rights of migrants**
- **Steady progress in acceptance by countries of the 1990 Convention on Migrant Workers**
- **Importance of regional legal frameworks**
- **Global and regional consultative processes are increasingly devoting attention to the protection of the human rights of migrants, in particular migrant workers**

Thank you!