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**International Legal Framework for the Protection
of Migrant Workers**

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Session Content

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Temporary migrant workers and common abuses in the recruitment process

- **Particular problems faced by temporary lower-skilled workers**
 - **deliberate misinformation about the working and living conditions in the country of employment**
 - **the charging of excessive fees**
 - **requirement that employers sponsor migrant workers also results in abuses, such as**
 - **late payment of wages, contract substitution, restrictions on freedom of movement, and, in some cases, physical or sexual intimidation**
- **Source: M. Ruhs, *Temporary Foreign Worker Programmes: Policies, Adverse Consequences, and the Need to Make them Work*, Perspectives on Labour Migration 6 (Geneva: International Labour Office, 2003) pp. 13-15.**



International legal framework

- **International human rights law**
- **ILO international labour standards**
- **UN Convention on Migrant Workers 1990**
 - **N.B. This instrument is also one of the core 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, e.g.**
 - **Right to leave own country and enter/ return to that country**
 - **Right to freedom of assembly/ association**
 - **Rights to equal work and employment conditions**
 - **Rights to education/ health**
 - **Right to family life**



ILO international labour standards

- **Most standards are detailed articulation of Art 7 ICESCR**
 - **Right of everyone to enjoyment of just and favourable conditions of work**
- **ILO Convention No. 97 of 1949 (45 States parties)**
 - **Only applicable to lawfully resident migrant workers**
 - **Recruitment and orderly migration of foreign workers**
 - **Equal treatment with nationals in respect of wages and working conditions, trade union rights, social security, accommodation, access to courts**
- **ILO Convention No. 143 of 1975 (21 States parties)**
 - **Protects basic human rights of irregular migrants and rights arising out of past employment (unpaid wages, social security)**
 - **Principle of equal treatment of legal migrants with nationals**



UN Convention on Migrant Workers 1990

- **Adopted by UN General Assembly – 18 December 1990**
- **Entry into force – 1 July 2003**
- **35 States parties to date**
 - **Algeria, Azerbaijan, Belize, Bolivia, Bosnia, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timor-Leste, Turkey, Uganda, Uruguay**
- **Ratified almost exclusively by sending countries**



UN 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/ illegal 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 migrants**
- **Part VI – State cooperation/ obligations in promoting sound, equitable, humane and lawful 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/ illegal migrants**
- **Specific groups of (temporary) migrant workers**
 - e.g. seasonal workers/ project-tied workers
- **But not certain categories of foreigners**
 - e.g. IGO officials and diplomats, students or trainees, refugees, investors



Rights covered

- **Civil and political rights**
 - E.g. freedom from cruel, inhuman or degrading treatment, slavery, forced labour - Arts 10-11
 - Procedural protection against individual expulsion applicable to all migrant workers – Art 22
- **Employment rights**
 - Rights to equal work and employment conditions with nationals - Art 25
 - Trade union rights (freedom of association)
 - to join existing trade unions - Part III, Art 26
 - to form own trade unions and associations for promotion and protection of their interests - Part IV, Art 40
 - Rights arising out of past employment
 - Remuneration (past wages) - Art 25(3)
 - Social security - Art 27

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

- **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**
 - **Obligation on State parties to disseminate this information or “ensure that it is provided by employers, trade unions or other appropriate bodies or institutions” – Art 33(2)**



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 the Counter-Trafficking and Counter-Smuggling Protocols to the International Convention against Transnational Organised 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://www.ohchr.org/english/bodies/cmw/>

- Five sessions held to date, commencing in March 2004
- Third session (Dec 2005) – Day of General Discussion on “protecting the rights of all migrant workers as a tool to enhance development” (contribution to UN General Assembly High Level Dialogue on international migration and development, held on 14-15 Sept 2006)
- States parties are required to submit initial reports (after one year) and then periodic reports (after 5 years) on application / implementation of Convention
- optional individual and inter-State complaint mechanisms
 - not yet invoked by any of the 35 States parties



Obstacles to ratification

➤ Receiving countries

- Convention protects explicitly the rights of irregular migrants
- Misconceptions exist about certain provisions, such as the provision concerned with family reunification

➤ Sending countries

- Perceived competition from non-ratifying labour sending countries

- Source: Piper, N. and R. Iredale, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of all Migrant Workers 1990: The Asia Pacific Perspective* (Paris, UNESCO Oct. 2003)



Obstacles to Ratification (cont.)

- **Applicable to both receiving and sending countries**
 - **Inadequate knowledge of Convention**
 - **Length and complexity of instrument**
 - **Resources required for its implementation from more than one government department**
 - **Argument that migrant rights are protected adequately by other human rights instruments (e.g. UK Government)**
 - **Changes to labour migration landscape in the era of globalization**
 - **Lack of political will**



Regional legal frameworks

➤ Europe

➤ Council of Europe standards

- European Convention on Human Rights 1950
- European Social Charter 1961/ Revised Charter 1996/ Collective Complaints Protocol 1995
- European Convention on the Legal Status of Migrant Workers 1977

➤ European Union

- Free movement of EU workers regime
- Developing EU law and policy on asylum and migration from third countries

➤ Americas

- American Convention on Human Rights 1969



European (Revised) Social Charter

- Charter only applicable to lawfully resident migrants from other Contracting Parties
- But interesting decision of the European Social Committee under the Collective Complaints Protocol
 - Complaint 14/2003 International Federation of Human Rights (FIDH) v. France
 - Limitation of access to health care for children of irregular migrants is a violation of Art 17 of the Charter (protection and assistance to children and young persons)



European Union (EU citizens)

- **Free movement of workers regime**
 - **EU/European Economic Area (EEA) and Swiss nationals**
- **EU enlargement and free movement of labour**
 - **Transitional arrangements for new Member States' nationals**
 - **Only applicable to 10 Central and Eastern European countries (not Cyprus or Malta)**
 - **Normal rules apply to self-employment and services provision**
 - **As of 1 May 2006, free movement of labour only applies in 8 of the 'former 15' Member States (Finland, Greece, Ireland, Italy, Portugal, Spain, Sweden and UK)**
 - **Only Finland and Sweden (plus 7 new Member States) are not applying these arrangements to nationals from Bulgaria and Romania**



Commission policy plan on legal migration

(COM(2005) 669, 21 December 2005)

- **Follows Commission Green Paper on an EU approach to managing economic migration (Jan 2005) and proposed Directive on economic migration in 2001**
- **Describes situation and prospects of labour markets in EU as a “need” scenario**
- **Road map for 2006-2009 (for remainder of Hague Programme)**
 - **Legally binding measures proposed**
 - **General Framework Directive to guarantee a common framework of rights to all TCNs in legal employment in EU**
 - **4 Specific Directives on conditions of entry and residence of highly skilled workers, seasonal workers, intra-corporate transferees and remunerated trainees**
 - **Other activities**



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 Sept 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**



Other ways of protecting migrant workers' rights

- **National provisions such as regulation and close supervision of private recruitment**
 - e.g. Philippines
- **Emphasis on the legal status of workers in bilateral agreements and arrangements**
 - equitable standard employment contracts before departure
 - equal work and employment conditions with nationals
- **Engagement in global and regional cooperation and processes on labour migration**



ILO Multilateral Framework on Labour Migration

- **Plan of Action for migrant workers adopted by International Labour Conference in June 2004**
- **To be implemented by ILO and its constituents in partnership with other international governmental organisations**
- **Objective: to develop “a non-binding multilateral framework for a rights-based approach to labour migration, which takes account of labour market needs”**
- **Framework adopted by Tripartite Meeting of Experts in Dec 2005 and ILO Governing Body approved its publication and dissemination in March 2006**
 - **Comprises international principles and guidelines on best practices in a broad range of areas**
 - **Available from ILO website**

<http://www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf>



Colombo Process

- **Labour Migration Ministerial Consultations for Countries of Origin in Asia**
- **Composed of governments of major Asian sending countries**
 - **Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam and Afghanistan**
- **Process assisted by IOM**
 - **Meetings in Colombo 2003, Manila 2004, Bali 2005**
- **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**
- **Process recently expanded to encompass the participation of receiving countries (e.g. Gulf States such as Kuwait)**



Conclusions

- **Greater awareness of application of human rights to all migrant workers and members of their families**
 - **Assisted by the work of human rights treaty bodies and the Special Rapporteur on the human rights of migrants**
- **Steady progress in acceptance by States of the UN Convention on Migrant Workers**
- **Renewed attention to rights of migrant workers in the globalized economy**
- **Global and regional processes devoting more attention to protection of migrant workers' rights**

Thank you.



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