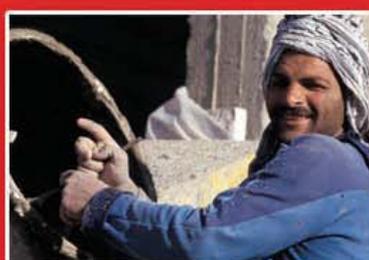




International  
Labour  
Office

# International Labour Standards on Migrant Workers' Rights

Guide for Policymakers and Practitioners in Asia and the Pacific



BANGKOK 2007

# **International Labour Standards on Migrant Workers' Rights**

Guide for Policymakers and Practitioners in Asia and the Pacific

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INTERNATIONAL LABOUR OFFICE  
BANGKOK 2007

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## PREFACE

**M**igration for work is becoming an increasingly permanent feature of today's labour markets. Growing inequality between and within countries has added the incentive—and in some cases created the bare necessity—for people to explore economic opportunities abroad. Continuously lower opportunities of women to secure productive work at home explain their growing presence at the lower echelons of the migrant workforce alongside men.

Migration for work is controversial. Proponents extol its virtues of relieving unemployment pressures at home and filling labour market shortages in the host country; providing migrant workers with opportunities for skills development abroad; and generating remittances that boost home economies. Opponents lament the failure to create decent work and the accompanying 'brain drain' in the sending countries; the downward pressure on working conditions caused by large inflows of migrant workers, fewer employment opportunities for unskilled nationals, and lower productivity gains; or threats to national security or sovereignty in the host economies.

Different countries experience different labour market needs, and it is one of the tasks of social dialogue in Asian and Pacific societies to find the optimal blend between the national and migrant workforce. Whatever the outcome of that dialogue may be, proponents and opponents at the international level agree on at least one point: Everyone will only benefit from orderly migration. This implies that the exploitation of regular or irregular migrant workers is never an option.

In this perspective, the member States of the International Labour Organization have laid down certain rights which regular and irregular migrant workers should enjoy, irrespective of the particular labour migration policy of their home or host country. This publication aspires to be a handy reference guide, explaining these rights from the vantage point of the migrant worker to policymakers and practitioners.

I thank the authors of this Guide, Tim De Meyer, Busakorn Suriyasarn and Nelien Haspels. The Guide results from a joint effort by the ILO's Subregional Office for East Asia and the Project Managing Cross-border Movements of Labour in South-East Asia in cooperation with the Asian Project on Governance of Labour Migration and the Mekong Subregional Project to Combat Trafficking

in Children and Women, with resources provided by the Government of Japan and the ILO.

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Bill Salter  
Director  
Subregional Office for East Asia  
ILO Bangkok

# INTRODUCTION

# 1

## 1. Global labour migration

---

Migration is an important global issue. The number of international migrants has more than doubled worldwide during the last 30 years, from 75 million in 1965 to 191 million in 2005. This means that 1 in 35 people or 3 per cent of the world's population are now living outside their home countries.<sup>1</sup>

Of the world's nearly 200 million migrants, the International Labour Office (ILO) estimates that 90 million men and women were migrant workers in 2005.<sup>2</sup> The United Nations (UN) Population Division puts the figure of international migrants in Asia at 53 million in 2005, about half of whom are working. This figure does not include internal migrant workers. Estimates by non-governmental organizations are usually higher.

## 2. Push and pull factors of migration

---

Current migration patterns are part of larger change processes. Accelerated global integration of markets, combined with hugely improved travel and communications, enable increasingly more people to move across borders. Most migrants seek job opportunities abroad because they cannot find work and earn enough to support themselves and their families in their own countries. The widening gaps in incomes and standards of living within and between countries add to the pressure to migrate.

At the macro level, the shortages of workers in economically better-off countries and the oversupply of workers or underemployment in less-well-off countries are important pull and push factors of migration. Social and economic insecurity and political crises in some countries also force people to leave home. Given the accelerating forces of global integration, movements of people across borders are an increasingly inevitable and permanent feature of today's world. The reality is that more people will continue to migrate for jobs. The challenge for policymakers is how to influence migration in ways that maximize the potential benefits and mitigate negative effects for workers, companies and societies.

### 3. Benefits and costs of migration

---

There are costs and benefits associated with labour migration. On the up side, higher wages and remittances afford migrants and their families better standards of living and security. Migrant-sending countries enjoy several potential benefits, including remittances that contribute to poverty reduction, reduced unemployment, and the sharing of skills and technology. On the down side, the sending countries lose a share of their labour force, often young workers, tax income and national output.<sup>3</sup>

Skilled workers and professionals have more bargaining power and consequently enjoy proper compensation and rights' protection. Migrant workers in low- and semi-skilled jobs typically fare less well. They are often at a greater disadvantage because they tend to work in occupations or sectors of work at the fringes of legal governance. Low-skilled and semi-skilled migrant workers, who form the majority of migrant workers, usually encounter numerous problems in the migration process and in destination countries. Due to their low levels of education, race or ethnicity, sex, employment and migrant status, they face more risks and vulnerabilities to discrimination, exploitation and abuse than those in highly skilled jobs. In the host countries migrant workers often end up being excluded from the protection, rights and entitlements enjoyed by nationals.

Migrant-receiving countries also need to weigh benefits with costs. Companies and countries gain economically from the labour of migrant workers, but orderly migration management requires resources which receiving countries are sometimes hesitant to allocate. For example, it is often difficult and sometimes impossible for migrant workers to access the host country's public education and health care services. In addition, despite little evidence to support allegations that foreign migrant workers take jobs away from nationals, strong negative sentiments against migrant workers exist, compromising the fair treatment of migrant workers in host societies.

Given the potential gains against the prospect of unemployment or insecurity at home, more migrant workers than ever are taking the risks to migrate for what they see as a better future. Governments of both sending and receiving countries need to cope with the increase in labour migration. Investment in proper management of migration flows is needed to curb the growth of irregular migration, including human trafficking. Prevention of abuse is more cost-effective than only taking remedial action in worst case scenarios.

### 4. Labour migration trends in Asia<sup>4</sup>

---

Movements of people across borders in Asia have historically been informal. Governments, especially of receiving countries, have made efforts to regularize

migration flows. However, in Asia the number of men and women traveling for employment overseas through government-sponsored programs has fallen drastically. Migration in the region, as in other parts of the world, is increasingly organized by private intermediaries and recruitment agencies. While some recruitment agencies are large firms, the overall majority are small-scale and often unregistered ventures.

This puts more migrant workers at risk of recruitment malpractices and rights' violations. Irregular migration in the region, including smuggling and trafficking in persons, is taking on new forms and dimensions, not only raising concerns about the exposure of migrant workers to exploitation and abuse, but fueling fears about national security and public order.

Recent trends show that more Asian workers from both traditional source countries like India, Pakistan, the Philippines, Indonesia and Sri Lanka and emerging source countries like Bangladesh, Cambodia, Lao PDR and Viet Nam are now finding jobs in other Asian countries. Among the main receiving countries in Asia are Japan, the Republic of Korea, Malaysia, Singapore, Thailand, Brunei Darussalam, Hong Kong Special Administrative Region (China) and Taiwan (China).

The trends reflect a shift from the traditional out-flow of Asian migrant workers to Middle-Eastern destinations of the past two decades. Of the 25 million migrant workers in Asia, many are employed in neighbouring countries, such as Indonesians in Malaysia, Cambodians, Laotians and ethnic Burmese as well as indigenous and tribal peoples from Myanmar in Thailand, Afghans in Pakistan, Nepalese and Bangladeshis in India, and Samoans and Kiribatians in New Zealand, besides the millions of South and Southeast Asians in the Middle East, Europe or the United States. Decreasing economic opportunities and loss of land, and vulnerability to trafficking, have resulted in increased migration and urbanization of indigenous and tribal peoples in the region.

Almost all labour migration within Asia is classified as temporary. Most migrant workers leave on fixed-term contracts of one to two years. The migration flow is largely dominated by low-skilled and semi-skilled migrant workers, such as those in construction, domestic service, entertainment and manufacturing. The global trend of feminization of migration is evident in Asia, where half of the workers seeking employment overseas are now women, many of whom migrating on their own, especially women migrant workers from Cambodia, Lao PDR, Myanmar, Indonesia, the Philippines and Sri Lanka.

## 5. How international labour standards help migrant workers

---

States have the sovereign right to develop their own labour and migration policies. This requires coherent and comprehensive national policies to effectively manage labour migration, including the protection of the rights of migrant workers. Special

attention should be given to the multiple disadvantages and discrimination often faced by migrant workers on the basis of their sex, race or ethnicity, employment and migrant status.

The ILO's member States have committed themselves to protecting the rights and interests of migrant workers in the ILO's Constitution of 1919—a commitment which was reiterated in 1944<sup>5</sup> and reaffirmed in 1998 when the ILO Declaration on Fundamental Principles and Rights at Work called for “special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers.” The United Nations<sup>6</sup> and the International Labour Organization have also adopted several standards specifically aimed at protecting international migrant workers' rights.

In recent years, the management of globalization and increased migration flows have become issues of pressing concern for policymakers, employers, workers and their respective organizations, and civil society worldwide. International labour standards adopted by governments, workers and employers lay down the basic minimum social standards so that people can work in freedom, safety and dignity. The standards are there to ensure that economic development is not pursued as an end in itself but as a means to improve the lives of people. They help governments and employers to avoid the temptation of lowering labour costs to gain advantages in international trade by creating a level playing field in the global economy.

International labour standards inspire the development of national legislation, policies and practices. Millions of workers have benefited from national laws enacted to comply with international labour standards, although only a small number of them may be aware of the connection between, for example, a poster on occupational safety and health standards in their factory, or rules on rest periods and maternity leave in the workplace, and the corresponding Convention. In this way the ILO standards have a real impact on the lives and working conditions of millions of workers, including migrant workers.

## 6. Aims of the Guide

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This Guide provides an update on the rights of migrant workers as laid down in international labour standards for use by policymakers and migration practitioners in Asia and the Pacific with a view to facilitate the design and implementation of appropriate policies and practical measures for matching labour market needs with the internationally agreed rights of migrant workers. Migration has many faces, male and female of different racial, social and ethnic origins and nationalities. It is hoped that this Guide will contribute to a better understanding and respect for their fundamental human and workers' rights.

The Guide is intended for policymakers and those dealing with migration in the public and the private sector on a day-to-day basis. It aims to familiarize senior and middle management levels in the many government agencies dealing

with migration with the specific employment and labour aspects of migration. It also hopes to inform employers and their organizations which are faced with a demand for labour that national supply is not able to satisfy, and workers and their organizations who are sometimes caught between seemingly conflicting interests to protect national and foreign workers. Migrant workers and their organizations as well as civil society groups interested in advocating workers' rights and building strong, sustainable and harmonious labour relations among diverse work forces in societies may also find this Guide useful.

The Guide has been prepared for policy makers and practitioners dealing with migration in Asia and the Pacific. For this reason facts and examples focus on migration realities in this region. However, migration is a worldwide phenomenon. Countries and their citizens everywhere need to come to grips with similar challenges and may benefit from experiences, lessons and good practices learned elsewhere. Therefore, the scope of the Guide may have relevance beyond the Asia-Pacific region and it is hoped it may serve as inspiration in other parts of the world.

## 7. Contents of the Guide

---

The Guide has five chapters, including this Introduction. Chapter 2: *A Fair Deal for Migrant Workers* explains basic terms and concepts in the migration and discrimination field and gives an overview of the international labour standards that are especially relevant to the protection of migrant workers' rights.

Chapter 3: *The Rights of Migrant Workers* describes the fundamental principles and rights at work which apply to all workers and specifies migrant workers' rights as laid down in international labour instruments at all stages of the migration process, from pre-departure and during the journey, on arrival, during employment, to return and repatriation.

Chapter 4: *The ILO and International Labour Standards* addresses questions the reader may have about the ILO and international standard setting. What is the role of international standards and why do ILO member States adopt them? How are these standards developed, how are they applied in national contexts and what is their use in practice?

Chapter 5: *Application of International Labour Standards* describes the mechanisms and procedures of the ILO to assist countries in implementing the provisions in the standards. It sets out the various forms of dialogue and the different types of complaints and procedures that are in place to help secure the rights and freedoms of all workers, including those who have migrated to earn a decent living.

The endnotes give exact references to the sources, so that readers interested in the precise wording of an instrument can easily find what they are looking for. The annexes provide additional information:

- Annex 1 provides a list of international labour standards relevant to migrant workers, including ILO Conventions and Recommendations and web links, as well as United Nations and regional instruments.
- Annex 2 contains the bibliography, other relevant publications, training and advocacy materials and web links on international migration.
- Annex 3 gives an overview of the ratification status of key migrant workers conventions.
- Annex 4 contains ILO guidance on the application of Forced Labour Convention, 1930 (No. 29).
- Annex 5 gives examples of CEACR observations and direct requests to governments.
- Annex 6 contains a glossary of terms and definitions used in the Guide.

## A FAIR DEAL FOR MIGRANT WORKERS

# 2

The ILO promotes opportunities for all men and women of working age, including migrant workers, to obtain decent and productive work in conditions of freedom, equity, security, and human dignity. Decent work for migrant workers means that they should be entitled to:

- fundamental human rights at work, including the right to be protected against discrimination on the basis of sex, racial, ethnic and social origin, religion and political opinion
- productive work as the basis of a livelihood
- protection against accidents, injuries and diseases at work, and social security
- social inclusion and participation in social dialogue.

### 1. Who are 'migrant workers'?

---

**Migrant workers** are people who leave home to find work outside of their hometown or home country. Persons who move for work in their own country are 'domestic' or 'internal' migrant workers. Persons who move for work to another country are commonly called 'foreign' or '**international**' migrant workers.

Migrant workers are considered 'regularly admitted' or 'regular migrant workers' when their entry and work activity comply with the immigration laws of the country in which they work. When migrant workers are employed without being regularly admitted—or without being able to produce evidence of their regular admission, they are considered 'irregular' or 'undocumented' migrant workers. Although irregular migrant workers may not necessarily be 'regularized' only because they have been working, they are still entitled to their human rights at work.

**International migrant workers** include workers migrating for short-term or seasonal work as well as for permanent settlement. These workers may migrate:

- under government-sponsored programmes
- under private recruitment schemes (e.g., involving private recruitment agencies)
- on their own account in search for employment.

If the irregular entry into the foreign country is deliberate and assisted by a person who derives a benefit from this violation of immigration laws, the migrant worker has been ‘smuggled’.<sup>7</sup> If the irregular entry does not result from such consensual transaction, but from fraud with the intention to exploit a person, the person has been ‘trafficked’. However, regular migrant workers can also be or become victims of trafficking.<sup>8</sup> (See Box 1.)

### Box 1: Refugee and victim of trafficking in persons

Two other categories of international migrants are covered by international labour standards governing migration for employment when they are workers employed outside of their home country: (i) refugees and displaced persons, and (ii) victims of trafficking in persons.

#### **Refugee**

A ‘refugee’ is a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his/her nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country.”\* The difference with a migrant worker is that a migrant worker chooses to emigrate to another country, while a refugee (or a displaced person) is driven from his or her home country, or cannot safely return to it.

#### **Victim of trafficking in persons**

A ‘victim of trafficking’ is a person who has been deceived or forced into a situation of sexual or labour exploitation. Trafficking in persons may take place within as well as across international boundaries. A person who has been trafficked across national frontiers is the victim of a crime, not the perpetrator of a criminal offence (e.g. violation of immigration laws). A victim of trafficking is often also a migrant worker, but the defining difference is that a trafficking victim’s involvement in an exploitative situation is not based on fully informed consent, but on either deception or coercion.\*\*

\* Article 1 A of the 1951 United Nations Convention Relating to the Status of Refugees.

\*\* The most recent and most widely accepted definition of trafficking is given in the (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000:

- “Trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a **threat** or **use of force** or other forms of coercion, of abduction, of fraud, of **deception**, of the **abuse of power** or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation. Exploitation shall include, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
- The **consent** of a trafficking **victim to the exploitation** shall be **irrelevant** where any of the **means** mentioned above, such as the abuse of power, have been **used**.
- The recruitment, transportation, transfer, harbouring or receipt of a **child** for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does **not involve any of the means** mentioned above.
- “**Child**” shall mean any person **less than eighteen** years of age.

## 2. Migrant workers and international labour standards

ILO Conventions and Recommendations are meant to apply to *all workers irrespective of their nationality*. In other words, international labour standards apply to migrant workers in the same way as they apply to workers who are citizens. This means that, in principle all the international labour instruments are relevant to migrant workers as they set out the minimum labour standards that have been universally agreed upon at the international level.

This Guide refers primarily to the international labour standards that are of specific relevance for the protection of migrant workers' rights and explains the substantive areas in which all migrant workers should enjoy equal treatment and opportunities. These international labour standards can be roughly divided into three categories:

- standards on migration as an element of employment policy
- standards articulating fundamental principles and rights at work
- other standards that are relevant to migrant workers including those concerning social security, employment policy, private and public employment agencies, employment and working conditions, as well as those covering sectors with large numbers of migrant workers.

## 2.1 International labour standards on migration

States have the sovereign right to determine who enters their territory and their labour market. To ensure that sovereignty does not run counter to the equal treatment principle provided in international labour standards—and to provide for protection during the migration process—the ILO's member States adopted five up-to-date instruments (two Conventions and three Recommendations) specifically for international migrant workers:

- Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation (Revised) 1949, (No. 86)
- Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151).

It is to be noted that the 'migrant workers' referred to in these standards include *only* 'foreign' or 'international' or 'external' migrant workers, and *not* 'domestic' or 'internal' migrant workers. In addition, the two migration Conventions (Nos. 97 and 143) refer to the rights of migrant employees, and do not cover the rights of foreign citizens who are self-employed workers.<sup>9</sup>

## 2.2 Fundamental Principles and Rights at Work

In recent years, a consensus has emerged that certain standards form the foundation of equitable social and economic development. In order to enable ILO member States to cope with the competitive pressures of global economic integration and ensure that the principles underlying these standards as laid down in the ILO Constitution are recognized, respected and realized everywhere, governments, employers' and workers' organizations adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998.

The Declaration's Preamble specifically calls for special attention to "*persons with special needs, particularly the unemployed and migrant workers,*" and efforts at all levels to resolve their problems.

The Fundamental Principles and Rights at Work cover four areas:

- Freedom of association and the right to bargain collectively
- Elimination of all forms of forced or compulsory labour
- Effective abolition of child labour
- Elimination of discrimination in employment and occupation.

**Box 2: Fundamental Principles and Rights at Work and concerned Conventions**  
(see also Annex 1)

Freedom of association and the right to bargain collectively	<ul style="list-style-type: none"> <li>• Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).</li> <li>• Right to Organize and Collective Bargaining Convention, 1949 (No. 98).</li> </ul>
Elimination of all forms of forced or compulsory labour	<ul style="list-style-type: none"> <li>• Forced Labour Convention, 1930 (No. 29).</li> <li>• Abolition of Forced Labour Convention, 1957 (No. 105).</li> </ul>
Effective abolition of child labour	<ul style="list-style-type: none"> <li>• Minimum Age Convention, 1973 (No. 138).</li> <li>• Worst Forms of Child Labour Convention, 1999 (No. 182).</li> </ul>
Elimination of discrimination in employment and occupation	<ul style="list-style-type: none"> <li>• Equal Remuneration Convention, 1951 (No. 100).</li> <li>• Discrimination (Employment and Occupation) Convention, 1958 (No. 111).</li> </ul>

The ILO Declaration on Fundamental Principles and Rights at Work makes it clear that these principles and rights are universal and *apply to all human beings in all countries*—regardless of nationality or residence or migrant status, and regardless of countries’ level of economic development. These basic principles and rights must be respected even in countries whose governments have not ratified the Conventions concerned. On several occasions the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have made comments on the application of these standards to irregular migrant workers (see Box 24, in Section 1.2 of Chapter 5).

### 3. Equality at work and discrimination

#### 3.1 What is equality at work?

**Equality at work** is a fundamental value and principle, enabling workers to claim a fair share of the wealth which they help generate.

- The principle of **equal opportunity** at work aims to ensure that people can develop their economic potential to the fullest, and can allocate their time and energy where productive use and reward are the highest.

- The principle of **equal treatment** intends to ensure that people's work performance is rewarded according to productivity and merit, taking into account the objective characteristics of the job (e.g., skills, knowledge, responsibilities, working conditions), and without interference of considerations unrelated to merit (e.g., sex, race or religion).

Host economies benefit if they make full use of the potential of the migrant workers they attract. Migrant workers, host and home economies benefit alike if the workers are paid and treated the same for the same amount of wealth they help create. Discriminatory practices erode equality of opportunity and treatment at work.

### 3.2 What is discrimination?

**Discrimination at work** is a difference in work-related treatment or opportunity for which there is no objective or legitimate justification. For example, productivity or prior qualifications may be a legitimate reason to pay one person more than another one for a job of equal value. However, discrimination occurs when two persons of the same merit but of a different race, colour, sex or descent are paid different salaries for the same job or a job of equal value.

**Discrimination** is defined in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as *any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin<sup>10</sup> which nullifies or impairs equality of opportunity or treatment in employment or occupation*. In many countries, discrimination in employment is also prohibited on the basis of physical or mental disability, age, marital status, maternity, sexual orientation, material well-being or being HIV-positive.<sup>11</sup>

Convention No. 111 specifically prohibits any form of *direct* and *indirect* discrimination:

- **Direct discrimination** exists when unequal treatment between workers of different race, colour, sex or any other ground covered by the Convention stems directly from laws, rules or practices making an explicit difference between workers on these grounds. For example, laws which do not allow women to sign contracts. A labour law stipulating that internal rural migrants shall receive less pay in cities than the residents of these cities. Or job advertisements which specify the appearance and sex of the candidates. Or legislation excluding women migrant workers from the right to maternity protection.
- **Indirect discrimination** means rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by persons of one sex, race, colour or other characteristics. For example, setting requirements for managerial or secretarial jobs which are irrelevant to the job such as height or weight levels that typically only people of one sex, race or colour can meet.<sup>12</sup> General rules or legislation restricting the rights of

workers in domestic service, when it is known that domestic workers in the country are predominantly women migrant workers (from a certain ethnic origin) could be considered to be indirect discrimination on the basis of sex (and race/ethnic origin) of migrant workers.

### 3.3 What is not discrimination?

Recruiting exclusively from among groups representing a certain race, colour, sex, ethnic or social origin, religion or political opinion is discriminatory. However, employment practices are not considered to be discriminatory when they are based on the actual and real needs of a job, for example, employing male and female attendants in bathrooms for the respective sexes. Exceptionally, sex, race or religion, for instance, can be a legitimate, inherent requirement of the job.

#### Box 3: Sex, race, religion and inherent requirements of the job

While discrimination is not condoned and selection should be based on requirements of the job, there are situations of business necessity where a person's sex, race, nationality or origin could be a requirement for the job. Such situations of business necessity might include:

- Food & beverage services where race, language or religion is a requirement or qualification for the job.
- Personal services such as health, welfare, education where the holder of the job provides services to other individuals that can most effectively be performed by persons of the same or other sex or race.

In such situations of business necessity the employer has to explain this and make it clear that selection is based entirely on job requirements.

#### Examples of specific requirements for business necessities

- Language requirements, e.g. companies with business interests in China which are recruiting officers to handle major Chinese clients may require the officers to be conversant in Mandarin. The language requirement should be stated clearly: "Conversant in Mandarin" instead of "Chinese only".
- Religious sensitivities, e.g. employees working in a Halal kitchen must be in compliance with the certified requirements of MUIS [the *Majlis Ugama Islam Singapura* or Islamic Religious Council of Singapore]; cashiers in a supermarket may be required to handle pork at check-outs.

Source: Ministry of Manpower Singapore, (*Tripartite*) *Code of Responsible Employment Practices*, Recruitment and Selection, Case Study Series 1/2004, Appendix A, 2002.

### 3.4 What is positive action?

Different treatment or opportunities for specific groups of people is also allowed—and often called for—if their objective is to:

- protect a certain group of workers on special grounds, for example, the protection of the reproductive function of all workers of child bearing age
- promote equality by positive or affirmative action or special temporary measures.

#### Box 4: What is positive action and why is it needed?

**Positive or affirmative action** consists of temporary measures to redress the effects of past discrimination in order to establish 'de facto' equality of opportunity and treatment between population groups in society. Such measures are targeted at a particular group. They are intended to eliminate and prevent discrimination, and to offset the disadvantages arising from existing attitudes, behavior and structures based on social, racial and/or gender stereotypes. The adoption of such policies stems from the observation that the legal banning of discrimination has not proved sufficient to create equal outcomes and real equality in practice.

Affirmative action in favor of a particular population group, such as women, indigenous peoples or ethnic minorities, to redress the effects of past discrimination should not be considered discriminatory against other groups. Once the consequences of past discrimination have been rectified, the measures should be removed.

#### **Examples of positive action**

The Regulations allow employers to proactively encourage people of particular religions or beliefs to apply for certain jobs, or take up opportunities for training, as part of any initiative to redress the effects of previous inequality of opportunity. For example, employers may:

- place advertisements in the ethnic press to encourage applications from a particular minority religion
- provide bridging courses to enable potential applicants from disadvantaged religious groups to compete from a more level playing field
- train existing employees for work which has historically been the preserve of individuals from a particular religious background.

Employers must state the reasons for the positive action in any advertisements and in the workplace because it may otherwise be viewed as discriminatory.

Adapted from: ILO, *ABC of Women Workers' Rights and Gender Equality*, ILO: Geneva, 2000, p. 10; and The Muslim Council of Britain, *Muslims in the Workplace: A good practice guide for employers and employees*, London, 2005.

## 4. Racial and ethnic discrimination against migrant workers

Commonly recognized forms of racial discrimination against migrant workers include:

- **direct discrimination:** less favourable workplace treatment, on grounds of race or colour, than a person of a different racial group is or would be treated in the same or similar circumstances
- **indirect discrimination:** the effect of certain requirements (e.g. hairdress), conditions (e.g. performance monitoring) or practices (e.g. blaming for common incidents) has a disproportionately negative impact on members of one racial group
- **racial harassment:** engaging in conduct or comments that should reasonably be known to be unwelcome, for example, using racial epithets, slurs or jokes
- **racial stereotyping:** using race, and particularly any negative characteristics associated with it, to process information about individual persons
- **victimization:** being singled out, on grounds of race, colour or ethnic origin, for using complaint procedures or exercising legal rights.

### Box 5: Excerpts from the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Programme of Action:

*29. Urges States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law, and further urges States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions.*

...

*31. Urges States, in the light of the increased proportion of women migrants, to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect; detailed research should be undertaken not only in respect of human rights violations perpetrated against women migrants, but also on the contribution they make to the economies of their countries of origin and their host countries, and the findings should be included in reports to treaty bodies.*

## 5. Gender dimension of migration<sup>13</sup>

### 5.1 Feminization of migration

In 1960, female migrants accounted for nearly 47 out of every 100 people who lived and worked outside their countries of birth. Since then, the share of female migrants has been rising steadily.<sup>14</sup> By 2000, an estimate of 95 million female migrants accounted for almost half of the world's international migrants<sup>15</sup> and they form a substantial part of internal migration flows.

More and more women are migrating alone to work abroad. Often the primary breadwinners of the families, many end up going abroad several times over their life cycle, taking up a series of work over a number of years and in some cases even permanently.<sup>16</sup> This trend will continue.<sup>17</sup>

In developing countries that admit migrants exclusively for temporary labour purposes, the share of women in labour migration flows has been increasing since the late 1970s. The main destinations of female migrant workers are Western Asia, the Pacific Rim, East and Southeast Asia. By 2000, the number of female migrants was estimated to have surpassed that of male migrants in East and Southeast Asia (5 million versus 4.9 million).<sup>18</sup>

There is a high concentration of female migrants from some sending countries in Asia. For example, national level estimates indicate that in 2000, women represented 68 per cent of the 2.5 million Indonesian migrant workers abroad, 75 per cent of some 1.2 million Sri Lankan migrant workers abroad, and 46 per

cent of the nearly 3 million documented and 1.8 million undocumented Filipino migrant workers abroad.<sup>19</sup>

Migration involves women of all age groups and educational and social backgrounds. Some are well-educated and able to find jobs consistent with their qualifications. Many others from low-income backgrounds and not so well educated often end up in low-skilled jobs.<sup>20</sup> The demand for women migrant workers is greatest in sectors associated with traditional female roles such as domestic work, nursing and personal care services, cleaning, entertainment and the sex trade, as well as retailing and labour-intensive manufacturing in small factories and sweatshops.<sup>21</sup>

## 5.2 Gender discrimination in the labour market

In most countries, direct discrimination based on sex is prohibited by law. In practice, however, women continue to encounter discrimination in one or more forms during their working lives. In the world of work, women are typically concentrated in ‘the five Cs’ occupations: caring, cashiering, catering, cleaning and clerical. These jobs are mostly in small, non-unionized firms, where women have less bargaining power and less possibility to improve their economic situation, compared to male workers.<sup>22</sup>

This situation is mirrored and compounded in the sphere of migration for employment:

- ***In the countries of origin***, poverty, labour market discrimination, limited access to productive resources, and shrinking opportunities to engage in economic activity are among the factors pushing women into migration. For example, higher unemployment rates among young women (15 – 24 years old) are more pronounced in countries that export a large number of women migrant workers like Indonesia and the Philippines.<sup>23</sup> Restrictions on women’s legal migration, lack of education and violence often push women into irregular migration and add to their vulnerability to trafficking.
- ***In the host countries***, women migrant workers often have higher educational levels than their male counterparts. However, their university degrees or other educational qualifications are not necessarily recognized in the host countries. Scarcity of high-skilled jobs for women results in many women migrant workers working in jobs for which they are over-qualified.<sup>24</sup> For the most part, the types of jobs for which there is a great demand for women migrant workers commonly reflect traditional female roles, sex and gender stereotypes in the domestic and sexual spheres and in the care economy—occupations that tend to ‘deskill’ women migrant workers.<sup>25</sup>

## 5.3 Vulnerabilities of women migrant workers

Migration experiences differ for men and women, but migration and labour market policies often do not take this into account. There are relatively more

job opportunities for men migrant workers that offer legal channels of migration such as work in construction and agriculture. In contrast, most job opportunities for women migrant workers tend to be in unregulated sectors that do not always recruit through legal channels.

The lack of legal protection of workers in these sectors usually leaves millions of women migrant workers vulnerable to substantial abuses. Lacking the channels to migrate legally, women find themselves in dangerous situations. They are at a greater risk than men to trafficking and other dangers during the migration process. After arrival at the destination country, they are more likely to face multiple discrimination, and various forms of exploitation and abuse, including severe exploitation and enslavement in prostitution and domestic work, and forced labour. Women also have additional concerns of sexual harassment and rape, and being dismissed from work due to pregnancy.

The low regard for women and the types of mostly low-skilled and semi-skilled jobs that they perform adds to their vulnerability. Their other social characteristics such as race or ethnicity, class, and religion can also come into play. Discrimination against women usually intersects with other forms of discrimination. Women migrant workers face multiple forms of discrimination:<sup>26</sup>

- as women vs. men
- as foreigners vs. nationals
- as dependents vs. autonomous migrants
- as irregular vs. regular documented migrants.

#### Box 6: Domestic workers

Many women migrants are engaged in domestic work. Indonesia, Sri Lanka and the Philippines have been sending greater numbers of female migrant workers to the Arab States in the past ten years mainly to work as domestic workers.\* Thailand receives many women migrants from neighboring countries who find jobs as domestic workers. Other receiving countries of female domestic workers in Asia are Hong Kong SAR, Malaysia and Singapore. Internal migration flows of domestic workers are also considerable.

Domestic work is not protected by labour laws in many countries, as a result domestic workers, mostly women and girls, are particularly vulnerable to discrimination, exploitation and abuse.

They are often at risk of falling victim to trafficking, forced labour and debt bondage. Many domestic workers suffer extremely poor working conditions and other rights violations at work including:

- very low pay (often far below minimum wage)
- long working hours (up to 15-18 hours)
- no regular holidays and few days off
- insufficient food and accommodation
- confinement and isolation
- withholding or delaying salary payment, and seizure of identification documents
- harassment and violence at work including physical, psychological and sexual abuse.

\* Source: ILO, "Female Migrant Workers in the Labour Market: Global challenges and trends," *ILO Gender News*, International Women's Day, 8 March 2007 – Special Issue on Women and Migration, p. 2

The overall feminization of international migration is likely to continue. New forms of exploitation arise as globalization enables increasing migration for labour

at the same time of decreasing regulation of the markets and growth of the informal economy. Governments are tightening controls of their borders amidst growing irregular migration. This interplay sets the scene for exploitation of migrant workers, especially women, who are or easily become irregular migrants, eking out a living in the informal or illegal economy and not able to escape poverty.<sup>27</sup> This trend, coupled with the hardened attitudes towards migrants in general and gender-biased attitudes and perceptions in particular, spells increased challenges for women migrant workers.

#### 5.4 Mainstreaming gender into labour migration policies

Migration for work brings many benefits to women migrant workers and their families. In many instances, it has transformed women into family breadwinners and crucial economic agents who play a major role in poverty alleviation and development of their communities and countries of origin. However, these benefits of migration have not been matched with protection of the rights of women migrant workers.

Labour migration policies should aim to eradicate discrimination and inequality against women migrant workers, so that they can enjoy decent working conditions and respect for their fundamental human and workers' rights.<sup>28</sup> **Key gender equality rights at work** include:<sup>29</sup>

- equality of opportunity and treatment between men and women in employment
- equal pay for work of equal value
- maternity protection
- better balance and sharing of paid and unpaid work between men and women workers with family responsibilities.

##### Box 7: What is gender mainstreaming?

- The ultimate goal of mainstreaming is to achieve gender equality.
- Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels.
- It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated.

Source: United Nations Economic and Social Council (ECOSOC): Agreed Conclusions E/1997/L.30, p. 2.

Greater protection for these rights will maximize benefits to all—the women workers themselves, their families and communities, and the home and host economies.

For this reason, it is imperative that the gender perspective be brought into the mainstream of all migration policies, programmes and activities. In 1995, at the Fourth World Conference of Women, 189 UN member States made a collective

commitment to ensuring that a gender perspective is reflected in all policies and programmes to promote equality and eliminate inequality between men and women in societies.<sup>30</sup>

Mainstreaming gender into migration policies and programmes in home and host countries means, among others:

- sex-disaggregated data collection and analysis, and application of such data in policies and programmes
- recognition of the similarities and differences in the migration experiences of different categories of women and men in relation to vulnerabilities, rights' violations and their effects
- addressing the differential and often discriminatory impacts of legislation, policies and programmes on different groups of women and men, for example:
  - eliminating 'protective' measures for women which restrict their entry into safe and productive migrant work
  - eliminating discrimination on the basis of pregnancy and family status as it puts the responsibility of human reproduction exclusively on women
  - ensuring the reproductive rights of men and women migrant workers of child bearing age and maternity protection for women migrant workers
- voice and representation of women migrants so that their views and perspectives are taken into account in policy making and decision making mechanisms
- extension of labour protection to all economic sectors and occupations, including those dominated by women migrant workers such as domestic work
- promotion of equality of opportunity and treatment for women migrant workers by designing special measures to combat harmful gender stereotypes and eliminate discrimination in migration for employment.

## 6. Protection of indigenous and tribal peoples<sup>31</sup>

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The marginalization of indigenous and tribal peoples in many societies often drives their members away from their communities and into migration. As a result of large-scale exploitation of natural resources, development of industries and mines, commercial exploitation of forests and rapid urbanization, persons belonging to indigenous and tribal groups are often forced to seek work outside their traditional communities in order to survive. Widespread prejudices and discrimination against indigenous and tribal peoples in many societies—and sometimes their lack of citizenship, legal status, or recognition of land title—leave them with limited job choices. Many serve as a cheap workforce for large businesses or farms. Others seek jobs as seasonal or casual workers in their own countries or abroad. Sometimes indigenous men and women have to sell their

land and property to be able to pay their fare and placement fee to a recruitment agency of migrant workers.

In many situations, the conditions of work and recruitment for indigenous and tribal peoples are well below national and international labour standards. Often due to their lack of knowledge of the laws and understanding of their own rights, many indigenous and tribal peoples are subject to multiple discrimination: lower wages, hazardous working conditions, coercive recruitment systems, including bonded labour and other forms of debt servitude, and forced labour.

The ILO has long been engaged in protecting the rights of indigenous and tribal peoples. Between 1936 and 1957, it adopted a number of Conventions to protect indigenous and tribal workers. These Conventions address such issues as recruitment, work contracts and forced labour. In 1957, the ILO adopted the Convention on Indigenous and Tribal Populations (No. 107), envisaging the progressive assimilation and absorption of indigenous culture into mainstream development.

In 1989, the ILO revised C. 107 with the adoption of the Indigenous and Tribal Peoples Convention, 1989, (No. 169).<sup>32</sup> This Convention marked a change in the ILO's approach to indigenous and tribal peoples. Protection remains the main objective, but with more concern for cultural and biological diversity in general, and in respect for indigenous and tribal peoples' cultures, their distinct way of life, their traditions and customs, and their economic relationship with the land they traditionally occupy in particular. In regard of employment, the Convention emphasizes the need to adopt special measures for the protection of indigenous and tribal workers where they are not effectively protected by existing national labour standards. It aims to prevent any discrimination against indigenous and tribal workers and to ensure that they are treated the same way as all other workers as regards:

- admission to employment
- equal remuneration
- medical and social assistance
- right to association.



# MIGRANT WORKERS' RIGHTS

## 3

The rights of migrant workers covered here include the rights and freedoms that are reflected in international labour standards which are the most relevant to migrant workers today.<sup>33</sup> The focus is on international migrants although the guidance provided addresses concerns of immediate interest to internal migrants and management of migration within national borders as well.<sup>34</sup>

The rights are grouped according to stages in the migration process, starting with the four main principles and rights as defined by the ILO Declaration on the Fundamental Principles and Rights at Work which apply to all stages of migration. Then the rights are discussed for each stage of migration: pre-departure and during the journey; on arrival; during employment; social and civil rights in host country; and return and repatriation.

### 1. Fundamental principles and rights at all stages of migration

As mentioned in Chapter 2, the ILO Declaration on the Fundamental Principles and Rights at Work identifies four main areas of principles and rights that apply to all workers, irrespective of nationality and migrant status. The following four principles and rights must be observed at all stages of the migration process and must be respected even in countries whose governments have not ratified the Conventions concerned.

#### 1.1 Trade union right<sup>35</sup>

The ILO Constitution, the ILO Declaration on Fundamental Principles and Rights at Work and several international labour Conventions protect the right of all workers (including regular and irregular migrant workers) to establish or join organizations that defend and further their professional interests. The Freedom of Association and Right to Organization Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) in particular prohibit discrimination on the basis of nationality or irregularity of status regarding both the membership in workers' organizations and in establishing a trade union.

The principal trade union rights include the rights to:

- form and join unions or associations of the migrant worker's choice
- engage in collective bargaining on matters affecting conditions of work and terms of employment
- elect their representatives
- use machinery for arbitration and conciliation for the settlement of disputes
- strike.

Migrant workers should be allowed to stand for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings at least after a reasonable minimum period of residence in the country, e.g. two years.

Migrant workers should also enjoy civil liberties essential for the normal exercise of trade union rights:

- the right to freedom and security of person, and freedom from arbitrary arrest and detention
- freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers
- freedom of assembly
- the right to a fair trial by an independent and impartial tribunal
- the right to protection of the property of trade union organizations.

## 1.2 Freedom from forced labour

Work must be based on choice and incentive, not on coercion or threat. This implies, for example, that:

- migrant workers must not be forced to work under threat of sanction
- migrant workers must not be physically confined
- migrant workers must be able to terminate their employment, serving notice to the employer as required by national law
- disciplinary action against migrant workers (e.g. for violating workplace rules on OSH) must not take the form of a compulsory work performance
- migrant workers who participate in a lawful strike must not be forcibly returned to work.

This principle applies to all workers, including migrant workers, irrespective of their status. Migrant workers are particularly vulnerable to coercion aimed at exacting a work or service, such as particularly hazardous work, excessive overtime or even unlawful practices (e.g. in the entertainment industries). Threats used to extract work or services include, for example, deportation (in the case of undocumented workers), physical abuse or punishment, withholding of wages, and retention of identity documents.

Migrant workers are vulnerable to forced labour. In 2001, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) made a general observation, requesting all governments to include in their country reports under the Forced Labour Convention, 1930 (No. 29) information on measures the governments have taken or plan to take to prevent, suppress and punish trafficking in persons for the purpose of exploitation. The CEACR specifically called for information on:

- measures concerning legal practices and enforcement against forced labour of regular or irregular migrants, in particular in sweatshops, prostitution, domestic service and agriculture.
- practical measures including those required in practice for court proceedings to be initiated and completed; measures designed to encourage the victims to turn to the authorities (such as permission to stay in the country at least for the duration of court proceedings and efficient witness protection); and measures designed to strengthen the active investigation of organized crime. (See details in Annex 4.)

### 1.3 Freedom from child labour

Children accompanying migrant workers and migrant children should not be admitted to employment or work before they have reached the minimum age specified by national law for the type of work concerned. For regular, full-time work the minimum working age should not be lower than the age at which compulsory schooling ends, and not lower than 15 years, or 14 years if the country considers that its economic and educational infrastructure is not sufficiently developed. For specified types of hazardous work, that age should not be lower than 18 years.

To facilitate the verification of ages, public authorities should maintain an effective system of birth registration. Birth certificates should be issued<sup>36</sup> also to children of migrant workers.

Children accompanying migrant workers and even more so migrant children are often vulnerable to the worst forms of child labour, including trafficking, debt bondage, sexual exploitation, illicit activities (e.g. begging), and work in hazardous conditions that put them at high risk of danger, violence and abuse. These girls and boys and their communities are entitled to effective and time-bound measures to reduce their vulnerability to the worst forms of child labour.<sup>37</sup>

### 1.4 Freedom from discrimination<sup>38</sup>

Although each country retains its sovereign right to decide whether and under which conditions to admit migrant workers, these conditions must not amount to discrimination on the basis of race, colour, sex, national extraction, social origin, religion or political opinion. For example, the following practices should be outlawed:

- 'shading', i.e. differentiating between groups of migrant workers (or between nationals and migrant workers) with different complexion or racial or ethnic features or social origin
- discrimination on the basis of sex and gender stereotypes, such as pregnancy, family status, and 'protective' measures which limit women's access to safe and productive migrant work.

Migrant workers are often subject to various forms of discrimination at every stage of migration. For example, a migrant worker may have a different colour and social origin, and be a woman. These grounds of discrimination usually interact with one another, and this often leads to cumulative disadvantages for the persons concerned. For this reason, the multiple forms or layers of discrimination need to be identified and addressed at the same time.

**Box 8: How international labour standards protect migrant workers from discrimination: An example from the USA**

In the United States, it is unlawful for an employer to retaliate against migrant workers by reporting them to the immigration authorities because they have sought remedies for violations of labour laws. The Government has successfully prosecuted employers for such retaliation. With regard to employment discrimination, the Civil Rights Act of 1964 covers migrant workers in its prohibition against discrimination on the basis of national origin. It is unlawful to favour national workers over migrant workers and to favour migrant workers from one country over migrant workers from a different country. The Civil Rights Act also prohibits discrimination on the basis of pregnancy. It is therefore unlawful for an employer to require an employee to take a pregnancy test or to discriminate against a worker because she is pregnant.

*Source: ILO, Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, 31 October-2 November 2005, p. 62.*

## 2. Pre-departure and during the journey

Migrant workers are at risk of exploitation before they leave their home country. They often lack accurate information about the jobs and the working and living conditions overseas and are not well informed about the complex process of going abroad. They are frequently overcharged for paperwork, find it difficult to distinguish genuine recruitment agencies from fraudulent agents or organized crime, or forced to undergo a process that is in violation of their human rights (e.g. confinement in so-called 'recruitment centers'). Trafficking dangers are prevalent, especially for young women and children. (See Box 9.)

Before departing their home countries and while traveling to the destination country, migrant workers are entitled to the following rights:

### 2.1 Information about working and living conditions<sup>39</sup>

Before going abroad, migrant workers have the right to information about the general working and living conditions in the country they intend to work, and on any other issues of potential interest to them in their capacity as migrants.

### Box 9: Vulnerabilities at recruitment, pre-departure and during the journey

- Inadequate access to accurate and reliable information about the labour market abroad and legal channels of migration
- Illegal recruitment and trafficking
- Overcharging of fees for placement and documents
- Deception with regard to the nature of employment
- Falsification of documents
- Cheating and extortion by employment agencies and brokers
- Debt bondage
- Inefficiency and abuse of authorities
- Inappropriate and expensive training programmes
- Exploitation and abuse while waiting for the job (e.g., being detained in 'collection centers')
- Lack of knowledge about transit procedures and requirements
- Hazardous journey, including smuggling
- Victimization in transit.

- The information provided should be in their language or dialect, or at least in a language they can understand.
- The information should be provided free of charge.
- Measures must be taken against misleading advertisements relating to migration and immigration.<sup>40</sup>

Women and young people particularly from rural areas, are often least informed about the costs, risks and benefits of migration due to limited access to sources of information, lower rates of literacy, etc. This can easily lead to exploitative situations. Special attention should therefore be given to make sure that reliable information reaches them.

## 2.2 Recruitment<sup>41</sup>

The recruitment of migrant workers should be carried out only by:

- public authorities
- prospective employers
- authorized private agencies.

Recruitment services rendered by a *public* employment service should be free of charge.<sup>42</sup> Employers or private agencies involved in recruitment should be subject to prior authorization by the relevant governmental body, and their activities carried out under official supervision, so as to protect migrants against various possible forms of exploitation such as:

- excessive fees
- fraudulent contracts
- the use of misleading propaganda
- attempts to evade immigration controls.

The authorization of *private* employment agencies is limited to specified categories of workers or specified types of services.<sup>43</sup> Private employment agencies may only charge fees in relation to recruitment from workers under strict conditions.

They should not charge directly or indirectly, in full or in part, any fees or costs to workers. Any deduction from wages as a direct or indirect payment for the purpose of securing employment (made by a worker, his or her employer, a labour contractor, or a recruiter) is prohibited.<sup>44</sup>

#### Box 10: Private employment agencies and migrant workers

In 1997, a meeting of international experts organized by the ILO developed recommendations to encourage self-regulation of Private Employment Agencies engaged in recruitment for employment abroad. The ILO Governing Body later adopted these recommendations.

It was recommended that codes of practice for overseas recruitment agencies cover the following:

- minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers
- provision of full and unambiguous information of all charges and terms of business to clients
- the principle that private agents must obtain from the employer before advertising positions in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages, salaries, and other benefits, working conditions, travel and accommodation arrangements
- the principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind
- the principle that migrant workers are informed, as far as possible, in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment
- refraining from bidding down wages of migrant workers
- maintaining a register of all migrants recruited or placed through them, to be available for inspection by the competent authority, provided that this information is limited to matters directly related to recruitment and with respect for the privacy of workers and their families.

Source: ILO, *Guide to Private Employment Agencies: Regulation, monitoring and enforcement*, Geneva, 2007, p.41, <http://www.ilo.org/public/English/employment/skills/index.htm>.

### 2.3 Contracts<sup>45</sup>

Where governments maintain a system of supervising contracts of employment migrant workers have the right to receive, before departure, a written contract of employment, covering conditions of work and terms of employment, particularly the rate of remuneration and the contract duration.

The Governments of the migrant worker's home and host country can also agree that a copy of the contract be given to the worker on arrival in the host country. In that case, the migrant worker should receive a document before departure that indicates at the minimum the occupational category in which the migrant worker is to be engaged and the other conditions of work, in particular the guaranteed minimum wage.

The contract or any documents related to employment should be in a language that the migrant worker understands. If a migrant workers cannot read, then the contract or documents should be explained to the worker.

Employment contracts (or work permits) should not violate the established migrant workers' rights which are recognized in law. For example, the contracts

should not stipulate commitment of migrant workers not to join a trade union, not to marry or become pregnant or undergo periodic pregnancy tests.

#### **Box 11: Employment contract**

An individual contract of employment should contain the following information:

- Full name of the worker, date and place of birth, family status, place of residence, place of recruitment
- Nature of work, type of work (occupational category) and place of work
- Remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment
- Bonuses, indemnities and allowances, if any
- Conditions under which and extent to which the employer may be authorized to make any deductions from remuneration
- Conditions regarding food and accommodation if food and accommodation are to be provided by the employer
- Duration of contract and conditions of renewal and denunciation of contract
- Conditions under which entry and residence in the territory of immigration are permitted
- Method of meeting the expenses of the journey of the migrant and the members of his or her family
- In case of temporary migration, method of meeting the expenses of return to the home country or the territory of migration
- Grounds on which the contract may be prematurely terminated.

### **2.4 Facilitated departure<sup>46</sup>**

When migrant workers leave their own country, especially for the first time, they usually need help to cope with the practical and administrative steps involved. They should receive assistance from the public authorities to deal with documentation and other formalities relating to the immigration process. These services should be provided free of charge.

### **2.5 Medical care<sup>47</sup>**

Migrant workers and members of their families authorized to accompany them have the right to medical examination and attention before departure during the journey and on arrival. Migrant workers must not be forced to undergo compulsory or non-confidential medical examinations, such as testing for pregnancy and HIV/AIDS. Migrant workers must not be disqualified or dismissed from the job on the basis that they tested positive to these tests. (See Box 12.)

### **2.6 Free Travel**

Migrant workers who have been recruited or engaged by an employer, should not have to pay the cost of their own travel, nor, in appropriate cases, that of their families. In actual practice, however, almost all migrant workers have to pay for their own travel expenses, and the travel arrangements often lead to abusive recruitment practices. The recruiter or the employer should pay traveling expenses.<sup>48</sup> Bilateral agreements between home and host country should establish methods for meeting the cost of travel for the migrants and the members of their families.<sup>49</sup> For migrant workers who travel without a contract or who have not

accepted an offer of definite employment, the authorities must see to it that travel expenses are kept to a minimum.

#### **Box 12: No mandatory testing**

The Government of India has given considerable thought to the issue of mandatory testing. It feels that there is no public health rationale for mandatory testing of a person for HIV/AIDS. On the other hand, such an approach could be counter-productive as it may scare away a large number of suspected cases from getting detected and treated. HIV testing carried out on a voluntary basis with appropriate pre-test and post-test counseling is considered to be a better strategy and is in line with the WHO guidelines on HIV testing.

In the context of its National Policy on HIV/AIDS, the Government of India issued a comprehensive HIV testing policy comprising the following elements:

- i. No individual should be made to undergo a mandatory testing for HIV.
- ii. No mandatory HIV testing should be imposed as a precondition for employment or for providing health care facilities during employment. However, in the case of Armed Forces, before employment, HIV screening may be carried out voluntarily with pre-test and post-test counseling and the results may be kept confidential.
- iii. Adequate voluntary testing facilities with pre-test and post-test counseling should be made available throughout the country in a phased manner. There should be at least one HIV testing center in each district in the country with proper counseling facilities.
- iv. In case a person likes to get the HIV status verified through testing, all necessary facilities should be given to that person and results should be kept strictly confidential. Such results should be given out to the person and with his/her consent to the members of his/her family. Disclosure of the HIV status to the spouse or sexual partner of the person should invariably be done by the attending physician with proper counseling. However, the person should also be encouraged to share this information with the family for getting proper home-based care and emotional support from the family members.
- v. In case of marriage, if one of the partners insists on a test to check the HIV status of the other partner, such tests should be carried out by the contracting party to the satisfaction of the person concerned.

Source: National AIDS Policy of India, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN009846.pdf>.

### **3. On arrival**

Traveling to a foreign country can be daunting for migrant workers, especially for first-timers. It is doubly intimidating if they do not speak the language of the new country. Orientation services and briefings are often necessary and should be provided before travel. On arrival, migrant workers also usually need language orientation as well as other practical assistance.

#### **3.1 Customs exemption<sup>50</sup>**

Migrant workers have the right to take into their country of work, free of customs duty, their personal effects—including those of members of their families authorized to accompany or join them—as well as the tools of their trades.

#### **3.2 Assistance in finding suitable employment<sup>51</sup>**

Migrant workers are entitled to the services of the appropriate public authority in finding suitable employment, without payment of fees or administrative costs.

### 3.3 Settling in<sup>52</sup>

During an initial period in the country of work, migrant workers are entitled to any necessary assistance in settling into their new environment. Possible types of service include interpretation, help with documentation and other formalities, and the supply of information and guidance on immediate personal and family concerns such as housing. Discrimination in access to accommodation should be prohibited.

## 4. During employment

Migrant workers are vulnerable in many respects while working and living abroad. Many are subject to serious rights violations. (See Box 13.)

Member States should pursue a national policy to promote and guarantee equal opportunity and fair treatment in employment for migrant workers and their family members who are residing lawfully within its territory.<sup>53</sup> Migrants who are regularly admitted to the country are entitled to equality of treatment to nationals with regard to conditions of work, including remuneration, membership of trade unions, accommodation, social security (with certain limitations), employment taxes and legal proceedings.<sup>54</sup>

### Box 13: Vulnerabilities while working and living abroad

Xenophobia and discrimination may lead to:

- Jobs not covered by labour or social protection
- Violation of employment contracts
- Confiscation of papers and documents
- Poor working and living conditions
- Forced labour and debt bondage
- Non-payment or delayed payment of wages and unauthorized deductions from wages
- Health and safety risks
- Physical, psychological and sexual abuse
- Limited freedom of movement
- Restrictions on free choice of employment
- Restrictions on freedom of association
- Difficulties in sending remittances home
- Unlawful, arbitrary or unjust termination of employment
- Lack of information and access to services and redress mechanisms
- No embassy or inadequate services provided by embassy

Adapted from: Gender Promotion Programme, International Labour Office, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An information guide*, Booklet 1 Introduction: Why the focus on women international migrant workers, Geneva, 2003, Box 1.3. Vulnerabilities at different stages of the migration process, p. 22.

### 4.1 Remuneration<sup>55</sup>

A fundamental principle is that remuneration must be based on the objective characteristics of a job (such as skills, knowledge, working conditions and responsibilities), and not on the sex<sup>56</sup> nor the nationality of the majority of workers

employed in that job category. To assess, for example, if a migrant worker is receiving equal remuneration for work of equal value,<sup>57</sup> the remuneration must be compared with the remuneration received by citizens in the same job category, as well as by citizens in comparable job categories, taking into account the objective characteristics of the job.

#### Box 14: Remuneration

**Remuneration** means wages or earnings payable by an employer to an employed person according to a written or unwritten contract of employment for work or services performed or to be performed. Remuneration includes wages and earnings in cash or in kind and other benefits, such as family allowances, when applicable.

Several ILO Conventions ensure migrant workers further rights as regards remuneration:

- minimum wage rates (fixed either by collective agreement, arbitration award or by the competent authority, under the same conditions as for nationals of the host country)
- participation, through their representatives, in the operation of statutory machinery for fixing wages
- direct, regular payment in the form of cash
- freedom to dispose of their wage as they wish
- regular provision of food, housing, clothing and other essential supplies and services, if these form part of remuneration. Such 'payments in kind' must be fairly valued and adequate for needs of the workers and their family, as assessed by the competent authority.<sup>58</sup>

Migrant workers who are not regularized should be remunerated for past employment to the same extent that citizens should be paid their arrears.<sup>59</sup>

## 4.2 Working conditions<sup>60</sup>

Migrant workers should enjoy equal treatment with regard to working conditions as the nationals of the country in which they work. Besides remuneration, conditions of work commonly include:

- hours of work (with some restrictions for young workers)
- rest periods (including breastfeeding breaks)
- overtime arrangements
- holidays with pay
- apprenticeship and training
- protection against toxic substances or dangerous machinery, noise and vibration
- protection against violence and sexual harassment at work
- welfare facilities and other benefits.

Special attention should be given to women and young workers who are entitled to special protection, including:

- minimum age for employment
- restrictions to protect young persons (e.g. prohibition of overtime)

- restrictions on night work
- restrictions on women's work to protect their reproductive health (e.g. prohibition of exposure to hazardous substances during pregnancy)
- maternity protection (including maternity leave, maternity benefits and protection against dismissal).

#### Box 15: Maternity protection: A right denied to most women migrant workers

Women migrant workers usually do not enjoy the right to maternity protection. As internal migrants they often work in sectors not covered by maternity protection. International women migrants often undergo obligatory pregnancy tests before they travel or are dismissed and deported when they become pregnant during employment.

The first international labour instrument on maternity protection was adopted at the first International Labour Conference in 1919. Adequate maternity protection is vital for the future generation of societies, enabling women workers to successfully combine their reproductive and productive roles and prevent unequal treatment in employment due to their child bearing role. Key provisions in the first and later maternity protection conventions include protection against dismissal during and after delivery, and maternity benefits in the form of leave and income continuity.

The fundamental right to maternity protection continued to be breached even if almost all national legislations provide for it. For this reason, ILO member States adopted a new Maternity Protection Convention in 2000:\*

- broadening the coverage to all employed women, including those in atypical forms of dependent work
- explicitly prohibiting dismissal of women on the grounds of pregnancy, child birth and its consequences or nursing with the burden of proof resting on employers
- encouraging countries to adopt measures to ensure that maternity does not constitute a source of discrimination at work including access to employment and prohibiting pregnancy tests at recruitment except in very specific circumstances.\*\*

\* Maternity Protection Convention, 2000 (No. 183)

\*\* Exception for jobs which are prohibited to pregnant and nursing women under national laws and regulations or where there is a clear risk to the health of the woman and child, C. 183, art. 9.

#### Box 16: Violence against migrant workers

Workplace violence includes any action, incident or behavior that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a result of, his or her work. It can take the form of murders, assaults, rape, sexual harassment, threats, bullying, mobbing and verbal abuse:

- **Sexual harassment** means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men. This can include unwelcome physical, verbal or non-verbal conduct.
- **Bullying and mobbing** consist of repeated, regular and persistent negative attacks on the personal and professional performance of an individual or group of employees.

Sources: ILO, *Violence at Work*, Third edition, Geneva, 2006, pp. vi, 20-22, and ILO, *Action against Sexual Harassment at Work in Asia and the Pacific*, Bangkok, 2001, p. 17.

### 4.3 Health and safety<sup>61</sup>

Migrant workers are entitled to the same protection with regard to occupational health and safety as nationals of the country. Foreign migrant workers are

commonly permitted into countries for jobs that are usually ‘dirty’, ‘dangerous’, and ‘demeaning’ which national workers no longer want to perform. For this reason, migrant workers are considered a group ‘at risk’ in matters of occupational safety and health. The Migrant Workers Recommendation, 1975, (No. 151) asks member States “to take all appropriate measures to prevent any special health risks to which migrant workers may be exposed.”

Migrant workers should benefit from special measures in addition to those applicable to workers in general. These include measures to protect them against illnesses to which they were not exposed in their country of origin, and to which they have reduced immunity. They should also receive advice and help with psychological problems arising from an unfamiliar working and living environment, as well as training and information in the prevention of occupational accidents and diseases. Migrants who are refugees or in other ways escaped from abuses in their family or country may have a bad health to begin with.

#### **Box 17: Occupational safety and health (OSH)**

To prevent accidents, injuries and diseases at the workplace, the employer of all workers has the duty to:

- identify health hazards at work and develop adequate OSH procedures
- provide health and safety information and appropriately label harmful products and warning symbols in a language that migrant workers can understand
- train workers and make it compulsory for workers to comply with OSH procedures
- keep the working environment safe and healthy by promoting a preventative culture and establish OSH as a routine management function.

Workers have a duty to:

- cooperate with the employer in determining safety and health hazards and develop proper procedures
- observe established OSH procedures
- report health and safety hazards forthwith to the employer.

Workers have the right to:

- investigate OSH-related incidents
- withdraw from situations that present an imminent threat to their life and safety
- call on labour inspection services without threat of victimization.

*Source: Occupational Safety and Health Convention, 1981 (No. 155); ILO Guidelines on Occupational Safety and Health Management Systems, ILO-OSH 2001, Geneva, 2001.*

#### **4.4 Employment opportunities and freedom to change jobs<sup>62</sup>**

After a maximum of two years of lawful residence in the host countries for the purpose of employment, migrant workers should be granted free choice of employment. If the host country permits fixed-term contracts of less than two years, free choice of employment should be granted after the migrant worker has completed his or her first contract.

A country may continue to restrict migrant workers’ access to limited categories of employment or functions where this is necessary in the interests of the country (very often the civil service, especially security and defense).

#### 4.5 Job security<sup>63</sup>

All migrant workers also have the right to ‘equal treatment’ in respect of job security. While no international labour standard establishes an absolute right to a job, migrant workers should not be discriminated against if the workforce has to be reduced, for example, for reasons of redundancy. Migrant workers who have been dismissed should not automatically lose their residence or work permit as a result.<sup>64</sup> They should be allowed sufficient time to find an alternative job.

#### 4.6 Job promotion<sup>65</sup>

The fact that a migrant worker may have been recruited for a particular job does not mean that the worker must remain in the same position regardless of experience, ability or conduct. Migrant workers should be given the same opportunities for promotion and advancement as nationals of the country. Given equal qualifications, women should also be given equal opportunities to men in this regard.

#### 4.7 Access to other jobs and vocational training<sup>66</sup>

Migrant workers have equal access to nationals to vocational guidance and job placement services. They should also be granted equal access to vocational training of their own choice on the basis of individual suitability for such training. Host countries must consider whether men and women migrant workers have special needs as regards access to education, training and lifelong learning.

The employment opportunities of migrant workers are often reduced because the skills they have acquired at home are not recognized abroad. Mechanisms to assess, certify and recognize skills and qualifications enhance the job prospects of all workers, and migrant workers may claim special measures in this regard.<sup>67</sup> Migration management would become much more efficient if skills standards and certification systems of sending and receiving countries could be harmonized.

#### 4.8 Social security<sup>68</sup>

Social security systems provide economic security to people who face income losses in cases of unemployment, sickness, old age, family responsibilities such as maternity and childcare, invalidity, need for medical care, loss of the family breadwinner, and employment injury. They are commonly financed by the State and/or contributions from employers and employees.

Migrant workers should not be treated less favourably than nationals with respect to social security benefits. Conditions such as residency requirements may be imposed to the same extent as they apply to nationals. Exceptions are permissible only with respect to benefits which are payable solely from public funds, and benefits paid to persons who do not satisfy the conditions required for a normal pension.<sup>69</sup>

If migrant workers or their family members leave their country of employment, they should not automatically lose their right to benefits when they claim them in another country or upon their return home. Benefits should basically follow the migrant workers wherever they may reside. To make this possible, however, countries must cooperate to bring their national systems of social security in line with specific ILO standards.

Irregular migrant workers who cannot be regularized should, on the basis of their past employment, be able to claim social security benefits under the same conditions as nationals.<sup>70</sup>

**Box 18: How international labour standards protect the right to social security of migrant workers: An example from the Philippines**

In the Philippines, a memorandum of agreement requires recruitment agencies which recruit workers for foreign ships to make quarterly payments to the Philippines social security system. Workers are covered by social security upon signing the standard seafarer employment contract with the recruiting agency and foreign ship owner as employers.

*Source: ILO, Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, 31 October-2 November 2005, p. 62.*

#### 4.9 Housing<sup>71</sup>

Suitable housing is a cornerstone of productive work, but small enterprises in particular may find it difficult to pay proper attention to accommodation for migrant workers. Foreigners are greatly disadvantaged when they move to another country, especially unskilled seasonal workers. Migrant workers may fall victim to unscrupulous practices by private landlords, or end up at the bottom of waiting lists for public housing.

**Box 19: Housing**

In granting work permits, ministries of labour must take into account the capacity of employers to provide adequate housing.

- *How much space is allocated for each worker?*
- *Are rooms adequately ventilated?*
- *Do families proposing to employ a live-in foreign domestic helper have an adequate room and toilet facility?*

It is generally not desirable that employers should provide housing for their workers directly, except when circumstances necessitate it.<sup>72</sup> However, it is a widespread practice. Adequate and decent housing accommodation should not cost more than a reasonable proportion of the workers' income.<sup>73</sup> In cases where housing is provided by the employer, profits should not be made on the rent and the rent should not be part of payment for work.<sup>74</sup>

These standards aim to prevent coercive recruitment practices whereby an obligation to purchase accommodation from the employer—in addition to maybe food, clothing and equipment—creates a debt which the migrant must work to pay off.

#### 4.10 Access to remedies in law<sup>75</sup>

Migrant workers should have the same right of legal recourse, including the right to legal assistance, as nationals when disputes arise with respect to working conditions, the exercise of trade union rights or social security entitlements.

##### **Box 20: Role of labour and social welfare attaches in assisting migrant workers: An example from the Philippines**

In February 2004, the President of the Philippines issued Executive Order No. 287 to direct the deployment of social workers as Social Welfare Attaches in selected diplomatic posts with large concentration of Overseas Filipino Workers (OFWs). The selection of the diplomatic posts is determined in coordination with the Department of Foreign Affairs (DFA), the Department of Labour and Employment and the Philippine Overseas Employment Agency.

The Executive Order cites, among others:

- the Migrant Workers and Overseas Filipino Act requiring the establishment of Migrant Workers and Overseas Filipinos Resource Centers in countries where there are large concentrations of Filipino migrant workers to provide counseling, legal and welfare assistance and other services to OFWs
- the Labour Code of the Philippines requiring the Labour Attaches and consular officials to provide protection to Filipino workers on all matters arising out of employment
- the Anti-Trafficking in Persons Act of 2003 mandating government agencies, specifically the Department of Social Welfare and Development (DSWD) to establish and implement rehabilitative and protective programmes for victim of such trafficking.

Among the functions and duties of the Social Welfare Attaches are:

- Establish a network with overseas-based social welfare agencies and/or individuals and groups which may be mobilized to assist in the provision of appropriate social services
- Respond to and monitor the resolution of problems and complaints/queries of OFWs and their families
- Submit regular reports to the DSWD and DFA Home Office on plans and activities undertaken, recommendations, and updates on the situation of OFWs particularly those encountering difficulties in the host country.

#### 4.11 Freedom of movement<sup>76</sup>

Migrant workers are free to move at any time from one place to another in the country of work, providing that they are lawfully within the territory. They should be allowed to, for example, go out for socialization or leisure outside of their workplace during their non-working hours including at night, and travel to visit family or friends in the host country or their home country during holidays or leave. They should not be locked up or confined to their workplace. Migrant workers' right to geographical mobility is subject only to limitations which apply also to national workers.

In relation hereto, the 'zoning' policies which exist in some countries and restrict the movements of external migrant workers to certain cities or provinces, are not in line with these provisions.

#### 4.12 HIV/AIDS

Migrant work involves mobility and being away from the family sometimes for years. The obligation to work and live away from spouses and partners increases

the risk of HIV/AIDS infection. A climate of discrimination and lack of respect for human rights leaves migrant workers more vulnerable to infection and less able to cope with AIDS because it makes it difficult for them to seek voluntary testing, counseling, treatment or support. They will also not be in a position to take part in advocacy and prevention campaigns.

Any routine medical testing, such as testing in either sending or receiving country for fitness carried out prior to employment or on a regular basis for migrant workers, should not include mandatory HIV testing.<sup>77</sup> Employers, migrant workers and their representatives should encourage confidential voluntary counseling and testing that is provided by qualified health services.<sup>78</sup> To mitigate the impact of the HIV/AIDS epidemic in the workplace and on society, workplaces should provide counseling and other forms of social support to migrant workers infected and affected by HIV/AIDS.<sup>79</sup>

## 5. Social and civil rights in host country

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Social policies should enable migrant workers and their families to share in advantages enjoyed by the country's nationals. They should be accorded social and civil rights while working in the host country as follows:

### 5.1 Citizenship<sup>80</sup> and property rights

International labour standards do not require sovereign States to grant citizenship to migrant workers. However, migrant workers should be allowed to apply for citizenship after a period of residence in the host country of at least five years, if at least this is not contrary to the policy of the host country.

Bilateral agreements between labour-sending and labour-receiving countries should make provision for the acquisition, possession and transmission of rural and urban property by migrant workers.<sup>81</sup> At any rate, regular migrant workers should be given a reasonable period of time to dispose of their property before they have to go back to their home country.<sup>82</sup>

### 5.2 Education and culture<sup>83</sup>

Migrant workers and their family members are entitled to equal treatment in respect of education, and in addition, to assistance if necessary in learning the language of the country where they work. Their children should be provided with access to schools and facilities to acquire some knowledge of their own mother tongue. Migrant workers and their families have the right to participate in the cultural life of the country on a basis of equality with nationals and at the same time to maintain their own culture. They also have the right to practice their religion and to adhere to their national customs and ceremonies.

### 5.3 Transfer of funds to home country<sup>84</sup>

Within the limits allowed by national laws and regulations concerning the import and export of currencies, migrant workers have the right to transfer part of their earnings and savings as they wish. This enables them to contribute substantially to the welfare of their family members who have stayed behind in the home country. In practice, more work needs to be done to enable remittance transfers that are safer, more reasonable and efficient.

### 5.4 Family reunification and visits<sup>85</sup>

Governments should take all possible measures to facilitate family reunion (i.e. spouses and dependent children, father and mother). In cases where families cannot be reunited, migrant workers who have been employed for at least one year should be allowed to visit their families during the paid annual holiday to which they are entitled. Alternatively, the family should be allowed to visit the workers for a period corresponding at least to the paid annual holiday to which they are entitled.

### 5.5 Social services<sup>86</sup>

In adapting to an unfamiliar situation, migrant workers are entitled to receive assistance and advice. This would normally include information, services and facilities in education, vocational training, language training, health services, legal aid, social security, housing, transport, and recreation. Services should be offered, if possible, in the native tongue of the workers concerned, otherwise with interpretation and translation facilities. These services should be provided free of charge.

## 6. Return and repatriation

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It is generally assumed that foreign migrant workers will return to their home country voluntarily and in an orderly way upon the completion of their employment contract or when they have saved enough money. In reality, however, the return and repatriation of foreign migrant workers is not always so orderly or voluntary.

Many migrant workers are motivated to stay, even preferring to go into irregular migrant status, for the higher wages they can earn in the host country. In some instances, loss of occupation through illness or injury, or sudden termination, may lead to involuntary return of the migrant workers. There are usually few provisions in either sending or receiving countries to protect migrant workers with regard to return and repatriation.

### 6.1 Grounds of repatriation

Repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited is an unacceptable form of discrimination.

### 6.2 Appeal against arbitrary decisions<sup>87</sup>

Migrant workers have the right to appeal against a decision to terminate their employment or to deprive them of their resident status. The workers affected are entitled to challenge the decision, and if successful, to reinstatement or time to find alternative employment, and to compensation for loss of wages. Migrant workers have the same right to legal aid as national workers, and additionally the assistance of an interpreter.

### 6.3 Travel costs<sup>88</sup>

Existing ILO standards do not provide an absolute right to free travel back to the home country. However, if migrant workers fail, for a reason they are not responsible for, to secure the employment for which they have been recruited, or other suitable employment, they will not have to pay the costs of the return travel of themselves and family members authorized to accompany them.

If migrant workers and their family members are expelled from a country, they may have to pay their own travel costs but they do not have to bear the costs of the administrative or judicial procedures leading to the expulsion. Nor do they have to pay for the costs of implementing the order, for example, of police escorts to the frontier.

### 6.4 Rights of returning migrants in country of employment<sup>89</sup>

Whether regular or irregular, returning migrant workers have a right to outstanding remuneration, severance pay, compensation for holidays not taken, as well as, in certain cases, the reimbursement of social security contributions. If any difficulty arises in obtaining these entitlements, they should enjoy equal treatment with national workers regarding access to courts and legal assistance. Migrant workers should be given a reasonable period of time to remain in the country to seek and obtain a remedy for outstanding remuneration and benefits.

### 6.5 Rights of returning migrants in home country<sup>90</sup>

If migrant workers have retained the nationality of their country of origin, they have the right to assistance when they return. They are entitled to unemployment benefit, if necessary, and if it exists, assistance in obtaining work, for example, by not being obliged to satisfy conditions as to previous residence or employment. Their rights in regard of social security would also include rights acquired in the course of their employment abroad.

As in the case of arrival in the country of employment, migrant workers and their families should be exempt from customs duty on their personal possessions. The customs exemptions also include hand tools and portable equipment which they have owned for an appreciable time and intend to use in the course of their occupation.

Reintegration can pose a real challenge to returning migrants, especially women. The problem often starts upon arrival in the home country when returning migrants are subject to harassment and unclear extortions. In the home community, family problems caused by long separation (e.g. bonding with partners outside marriage and problems with children) can add to readjustment difficulties. This includes lack of suitable employment or problems in establishing a business.

Economic problems also abound, because the families at home may have utilized the migrant workers' remittances for economic survival or consumption purposes. As a result many migrant workers are frequently pressured to re-migrate for jobs overseas and trafficking victims face the danger of being re-trafficked. Return and reintegration are the stages of the migration process that are the least covered by policy interventions and protection.



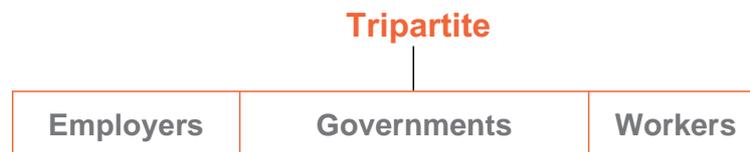
# THE ILO AND INTERNATIONAL LABOUR STANDARDS

## 4

### 1. What is the ILO?

The International Labour Organization (ILO) was established in 1919. The ILO is a specialized agency of the United Nations system which pursues social justice and promote decent work for men and women everywhere regardless of their race, sex, gender or social origin. The ILO pursues this aim by a combination of standard-setting, technical cooperation and sharing of information.

The ILO is unique among UN agencies because it is a tripartite organization. It is composed not only of governments, but of three partners: governments, employers and workers. The ILO is built on dialogue and cooperation among these three parties, with two votes from government and one each from employers and workers' representatives respectively from each country at the International Labour Conference.



The ILO has three main organs: the International Labour Conference, the Governing Body, and the International Labour Office.

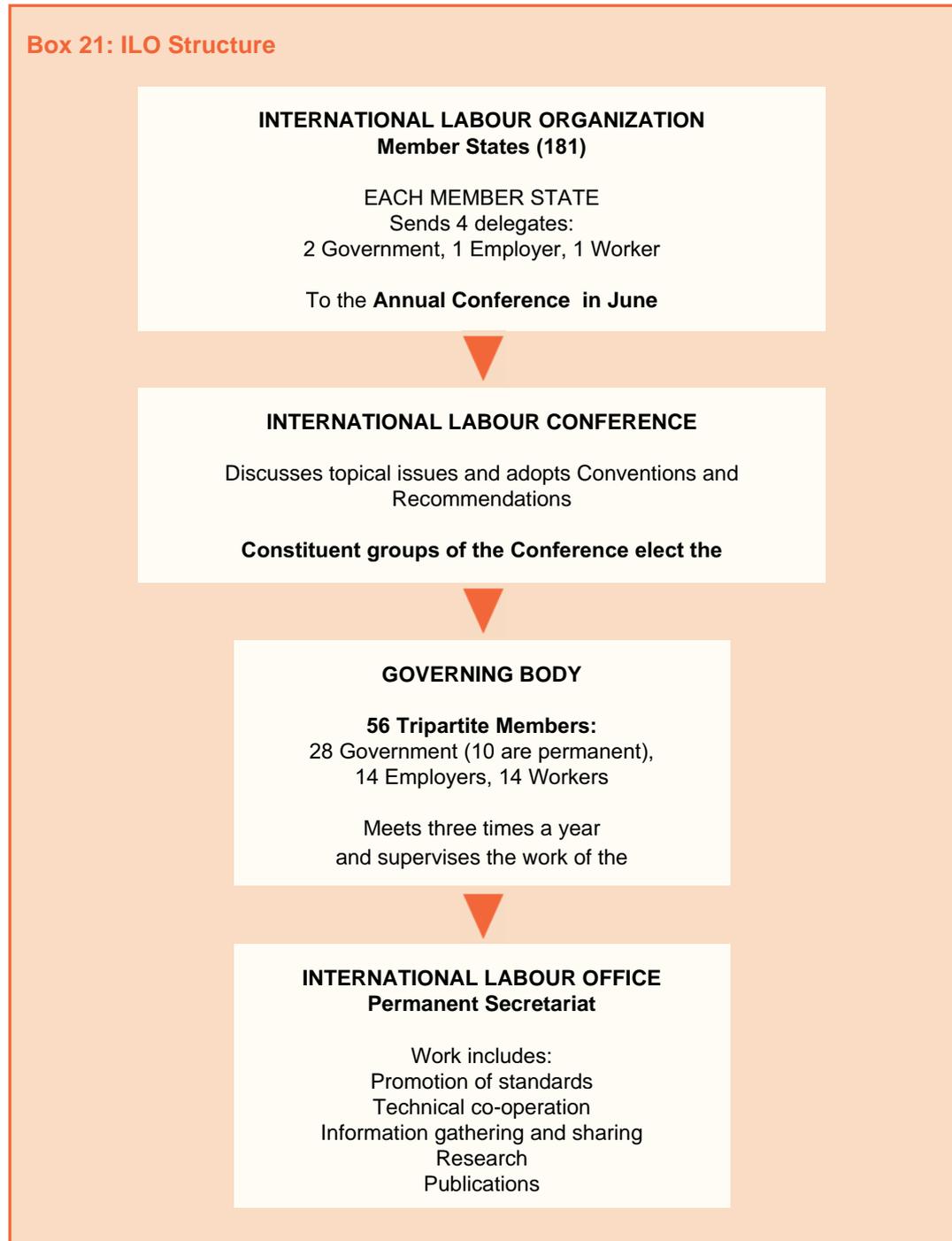
#### 1.1 The International Labour Conference

The International Labour Conference (ILC) is the principal policy-making body of the ILO. It provides a forum for debate and discussion on important social and labour issues. Each year in June, tripartite delegations from all member States come together to discuss, adopt and supervise the application of international labour standards. The ILC adopts the budget and elects the members of the Governing Body. (See Box 21.)

Each of the 181 member States (as of 1 August 2007) is represented by four delegates to the annual Conference. Two delegates represent the government, and one delegate each represents the employers and the workers from each country. The government designates the employer and worker delegate after consultations

with the most representative national organizations of employers and workers—and pays for their participation.

### Box 21: ILO Structure



## 1.2 The Governing Body

The Governing Body is the ILO’s executive council of the International Labour Office, or ‘board of directors’. It reviews the ILO programme and budget for approval by the ILC. It also sets the Conference agenda, and elects the Director-General of the ILO, its chief executive official, for a five-year term. The Governing Body is composed of 56 members: 28 government members, 14

employer members and 14 worker members. Representatives of 10 governments are permanently represented on the Governing Body and the others are elected.

### 1.3 The International Labour Office

The International Labour Office is the permanent secretariat and the focal point to carry out the activities of the ILO, including research, investigations, technical co-operation and publications.

The organization's Office headquarters are in Geneva and it has 58 field offices. ILO provides assistance to its member States with the ratification and application of international labour standards, and provides technical cooperation covering fields such as labour law reform, the fundamental principles and rights at work, employment policies, labour market information, enterprise development and vocational training, microfinance, social security, occupational safety and health, conditions of work, labour administration, industrial relations and labour inspection.

## 2. What are international labour standards?

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International labour standards are universal reference points marking levels of achievement in economic and social development. They lay out basic principles, articulate rights and duties of employers and workers, establish policy objectives, outline areas of action, or provide guidance on means and procedures to be employed. International labour standards are designed to promote decent work for workers of all nationalities. They take the legal form of either:

- **Conventions** or **Protocols**<sup>91</sup>: legally binding international treaties that may be ratified by member States, laying down the basic principles to be applied by ratifying countries, or
- **Recommendations**: non-binding, but authoritative guidelines that do not have to be ratified and become effective upon adoption at the International Labour Conference.

Conventions set out the minimum standards that were subject to extensive negotiations and resulting agreement between the ILO governments, employers' and workers' organizations from the member states. Recommendations provide more specific guidance for national law and practice, as well as for international advocacy. Usually Recommendations accompany and supplement a Convention but they can also be autonomous, i.e. not linked to any specific Convention.

In today's world, the role of international labour standards is to provide authoritative guidance on work-related matters, so that work can fulfill its function as a lever lifting people out of poverty, while providing space to economies to make the necessary adjustments to raise productivity and income levels. To date, 76 international labour Conventions, 5 Protocols and 79 Recommendations are considered up-to-date.<sup>92</sup>

### 3. How are international labour standards developed?

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International labour standards are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labour Conference. As a first step, the Governing Body agrees to put an issue on the agenda of a future International Labour Conference. The International Labour Office prepares a report that analyzes the laws and practices of member States with regard to the issue at stake. The report is circulated to member States and to workers' and employers' organizations for comments and is discussed at the International Labour Conference.

A second report is then prepared by the Office with a draft instrument for comments and submitted for discussion at the following Conference, where the draft is amended as necessary and proposed for adoption. This 'double discussion' gives Conference participants sufficient time to examine the draft instrument in the light of their own experience, and make comments on it. A two-thirds majority of the votes cast is required for an international labour Convention or Recommendation to be adopted.

### 4. How are international labour standards applied?

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Once a standard is adopted at the International Labour Conference, member States are required under the ILO Constitution to *submit* it to their legislative assemblies for information and consideration. In the case of Conventions, this means consideration with a view to giving effect in *national law and practice* and to their *ratification*.

The application of international labour standards is most commonly done through dialogue and persistent persuasion, and procedures are in place to ensure their application. A comprehensive supervisory system helps countries implement the Conventions that they have ratified and the Recommendations they have adopted. Through this supervisory system, the ILO helps its members to translate the standards into concrete policies and action. Standards set in numerous Conventions and Recommendations have been incorporated into the laws and practices of the vast majority of the ILO member countries. (For more details see Chapter 5.)

### 5. What is ratification?

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**Ratification** is a formal acceptance of an international convention or treaty by a government. It is a sovereign and voluntary act of a State. When a government ratifies a Convention, it is legally bound by its contents.<sup>93</sup>

After a Convention is ratified, it generally comes into force one year after the date of ratification. This means the ratifying country must take necessary steps to apply the Convention in national law and in practice, for example, by adopting appropriate laws and policies. The country must submit reports to the ILO on the progress in applying the Convention.<sup>94</sup> (See Box 22.)

Ratifying an ILO Convention is the start of a process of dialogue and co-operation between the government and the ILO. Unlike other international treaties, international labour Conventions cannot be ratified with reservations, and have to be accepted in their entirety. Therefore, before ratifying a Convention, it is desirable that government, employers' and workers' organizations discuss and reach a common understanding of the obligations they are about to undertake.<sup>95</sup>



Worldwide, Conventions No. 97 and No. 143 have been ratified by 47 and 23 countries respectively (as of 1 August 2007). In the Asia-Pacific region, Convention No. 97 has been ratified by New Zealand, Sabah (Malaysia) and Tajikistan only, and is applicable in Hong Kong as a Special Administrative Region of China. Among the 31 Asia-Pacific Member States only the Philippines and Tajikistan have ratified Convention No. 143. The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 has been ratified by 37 State Parties. (See ratification table in Annex 3.)

## 6. Process of dialogue and access to the ILO<sup>96</sup>

Dialogue between the ILO and its constituents usually starts well before a country ratifies a Convention, and continues after the Convention has been ratified. The purpose of the dialogue is primarily for the ILO and its constituents to work together to ensure that national legislation and practice are in line with the provisions of the Convention.

Due to its tripartite structure, the ILO allows non-state actors opportunity to participate in its activities and access to its mechanisms to a greater extent than do other international bodies. The relation with the non-governmental sector involves the following:

- the integration of non-governmental social partners in the ILO itself
- according consultative status to non-governmental international organizations that meet certain criteria
- collaboration at the operational level with a variety of international, national and local organizations.<sup>97</sup>

Migrant workers as individuals do not have a formal position within the ILO tripartite structure. However, they can participate in ILO meetings and other activities in the following manner:

- as representatives of governments, or of workers' and employers' organizations, including as organizations representing migrant workers
- as advisors to the delegations at the International Labour Conference
- as representatives of a non-governmental organization (NGO) on the ILO Special List of Non-Governmental International Organizations.

The ILO's Special List is a list of NGOs whose aims and activities are in harmony with the spirit, aims and principles of the ILO. NGOs should work internationally and cover a number of countries in their work. Anti-Slavery International, the Center for Migration Studies, and the International Catholic Migration Commission, are among the NGOs on the Special List, as well as several other NGOs which take an active interest in questions affecting migrant workers, for example, Amnesty International.

NGOs wishing to be on the list can send a request to the Director-General of the ILO. For an NGO on the special list to participate in a meeting, a written request must be submitted to the Director-General of the ILO at least one month before that meeting or conference is scheduled to start.

Migrant workers can also send information directly to the ILO. This can be done:

- through any workers' or employers' organization – including those made up of indigenous and tribal peoples
- by sending the information themselves.

The Committee of Experts and the Conference Committee have emphasized the value of such comments for their work if the comments contain verifiable information such as laws, regulations or other official documents such as land titles and judicial decisions.

## 7. [Where can I get more information on the ILO standards?](#)

A list of ILO standards and selected publications relevant to migrant workers is included in Annex 1. Every trade union or similar organization looking after the interests of migrant workers, as well as every organization concerned with migration policy is strongly recommended to have a copy of these standards and publication in their library.

# APPLICATION OF INTERNATIONAL LABOUR STANDARDS

## 5

The ILO is different from other UN standards-setting bodies in that it not only sets the standards, but also ensures their application. The ILO has its own mechanisms to supervise the application of ratified Conventions and to receive complaints from its constituents and act on them. The key mechanisms of the ILO's supervisory system are the regular supervision or reporting system and the complaints procedures.

### 1. Regular supervision (reporting system)

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#### 1.1 Reports by governments

ILO member States are required to submit *periodic reports* on the Conventions they have ratified and *selected reports* on the position of the State's law and practice with regard to matters dealt with in unratified Conventions or Recommendations.

##### a. *Periodic reports*

Once an ILO member State ratifies a Convention, it is required to submit reports on how the Convention is being applied in the country. The first report is due one year after the Convention comes into force. Thereafter, the ratifying State must submit periodic reports on ratified Conventions: every second year for the eight fundamental Conventions and the four priority Conventions<sup>98</sup> and every fifth year for all other Conventions. However, the Committee of Experts may require the State to submit a detailed report if it feels necessary.

The contents of the report include information on the situation in law and in actual practice, particularly the extent to which the Convention is made effective through legislation, court decisions, labour inspection visits, and budgetary or other measures. Periodic reports by governments must be sent to the most representative employers' and workers' organizations in the country for their comments. The comments from the employers and workers may then be communicated to the government or directly to the ILO.

## b. *Special reports*

At regular intervals, member States are requested to report on the law and practice in their countries with regard to a certain topic, whether or not they have ratified the Conventions on that topic. On the basis of reports received from member States and information transmitted by employers' and workers' organizations, the Committee of Experts publishes an in-depth annual General Survey on member States' national law and practice. This survey enables the Committee of Experts to examine the impact of Conventions and Recommendations, to analyze the difficulties indicated by governments in their application, and identify means of overcoming these obstacles.<sup>99</sup>

### Box 23: General Survey on Conventions and Recommendations

In 1998, the ILO's Committee of Experts undertook a General Survey of law and practice regarding migrant workers in ILO member states, whether or not they had ratified the relevant conventions. The Committee noted with interest some of the varied and innovative policies pursued by some countries with a view to applying the principles of international migrant workers standards. In Belarus and Israel, for example, it is obligatory for employers or recruiters to furnish migrants with employment contracts in either their mother tongue or a language which they can understand, while in Antigua and Barbuda, Bulgaria, Croatia and the United Republic of Tanzania (Zanzibar), migrants' contracts must be drawn up in accordance with a prescribed model. This is intended to ensure that migrants who may be unfamiliar with the standards and terms of employment in the host country are guaranteed basic protection from abuse and exploitation.

The Committee also noted that in Switzerland the public employment service is free for regular-entry migrant workers who already have permission to work in the country, and that Germany provides reintegration assistance to migrants returning to their country of origin. It was further interested in a special service set up by the Philippines to inform prospective female migrants of the conditions of work and life facing them in the host country and also to attempt to dissuade them from accepting work in which they are likely to be exposed to abuse and exploitation. By highlighting these various innovative practices, the Committee of Experts enables countries to learn from the experiences of others.

Sources: ILO, *Rules of the Game: A brief introduction to International Labour Standards*, Geneva, 2005, p. 63; ILO, *Migrant Workers, General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 87<sup>th</sup> Session, 1999, Report III, Part IB.

## 1.2 Reviews of reports by governments and follow-up

The implementation of all ratified and unratified Conventions of the ILO are supervised by two bodies. The Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards examine the reports submitted by governments.

### a. *The Committee of Experts on the Application of Conventions and Recommendations (CEACR)*

The CEACR reviews the periodic reports by governments. This Committee of Experts is made up of 20 legal experts chosen on the basis of their independent standing, impartiality and expertise in

the fields of law and labour. The Committee assesses the state of a country's application with ratified international labour standards, and identifies discrepancies between national practice and the Conventions' requirements. It provides two types of comments as guidance on the application of Conventions:

- **Observations** are generally used for more serious or long-standing cases of a government's failure to fulfill its obligations, or for noting cases of progress. Observations are published in the Committee's annual report to the International Labour Conference, and are made available to the public.<sup>100</sup>
- **Direct requests** are submitted directly to governments and organizations concerned, seeking more information or clarification on specific issues. Direct requests are not included in the Committee's annual report but are available on the ILO's public website.<sup>101</sup>

(Selected examples of CEACR observations and direct requests are listed in Annex 5.)

#### **b. *The Conference Committee on the Application of Standards***

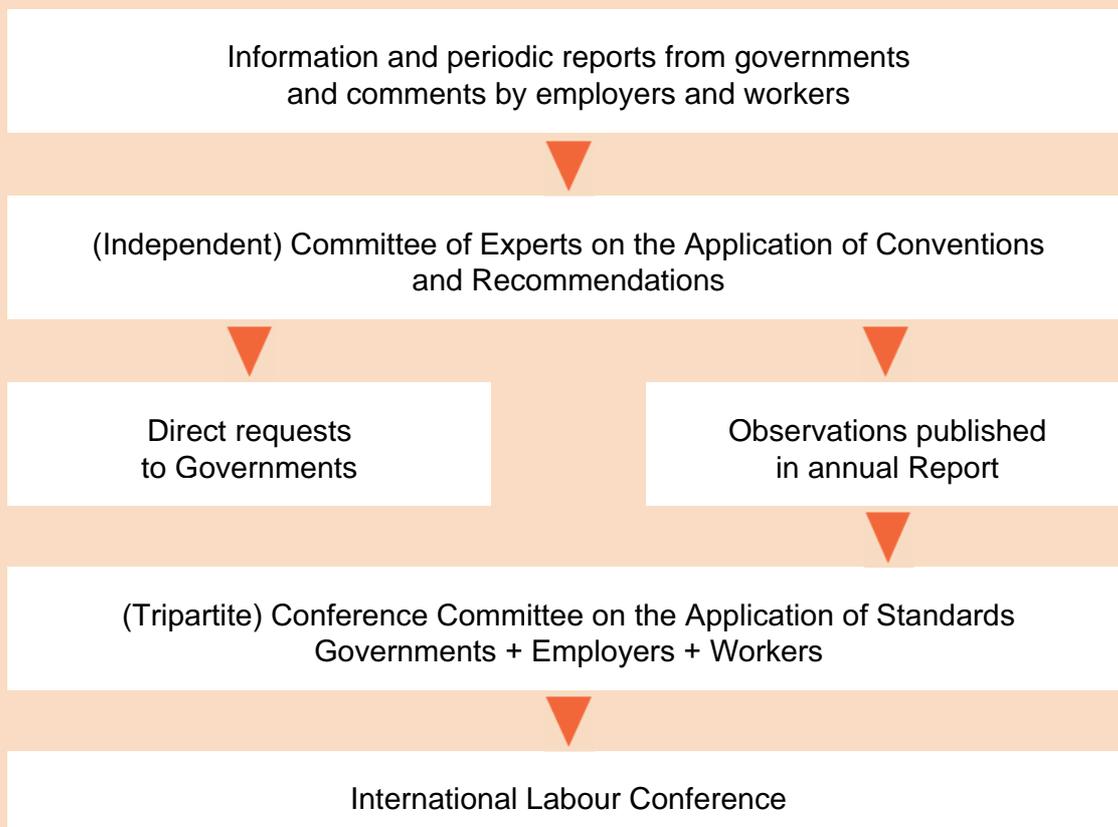
The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. As one of the standing committees of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report and selects from it a number of observations for discussion. The governments referred to in these comments are invited to provide information on the situation in question to the Conference Committee. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.<sup>102</sup> (See Box 24.)

## **2. Complaint procedures**

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When an individual State is not complying with the obligations under any ILO Convention it has ratified, complaints may be submitted to the ILO under several procedures. Following are complaint procedures and some examples of complaints concerning migrant workers that have been brought under such procedures.

### Box 24: Supervision of the Application of International Labour Conventions and Recommendations



Source: ILO, *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A manual*, Geneva, 2003, p. 75.

## 2.1 Representations under Article 24 of the ILO Constitution

Representations under Article 24 are the mildest form of formal grievance against failure to apply a ratified Convention. A representation can be made *only* by an employers' or workers' organization<sup>103</sup> against any government which, in its view, has not properly applied a Convention it has ratified. As mentioned earlier, individuals and NGOs *cannot* make representations directly to the ILO but can pass on relevant information through a workers' or employers' organization.

The ILO Governing Body will first determine whether a representation is receivable.<sup>104</sup> If so, a three-member tripartite committee may then be set up to examine the representation and the government's response. This committee's report describes the steps taken by it to examine the representation, presents conclusions on the issues raised therein and formulates recommendations as to the decisions to be taken by the Governing Body. Legal aspects of the case may be drawn to the attention of the Committee of Experts on the Application of Conventions and Recommendations. Where the government's response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response (Article 25).

### Box 25: Example of a representation lodged under Article 24

At its 288th Session (November 2003), the Governing Body approved the report of the tripartite committee set up to examine a representation made by the Trade Union Congress of the Philippines (TUCP), under article 24 of the ILO Constitution, alleging non-observance by China of Convention No. 97 with respect to the Special Administrative Region (SAR) of Hong Kong. The allegations related to certain measures approved by the Government of Hong Kong SAR affecting the wages and the social security rights of foreign domestic workers and which were harmful for Filipino workers and in violation of Article 6 of the Convention.

The Governing Body issued recommendations on:

- the residence requirement to be eligible for public health-care services, and the ability of foreign domestic workers to obtain such services
- the employees' retraining levy imposed on the employers of all migrant workers.
- the minimum wage for foreign domestic workers.

The Committee of Experts has been following up on these recommendations with the government in the course of its regular supervision of the application of C. 97 by Hong Kong SAR.

## 2.2 Complaints under Articles 26–34 of the ILO Constitution

Complaints under Articles 26–34 typically concern serious and persistent violations of the obligations by countries that have ratified ILO Conventions.<sup>105</sup> Due to the serious nature of this complaints procedure, it has been used infrequently and usually as a last resort, when a thorough investigation is not possible under the regular system of supervision. For the most part ILO constituents pursue issues of application through the regular supervisory system, which is generally perceived as an effective means to ensure governments' compliance with the ILO standards.

Various parties may file a complaint under this procedure: (i) one member State against another member State, provided both member States have ratified the same Convention, (ii) a delegate to the International Labour Conference on the observance of a ratified Convention by a State, or (iii) the Governing Body in its own capacity.

Upon receipt of a complaint, the Governing Body may appoint a Commission of Inquiry, consisting of three independent members. This Commission of Inquiry is the ILO's highest-level investigative procedure. It is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case. It makes recommendations on measures to be taken to address the problems raised by the complaint. To date, 11 Commissions of Inquiry have been established.

When a country fails to carry out the recommendations of a Commission of Inquiry, the Governing Body may recommend to the Conference any action "as it may deem wise and expedient" to secure compliance with the recommendations.

**Box 26: Example of complaints lodged under Articles 26 and 33**

Following a complaint under article 26 of the ILO Constitution from 25 Workers' delegates to the Conference, in March 1997 the Governing Body established a Commission of Inquiry to examine the observance of Myanmar of C. 29. After a detailed investigation (during which it was not, however, given access to Myanmar) the Commission of Inquiry concluded in a report issued in 1998 that there was widespread and systematic use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for a range of tasks including portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks.

Serious disappointment by the Government's "flagrant and persistent" failure to apply C. 29 and the "continued widespread use of forced labour" lead the International Labour Conference to adopt a *Resolution on the widespread use of forced labour* in Myanmar in 1999 denying Myanmar the benefit of further technical cooperation or assistance, except to the extent that it would be for the purpose of securing the immediate implementation of the recommendations of the Commission of Inquiry. In 2000, the ILC adopted another *Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar*, requesting ILO constituents, international organizations and the United Nations to review their relations with Myanmar, in particular to ensure that such relations could not be taken advantage of to perpetuate or extend forced labour practices.

### 2.3 Complaints on violations of freedom of association

Complaints on violations of freedom of association are made against individual States for the failure to fulfill their obligations under the ILO Constitution as related to the rights of workers to organize and bargain collectively. These complaints can be made by a workers' or employers' organization, or by another government. Like in the case of a representation, individuals *cannot* make such complaints directly to the ILO, but can pass on relevant information to a workers' or employers' organization and request them to act on their behalf.

Because the obligations originate from the ILO Constitution, complaints on this subject can be made even if a country has not ratified the relevant ILO Conventions, namely the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). The complaints for violations of freedom of association are examined by the Committee on Freedom of Association.

#### *The Committee on Freedom of Association*

In 1951, the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association. The CFA only examines allegations of violations of freedom of association, including:

- the right of workers and employers to organize with a view to defending and furthering their interests at work
- the right to strike

- the protection of civil liberties, particularly those essential to the normal exercise of trade union rights
- the right of workers to be protected against anti-union discrimination
- the right of workers' and employers' organizations to be protected against acts of interference by each other
- the right of workers and employers to collectively negotiate terms and conditions of employment ('collective bargaining').

The CFA is a tripartite body that meets three times a year. It is composed of an independent chairperson and three representatives each from the government, employer, and worker groups of the Governing Body. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the effect given to its recommendations.

In cases where the country has ratified the relevant instruments, the legislative aspects of the case may be referred to the Committee of Experts. The CFA may also choose to propose a 'direct contacts' mission to the government concerned to address the problem directly with government officials and the social partners through a process of dialogue. In over 50 years of work, the CFA has examined over 2,500 cases. (See Boxes 27 and 28.)

### 3. The ILO Multilateral Framework on Labour Migration

The report of the World Commission on the Social Dimension of Globalization entitled *A Fair Globalization, Creating Opportunities for All* called for a fully inclusive and equitable process of globalization and highlighted the need for a multilateral framework to govern cross-border labour mobility.

A major outcome of the General Discussion on Migrant Workers at the International Labour Conference 2004, was the adoption by consensus of 177 member countries of a *Resolution Concerning A Fair Deal For Migrant Workers In A Global Economy*. This Resolution calls upon the ILO and its constituents to carry out a plan of action in partnership with other relevant international organizations. The most important and innovative component of the Action Plan is the "development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards."

The Multilateral Framework comprises international guidelines and principles drawn from international labour and human rights standards as well as best practices in origin and host countries. As a set of non-binding guidelines for policy, it is not limited to only those principles where an international agreement has already

**Box 27: Examples of complaints for violations of freedom of association****AFL-CIO and CTM vs. Government of United States of America (2002)**

In 2002, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM) filed a complaint against the Government of the United States. The allegations in Case No. 2227 referred to the consequences for the freedom of association rights of an estimated 8 million undocumented workers in the United States following the United States Supreme Court ruling that, because of his immigration status, an undocumented worker was not entitled to back pay for lost wages after having been illegally dismissed for exercising the trade union rights protected by the National Labour Relations Act (NLRA).

After having examined the case, the Committee of Freedom of Association (CFA) concluded that the remaining remedies for the undocumented workers were inadequate to ensure effective protection against acts of anti-union discrimination. The CFA considered that:

- The remedies available to undocumented workers dismissed for attempting to exercise their trade union rights included: (1) a cease and desist order in respect of violations of the NLRA; and (2) the conspicuous posting of a notice to employees setting forth their rights under the NLRA and detailing the prior unfair practices.
- Failure to comply could only be challenged through court-enforced orders of the National Labour Relations Board (NLRB) obtained through litigation or formal settlements. Such remedies did in no way sanction the act of anti-union discrimination already committed, but only acted as possible deterrents for future acts. Such an approach was likely to afford little protection to undocumented workers who can be indiscriminately dismissed for exercising freedom of association rights without any direct penalty aimed at dissuading such action.

The case establishes a point of great practical significance to undocumented workers. To protect the right to organize of undocumented workers, States must not only proclaim freedom of association and provide sanctions where this freedom is violated. States must develop concrete methods of redress that take into account the specific vulnerability of certain categories of workers, so that this vulnerability can no longer be exploited with a view to committing violations of the right to organize.

**General Union of Workers of Spain vs. Government of Spain (2001)**

In 2001, the General Union of Workers of Spain (UGT) alleged that the new law on foreigners (Act No. 8/2000 on the Rights of Foreigners in Spain and their Social Integration) restricted foreigners' trade union rights by making their exercise dependent on authorization of their presence or residence in Spain. By this restriction, the Act established a clear distinction between the so-called 'legal' foreigners, who enjoy trade union rights on an equal footing with nationals, and 'irregular' foreigners, who did not enjoy such rights. The CFA recalled that Spain had ratified Convention No. 87, which guarantees the right to organize for all workers "without distinction whatsoever (with the exception of members of the armed forces and the police). The CFA also emphasized that unions must have the right to represent and assist workers covered by the Convention with the aim of furthering and defending their interests.

been negotiated. It contains appropriately detailed descriptions of policies and laws that can serve as models for policy reform in some 20 specific areas, taking into account the need of countries for a flexible way in which to progressively align national policies with international principles, from policies on admissions to the treatment of migrant workers, sharing the gains from migration, and social integration.

The main objective of the Multilateral Framework is to assist member States to develop more effective labour migration policies, so that the positive effects of labour migration may be maximized, and the negative effects minimized.

## Box 28: Complaint procedures

If a State is considered violating or not fulfilling its obligations to the provisions of any ILO Convention it has ratified or the provisions under the ILO Constitution:

The following parties:

- Employers' organization, or  
- Workers' organization

- Another member State  
- A delegate to the ILC, or  
- The ILO Governing Body (in its own capacity)

- Employers' organization  
- Workers' organization, or  
- Another member State

Can file:

**A Representation**

under Articles 24-25 of the ILO Constitution

**A Complaint**

under Articles 26-34 of the ILO Constitution

**A Complaint**

for violations of freedom of association under ILO Constitution

If the representation or complaint is considered receivable:

The Governing Body will appoint a 3-member tripartite Committee from amongst its member to examine the case and make recommendations.

The Governing Body may appoint a Commission of Inquiry (consisting of 3 independent members) to fully consider the complaint and prepare a report with recommendations to meet the complaint.

The report is published.

The case is referred to a standing of the Governing Body, the Committee of Freedom of Association (composed of an independent chairperson and 3 representatives each from governments, workers and employers).

The CFA examines the complaint and any reply from the Government concerned, and issues recommendations for adoption by the Governing' Body.

The Governing Body may or may not decide to publish the representation and its recommendations, and may draw the attention of Committee of Experts to the legal aspects of the case.

(1) A Government may accept the recommendations, or refer the case to the International Court of Justice.

(2) If the Government does not comply, the Governing Body may recommend to the Conference any action which it considers wise and expedient to secure compliance.

Legal aspects may be drawn to the attention of the Committee of Experts if the Conventions on freedom of association and collective bargaining have been ratified.

The Multilateral Framework is fairly encompassing and deals with a wide range of issues. These include, above all the promotion of Decent Work, promotion of managed migration for employment through bilateral and multilateral agreements, promotion of ethical recruitment procedures, prevention of abusive practices through the strengthening and creation of institutional capacities, making remittance transfers efficient and more productive in sending countries, promoting social integration of migrants in host societies, development of social security and other social protection entitlements through innovative schemes and finally, of course, the promotion of migrant workers rights.

#### 4. Practical guidelines to protect the rights of migrant workers

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The protection of the rights of migrant workers requires a sound legal foundation based on international law and standards, as well as active cooperation among governments, employers' organizations, workers' organizations, and civil society. Some practical guidelines for these key actors are provided below.<sup>106</sup>

##### 4.1 Role of governments

- Ratify and fully implement all international legal instruments that promote human, labour and gender equality rights of migrant workers, in particular ILO Conventions No. 97 and No. 143, the eight ILO fundamental Conventions, and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Adopt, implement and enforce legislation and policies that:
  - guarantee both men and women migrant workers the right to freedom of association and ensure compliance by employers' and workers' organizations
  - protect migrant workers from conditions of forced labour, including debt bondage and trafficking, in particular migrants with irregular status or groups of migrant workers who are especially vulnerable to such conditions
  - ensure respect for the minimum age for admission to employment and effectively prohibit the worst forms of child labour, including trafficking and forced labour of migrant children and children of migrant workers
  - eliminate all forms of discrimination against migrant workers in employment and occupation, for example, eliminate discriminatory medical examination for HIV status or pregnancy and 'protective' measures for women which restrict entry into productive and safe migrant work for women.
- Establish mechanisms for regular labour market analysis with a gender lens, including, for example:
  - sex-disaggregation in collection and analyses of data

- specific labour policies and legislation to address inequalities by (i) covering economic sectors with many women migrants, and (ii) identifying risks and vulnerabilities for women migrants and irregular migrant workers, in specific occupations and in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work.
- Intensify measures aimed at detecting and identifying abusive practices against migrant workers, including physical or sexual harassment or violence, restriction of movement, debt bondage, forced labour, withholding or underpayment or delayed payment of wages and benefits, retention of passports or identity or travel documents, and threat of denunciation to authorities, particularly in sectors outside the usual avenues of regulation and protection, such as domestic work.
- Formulate, as part of a comprehensive migration policy, a programme of protection, incorporating the substantive provisions of the ILO migration instruments. Such a programme should include at least the following:
  - orientations to provide migrant workers with adequate information in the language they understand and other assistance services, including effective consular services with both female and male staff
  - supervision of private recruitment agencies to prevent fraudulent practices
  - effective enforcement mechanisms for the protection of migrant workers' rights and training on human rights to all government officials involved in migration
  - social services to assist migrant workers on access to safe housing, education and language training, and assistance in finding employment opportunities
  - remedial measures and 'safe places' for victims of trafficking and abuse, especially women and children
  - legislation and policies to prevent abusive practices, migrant smuggling, trafficking in persons, and irregular labour migration
  - community-level action to address the root causes and impact of migration and trafficking with a focus on gender inequalities.
- Adopt measures to ensure that all migrant workers are paid their wages directly to them on a regular basis, that they have the freedom to dispose of their wages as they wish, and that their wages are paid upon the termination of employment in accordance with relevant ILO instruments, and national law and practice.
- Extend labour inspection to all workplaces where migrant workers are employed, in order to effectively monitor their working conditions and supervise compliance with employment contracts. Also ensure that labour inspection authorities have necessary resources and staff adequately trained

in addressing migrant workers' rights and the different needs of men and women migrant workers.

#### 4.2 Role of employers' organizations

- Ensure that employers, recruitment agencies or concerned authorities facilitate migrant workers' departure, journey, and reception by providing information, training and assistance in a language they understand prior to their departure and on arrival concerning the migration process, their rights and the general conditions of life and work in the destination country.
- Raise awareness of migrant worker issues among employers, particularly those that hire large numbers of migrants, and secure their involvement in promoting migrants' rights and welfare.
- Raise awareness of hiring practices and working conditions among employers to promote the principle of equal treatment between nationals and migrant workers.
- Adopt and promote employers' code of practice, including the use of written employment contracts.
- Cooperate with governments, trade unions, and NGOs to advocate for informed, transparent and rights-based migration policies, including the prevention and protection against abusive migration practices such as smuggling, trafficking in persons, and practices of forced labour and child labour.
- Integrate the specific concerns of men and women migrant workers in collective bargaining processes and social dialogue.
- Improve the labour market positions of migrant workers, for example, through the provision of vocational training and educational opportunities.

#### 4.3 Role of trade unions

- Actively organize migrant workers, including women, and assist them in forming their own organizations to ensure that they have effective voice and representation.
- Inform members about the ILO and its machinery, and ensure that all workers, including migrant workers, understand their rights and important ILO Conventions and international instruments that apply to them.
- Network with workers' organizations in origin and destination countries to ensure that migrant workers are informed of their rights and are provided with assistance throughout the migration process.

- Work with other social partners and migrant worker associations to ensure better representation and participation in economic, social and political life.
- Integrate the specific concerns of men and women migrant workers in collective bargaining processes and social dialogue.
- Utilize the full array of formal means available to unions within the ILO supervisory system to secure the rights of migrant workers under ratified Conventions.
- Maintain good working relationships, cooperate and exchange information with government, employers' associations and NGOs to advocate for informed, transparent and rights-based migration policies.

#### 4.4 Role of other civil society organizations

- Form partnerships with existing trade unions or workers' associations, and maintain good relationship with employers and the government.
- Advocate for the observance of migrant workers' rights by actively participating in the process of dialogue with the ILO and its constituents (through workers' and employers' organizations, or the ILO Special List of Non-Governmental International Organizations), by providing pertinent information to the dialogue.
- Advocate for social integration of migrant workers, respect for cultural diversity, prevention of discrimination and measures against racism, xenophobia and discrimination on the basis of sex migration policy.
- Promote public education and awareness-raising campaigns regarding the contributions migrant workers make to the countries in which they work.
- Strengthen training for migrant workers in legal literacy, financial education (budgeting and remittances), vocational skills development, and organizing skills and opportunities.
- Create and reinforce community support networks for migrant workers.
- Promote linkages between transnational communities and business initiatives.
- Create incentives for enterprise creation and development, including transnational business initiatives and micro-enterprise development by men and women migrant workers in origin and destination countries.

## ENDNOTES

- 1 Global Commission on Migration (GCIM), *Migration in an Interconnected World: New directions for action*, Report of the Global Commission on Migration, Switzerland, October 2005, p. 83.
- 2 United Nations Department of Economic and Social Welfare, Population Division, *Trends in Total Migrant Stock: The 2005 revision*, CD-ROM Documentation, February 2006.
- 3 *Ibid*, pp. 15-17.
- 4 *Ibid*, pp. 6-7.
- 5 Article 427 of the Treaty of Versailles, which laid the basis for the ILO in 1919, provides that “the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.” The Declaration concerning the aims and purposes of the ILO, known as the *Declaration of Philadelphia*, adopted in 1944 and incorporated into the ILO Constitution, makes specific reference to the problems of migrant workers in Paragraph III(c): *The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world, programmes which will achieve: ... the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; ... the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement.*
- 6 In 1990, the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Two UN Protocols supplementing the UN Convention Against Transnational Organized Crime adopted in 2000 have also served as important instruments in the protection of the rights of migrant workers: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol Against the Smuggling of Migrants by Land, Sea and Air. This UN Convention and its respective Protocols, as well as other UN conventions are mentioned in this Guide whenever they are of specific relevance to migrant workers.
- 7 Article 3 of the (Palermo) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime defines smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”
- 8 For more information, see ILO, *A Global Alliance against Forced Labour*, Geneva, 2005, p. 5 a.f.
- 9 C. 97, art. 11 (1); C. 143, art. 11 (1). The ILO Migration for Employment Convention (Revised), 1949 (No. 97) defines a ‘migrant worker’ as “a person who migrates from one country to another with a view to being employed otherwise than his [or her] own account, and includes any persons regularly admitted as a migrant for employment.” Similarly, Article 2 (1) the (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990) 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.” C. 97 excludes specific categories of workers such as frontier workers, the short term entry of members of the liberal professions and artists, and sea farers, while Convention No. 143 excludes two further categories: (1) persons coming specifically for purposes of training and education and (2) those admitted temporarily

- to a country at the request of their employer to undertake specific tasks for a limited and set period of time. The definition of migrant worker in the UN Convention is broader than that contained in the ILO instruments, as it also covers frontier workers, seasonal workers, itinerant workers, seafarers and workers on off-shore installations.
- 10 National extraction covers distinctions made on the basis of the place of birth, ancestry or foreign origin of citizens in a country. Discrimination on the basis of social origin arises when an individual's membership in a class, socio-occupational category—such as farmers—or a caste determines his or her occupational future. ILO, *Equality in Employment and Occupation*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th Session, Geneva, 1988, pp. 32 and 53.
  - 11 ILO, *ABC of Women Workers' Rights and Gender Equality*, ILO: Geneva, 2000, pp. 28–29.
  - 12 *Idem*.
  - 13 Gender Promotion Programme (GENPROM), International Labour Office, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An information guide*, Booklet 1 Introduction: Why the focus on women international migrant workers, Geneva, 2003.
  - 14 GENPROM, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, Booklet 1, p. 9.
  - 15 United Nations Population Fund (UNFPA), *State of World Population 2006: A passage to hope, women and international migration*, September 2006.
  - 16 GENPROM, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, Booklet 1, p. 10.
  - 17 GCIM, *Migration in an Interconnected World*, p. 14.
  - 18 GENPROM, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, Booklet 1, pp. 9–10.
  - 19 *Ibid*, p.10.
  - 20 ILO, *Global Employment Trends for Women Brief*, March 2007, Box 4, p. 9.
  - 21 GCIM, *Migration in an Interconnected World*, p. 14.
  - 22 ILO, *Global Employment Trends for Women Brief*, p. 12.
  - 23 ILO, *Labour and Social Trends in ASEAN 2007: Integrations, challenges and opportunities*, ILO: Bangkok, 2007, p. 23.
  - 24 In one ILO study, 23 per cent of domestic workers had university degree. United Nations Development Fund for Women (UNIFEM), *Human Rights Protections Applicable to Women Migrant Workers: A UNIFEM Briefing Paper*, Roundtable on the Human Rights of Women Migrant Workers under CEDAW, 11 July 2003, p. 20.
  - 25 ILO, “Female Migrant Workers in the Labour Market: Global challenges and trends,” *ILO Gender News*, International Women's Day, 8 March 2007 – Special Issue on Women and Migration, p. 2.
  - 26 GENPROM, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, Booklet 1, p. 15.
  - 27 UNIFEM, *Human Rights Protections Applicable to Women Migrant Workers*, p. 4.
  - 28 ILO, *Global Employment Trends for Women Brief*, p. 9.
  - 29 The key gender equality rights at work are reflected in four ILO Conventions and their accompanying Recommendations: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111); the Equal Remuneration Convention, 1951 (No. 100) and Recommendation (No. 90); the Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165); and the Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191). C. 100 and C. 111 are fundamental Conventions.
  - 30 United Nations Department of Public Information, *Platform for Action and the Beijing Declaration*, New York, 1996, p. 11.
  - 31 ILO, *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A manual*, Geneva, 2003.
  - 32 Convention No. 107 is now closed for ratification. However, the Convention remains binding on countries that have ratified it. Countries that have ratified C.

- 107 automatically denounce the Convention when they ratify C. 169 *Ibid*, p. 5.
- 33 Certain of the Conventions and Recommendations referred to in this chapter exclude from their scope one or more of the following groups: frontier workers, members of the liberal professions, artists on short-term visits, seafarers, the self-employed, persons entering a country specifically for the purpose of training or education, and workers who stay in a country without a permit.
- 34 Readers interested in the precise legal wording of a right can pick up the article of a Convention or the paragraph of a Recommendation as indicated in the following endnotes.
- 35 C. 87; C. 97, art. 6(1)(a)(ii); C. 98; C. 135; R. 143; C. 141; R. 149; C. 143, art. 10; R. 151, para. 2(g).
- 36 Minimum Age Recommendation, 1973 (No. 146), para. 16 (a).
- 37 C. 182, art. 7 (2) (d).
- 38 C. 97, art 6; C. 111, art. 1 (a); C. 143, arts. 10 and 12 (g).
- 39 R. 86, para. 5(2). See also endnote 45 below.
- 40 C. 97, art. 2.
- 41 C. 97, art. 3; C. 97, Appendix I, art. 3, and Appendix II, art. 3.
- 42 C. 97, art. 7; C. 97, Appendix I, art. 4.
- 43 C. 181, art. 7.
- 44 C. 95, art. 9.
- 45 C. 97, Appendix I, art. 5, and Appendix II, art. 6. See also R. 86, Model Agreement, art. 22.
- 46 C. 97, art. 2; C. 97, Appendix I, arts. 4 and 6, and Appendix II, arts. 4 and 7.
- 47 C. 97, art. 5; R. 86, paras. 12 and 14; R. 100, para. 8.
- 48 R. 100, para. 7.
- 49 R. 86, Annex, art. 12.
- 50 C. 97, Appendix III, art. 1.
- 51 R. 151, para. 2(a) in conjunction with C. 97, art. 2. See also C. 97, Appendix II, arts. 10 and 11.
- 52 C. 97, art. 6(1)(a)(iii); C. 97, Appendix I, art. 6(c), and Appendix II, art. 7(c); R. 100, paras. 21 and 22.
- 53 C. 143.
- 54 C. 97, art. 6.
- 55 C. 97, art. 6(1)(a)(i); R. 100, paras. 23, 25 and 36; R.151, para. 2.
- 56 This is essentially the subject of C. 100, although the standard is reiterated in e.g. C. 111, the Employment Policy Convention, 1964 (No. 122) and in art. 6 (1) (a) of C. 97.
- 57 Art. 6 (1) (a) of C. 97 requires ratifying States to secure migrant workers “treatment no less favourable than that which it applies to its own nationals in respect of ... (i) remuneration, including family allowances where these form part of remuneration ...” “No less favourable treatment” is understood to mean treatment which is not necessarily identical, but equivalent.
- 58 The Protection of Wages Convention, 1949 (No. 95) lays down further standards regarding wage payment. The Convention is applicable to nationals of the host country and migrant workers alike.
- 59 C. 143, art. 9(1).
- 60 C. 143, art. 12(g).
- 61 R. 100, paras. 45 and 46; R. 151, paras. 20, 21 and 22.
- 62 C. 143, art. 14 (a).
- 63 C. 143, art. 8; R. 151, para. 2(d).
- 64 C. 143, art. 8.
- 65 R. 100, paras. 38, 39 and 40; R. 151, para. 2(c).
- 66 R. 151, para. 2 (a) and (b).
- 67 R. 195, para. 12.
- 68 C. 118; C. 97, art. 6(1)(b); R. 100, paras. 45, 46 and 47; C. 143, art. 10; R. 151, para. 34; C. 157; R. 167.
- 69 C. 97, art. 6
- 70 C. 143, art. 9 (1)
- 71 Extensive guidance may be found in the Workers’ Housing Recommendation, 1961 (No. 115).
- 72 R. 115, para. 12 (2).
- 73 R. 115, para. 4.
- 74 R. 115, para. 12 (3).
- 75 C. 97, art. 6(1)(d); C. 143, art. 9(2); R. 151, paras. 33 and 34.
- 76 C. 143, art. 14 (a) and (c).
- 77 *ILO Code of Practice on HIV/AIDS and the World of Work*, para. 8.1.
- 78 *Ibid*, para. 5.2.
- 79 *Ibid*, para. 9.
- 80 R. 100, para. 51.

- 81 Model Agreement in Annex to R. 86, art. 18.
- 82 R. 86, para. 18.
- 83 R. 100, para. 49(d) and (e); C. 143, art. 12(f); R. 151, para. 7.
- 84 C. 97, art. 9.
- 85 C. 143, art. 13; R. 151, paras. 13, 14, 15, 16, 17, 18 and 19.
- 86 C. 97, art. 2; R. 151, paras. 7(1)(a) and 24.
- 87 R. 151, paras. 32, 33 and 34.
- 88 C. 97, Appendix II, art. 9; R. 100, para. 10; C. 143, art. 9(3).
- 89 C. 143, art. 9(1) and (2); R. 151, paras. 33 and 34.
- 90 C. 97, Appendix III, art. 2; R. 86, para. 20.
- 91 A Protocol partially revises a Convention. For example, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, provides conditions in which States can depart from the prohibition of night work for women. A State can only ratify a Protocol if the underlying Convention has been ratified.
- 92 As of 1 July 2007, the ILO has adopted 188 Conventions and 199 Recommendations addressing a number of issues such as wages, occupational safety and health, forced labour, child labour, maternity protection, labour administration, tripartite consultation, and freedom of association, as well as specific categories of workers, including migrant workers.
- 93 ILO, *ILO Standards and Women Workers*, Bangkok, 1990, p. 41.
- 94 The priority Conventions referred to in Box 22 include the Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Tripartite Consultations (International Labour Standards) Convention, 1976 (No. 144).
- 95 ILO, *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169)*, pp. 70–71.
- 96 For more specific information on access to the ILO for NGOs, see Asian Migrant Center et. al., *A UN Road Map: A guide for Asian NGOs to the international human rights system and other mechanisms*, 2nd ed., 2004.
- 97 See <http://www.ilo.org/public/comp/civil/ngo/relngios.htm>.
- 98 See endnote 94.
- 99 The Conventions and Recommendations specifically aiming at the protection of migrant workers were the subject of a General Survey by the Committee of Experts in 1998. ILO: Migrant Workers. General survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975, Report III (Part 4B), International Labour Conference, 87th Session, Geneva, 1999.
- 100 Most communications from workers' and employers' organizations are taken up in observations rather than direct requests and may be discussed at the International Labour Conference.
- 101 See ILOLEX database on ILO website for further information at: <http://www.ilo.org/ilolex/english/>.
- 102 ILO, *Rules of the Game: A brief introduction to International Labour Standards*, Geneva, 2005, p. 77.
- 103 The term used in article 24 of the ILO Constitution is “industrial association of employers or workers.”
- 104 Art. 2 (2) of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization provides the following conditions of receivability for a representation: It must:
  - be communicated to the International Labour Office in writing
  - come from an industrial association of employers or workers
  - make specific reference to article 24 of the ILO Constitution
  - concern a Member of the Organization
  - refer to a Convention to which the Member against which it is made is a party
  - indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention.

- 105 Countries against which complaints are made are usually ILO member States. However, complaints can also be made against countries that are no longer ILO member States, but have retained obligations under the Conventions they ratified in the past.
- 106 More detailed guidelines can be found in the ILO Multilateral Framework on Labour Migration. ILO, *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, 31 October-2 November 2005. See also “Checklist: Means of action to protect the rights and welfare of migrant workers” in ILO, *Labour Migration Policy and Management: Training modules*, Bangkok, 2004, pp. 71-72.

# ANNEX 1

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## INTERNATIONAL LABOUR STANDARDS RELEVANT TO MIGRANT WORKERS

### Fundamental ILO Conventions

#### *Freedom of Association*

- C. 87 Freedom of Association and Protection of the Right to Organize Convention, 1948.
- C. 98 Right to Organize and Collective Bargaining Convention, 1949.

#### *Equality at Work*

- C. 100 Equal Remuneration Convention, 1951.
  - R. 90 Equal Remuneration Recommendation, 1951.
- C. 111 Discrimination (Employment and Occupation) Convention, 1958.
  - R. 111 Discrimination (Employment and Occupation) Recommendation, 1958.

#### *Forced Labour*

- C. 29 Forced Labour Convention, 1930.
  - R. 35 Forced Labour (Indirect Compulsion), 1930.
- C. 105 Abolition of Forced Labour Convention, 1957.

#### *Child Labour*

- C. 138 Minimum Age Convention, 1973.
  - R. 146 Minimum Age Recommendation, 1973.
- C. 182 Worst Forms of Child Labour Convention, 1999.
  - R. 190 Worst Forms of Child Labour Recommendation, 1999.

### Migrant-specific ILO Conventions and Recommendations

- C. 97 Migration for Employment Convention (Revised), 1949.
  - R. 86 Migration for Employment Recommendation (Revised), 1949.
- C. 143 Migrant Workers (Supplementary Provisions) Convention, 1975.
  - R. 100 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955.
  - R. 151 Migrant Workers Recommendation, 1975.

### Some ILO Conventions and Recommendations with Specific Concerns of Migrant Workers

- C. 19 Equality of Treatment (Accident Compensation) Convention, 1925.
- C. 26 Minimum Wage-Fixing Machinery Convention, 1928.
- C. 81 Labour Inspection Convention, 1947.
- C. 88 Employment Service Convention, 1948.
- C. 94 Labour Clauses (Public Contracts) Convention, 1949.
- C. 95 Protection of Wages Convention, 1949.
- C. 102 Social Security (Minimum Standards) Convention, 1952.

- C. 110 Plantations Convention, 1958.
- R. 115 Workers' Housing Recommendation, 1961.
- C. 117 Social Policy (Basic Aims and Standards) Convention, 1962
- C. 118 Equality of Treatment (Social Security) Convention, 1962.
- C. 121 Employment Injury Benefits Convention, 1964.
- C. 122 Employment Policy Convention, 1964.
- R. 122 Employment Policy Recommendation, 1964.
- R. 169 Employment Policy (Supplementary Provisions) Recommendation, 1984.
- C. 129 Labour Inspection (Agriculture) Convention, 1969.
- C. 131 Minimum Wage Fixing Convention, 1970.
- C. 135 Workers' Representatives Convention, 1971.
- R. 143 Workers' Representatives Recommendation, 1971.
- C. 141 Rural Workers' Organizations Convention, 1975.
- R. 149 Rural Workers' Organizations Recommendation, 1975.
- C. 142 Human Resources Development Convention, 1975.
- R. 195 Human Resources Development Recommendation, 2004.
- C. 149 Nursing Personnel Convention, 1977.
- C. 155 Occupational Safety and Health Convention, 1981.
- R. 164 Occupational Safety and Health Recommendation, 1981.
- C. 157 Maintenance of Social Security Rights Convention, 1982.
- R. 167 Maintenance of Social Security Rights Recommendation, 1983.
- C. 158 Termination of Employment Convention, 1982.
- C. 167 Safety and Health in Construction Convention, 1988.
- C. 168 Employment Promotion and Protection against Unemployment Convention, 1988.
- C. 169 Indigenous and Tribal Peoples Convention, 1989.
- C. 172 Working Conditions (Hotels and Restaurants) Convention, 1991.
- C. 176 Safety and Health in Mines Convention, 1995.
- C. 181 Private Employment Agencies Convention, 1997.
- R. 188 Private Employment Agencies Recommendation, 1997.
- C. 183 Maternity Protection Convention, 2000.
- C. 184 Safety and Health in Agriculture Convention, 2001.

### Information Sources on ILO Conventions and Recommendations

All parties interested in the rights of migrant workers should have copies of at least some, ideally all, of the Conventions and Recommendations listed here. Information concerning international labour standards may be obtained from various databases, which are publicly accessible through the ILO website:

- ILOLEX (<http://www.ilo.org/ilolex/english/>) contains the text of all Conventions and Recommendations, as well as various reports on the application of standards from ILO supervisory bodies.
- APPLIS (<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>) is less comprehensive, but features comparative information on ratifications as well as details regarding the reporting obligations of ratifying States at any given time.
- NATLEX ([http://www.ilo.org/dyn/natlex/natlex\\_browse.home](http://www.ilo.org/dyn/natlex/natlex_browse.home)) is originally a database of national labour legislation, but also features links to country profiles and other websites containing information on international labour standards.
- Libsynd (<http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1>) is a database with reports from the ILO supervisory bodies on freedom of association and the right to bargain collectively
- The ILO homepage on International Labour Standards (<http://www.ilo.org/public/english/standards/norm/index.htm>) provides information on

the latest standards-related information, as well as links to databases, promotional materials and background information

- The ILO homepage on Fundamental Principles and Rights at Work (<http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>) provides information on the latest developments related to the ILO Declaration on Fundamental Principles and Rights at Work; information gathered under the Declaration's Follow-Up mechanism (i.e. the Annual Reviews); information and perspectives released through the Global Reports; and links to research and promotional materials.

The full text of all the above Conventions and Recommendations can also be obtained as separate publications from ILO local offices or from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland.

### **United Nations Instruments Relevant to Migrant Workers**

- Universal Declaration of Human Rights (UDHR), 1948.
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965.
- International Covenant on Civil and Political Rights (ICCPR), 1966.
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- International Convention for the Protection of the Rights of All Migrant Workers and members of Their Families (MWC), 1990.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 2000.
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime, 2000.
- Convention on the Rights of the Child (CRC), 1989 and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, 2001.

### **Regional Instruments Relevant to Migrant Workers**

There is a great variety of regional instruments around the world. One that particularly deserves to be mentioned in the context of Asia Pacific is the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers adopted at the 12th ASEAN Summit, Cebu (Philippines), January 2007. (<http://www.aseansec.org/19264.htm>)

## ANNEX 2

### BIBLIOGRAPHY AND RESOURCE MATERIALS

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United Nations Population Fund (UNFPA), *State of World Population 2006: A passage to hope, women and international migration*, September 2006.

### **ILO Global Reports on Fundamental Principles and Rights at Work**

As a follow-up to the 1998 Declaration on Fundamental principles and rights at work, a Global Report is submitted to the International Labour Conference each June. All of the following reports are available at [www.ilo.org/declaration](http://www.ilo.org/declaration).)

*Equality at work: Tackling the challenges*, 2007.

*The End of Child Labour: Within Reach*, 2006.

*A Global Alliance Against Forced Labour*, 2005.

*Organizing for Social Justice*, 2004.

*Time for Equality at Work*, 2003.

*A Future without Child Labour*, 2002.

*Stopping Forced Labour*, 2001.

*Your Voice at Work*, 2000.

### **Other Publications on Migration and Migrant Workers**

Anggraeni, Dewi, *Dreamseekers: Indonesian women as domestic workers in Asia*, ILO Jakarta and PT Equinox Publishing, Jakarta, 2006.

ILO, *Human Trafficking and Forced Labour Exploitation: Guidance for legislation and law enforcement*, Geneva, 2005.

ILO, *Migrant Workers*, Labour Education 2002/4 No. 129, Geneva, 2002.

Organization for Security and Cooperation in Europe (OSCE), International Organization for Migration (IOM) & ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*, 2006.

World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating opportunities for all*, Geneva, 2004.

### **Training and Resource Materials on Safe Migration and Migrant Workers' Rights**

*A UN Road Map: A guide for Asian NGOs to the international human rights system and other mechanisms*. Joint publication of the Asian Migrants Center, the Ateneo Human Rights Center, the Canadian Human Rights Foundation, and the Asia Pacific Forum on Women Law and Development, 2nd edition, 2004, <http://www.equitas.org/english/ed-manuals/un-road-map.php>.

*Empowerment for Children, Youth and Families: 3-R Trainers' Kit on Rights, Responsibilities and Representation*. Busakorn Suriyasarn, Rosalinda Terhorst & Nelien Haspels, ILO, Bangkok, 2006, Book 6: Module 9 'A Smart Job Seeker'.

*Labour Migration Policy and Management: Training modules.* ILO, Bangkok, 2004.

*Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An information guide.* Gender Promotion Programme, ILO, Geneva, 2003.

*Promoting Gender Equality: A resource kit for trade unions.* Gender Promotion Programme, ILO, Geneva, 2002.

*Trafficking for Forced Labour, How to Monitor Recruitment of Migrant Workers: Training manual.* Special Action Programme to Combat Forced Labour, ILO, 2006.

*Travel Smart – Work Smart: A ‘smart’ guide for migrant workers in Thailand.* Mekong Subregional Project to Combat Trafficking in Children and Women, ILO, Bangkok, April 2007.

### **Useful Websites on International Migration**

Amnesty International: <http://www.web.amnesty.org>

Anti-Slavery International: <http://www.antislavery.org>

Asia-Pacific Migration Research Network: <http://www.unesco.org/most/apmrn.htm>

Asian Migrant Center: <http://www.asian-migrants.org>

Bangkok Declaration on Irregular Migration: <http://www.thaiembdc.org/info/bdim.html>

Coalition Against Trafficking in Women (CATW): <http://www.catwinternational.org/>

Global Alliance Against Trafficking in Women (GAATW): <http://www.thai.net/gaatw>

Global Campaign for the Ratification of the Convention on the Rights of Migrants: <http://www.migrantsrights.org>

Human Rights Watch (HRW): <http://www.hrw.org>

International Labour Office (ILO): <http://www.ilo.org>

ILO International Labour Migration Database: <http://www.ilo.org/public/english/protection/migrant/ilmdb/index.htm>

International Confederation of Free Trade Unions (ICFTU): <http://www.icftu.org>

International Human Rights Law Group: <http://www.hrlawgroup.org>

International Organization for Migration: <http://www.iom.int>

Migration Information Source: <http://www.migrationinformation.org>

Migrant Rights International: <http://migrantwatch.org>

Network of Migrant Workers Organizations: <http://www.solidar.org>

Philippine Overseas Employment Administration: <http://www.poea.gov.ph>

Public Services International (PSI) – Migration and Women Health Workers: <http://www.world-psi.org/migration>

Scalabrini Migration Center: <http://www.scalabrini.asn.au>

United Nations Development Fund for Women (UNIFEM): <http://www.unifem.org>

United Nations High Commissioner for Refugees (UNHCR): <http://www.unhcr.ch>

United Nations Population Division: International Migration Report 2002: <http://www.un.org/esa/population/unpop.htm>

US State Department Annual Trafficking in Persons Report: <http://www.state.gov/g/tip/rls/tiprpt/>

## ANNEX 3

### RATIFICATION STATUS OF MIGRANT WORKERS CONVENTIONS

As of 1 August 2007

**ILO Migration for Employment (Revised) Convention, 1949 (No. 97)**  
**ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)**  
**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN MWC), 1990**

**STATUS:**

ILO Convention No. 97                    **47 ratifications**  
 ILO Convention No. 143                **23 ratifications**  
 UN MWC:                                    **State Parties: 37**  
     **Signatories: 15**

State	Ratification ILO C. 97	Annexes excluded from ratification of C. 97	Ratification ILO C. 143	Ratification or Accession UN MWC (s) <i>signature only</i>
Albania	2 Mar 2005		12 Sep 2006 (Part II excluded)	5 June 2007
Algeria	19 Oct 1962	Annex II		21 Apr 2005
Argentina				27 Feb 2007
Armenia	27 Jan 2006		27 Jan 2006	
Azerbaijan				11 Jan 1999
Bahamas	25 May 1976	Annexes I to III		
Bangladesh				7 Oct 1998 (s)
Barbados	8 May 1967	Annexes I to III		
Belgium	27 July 1953			
Belize	15 Dec. 1983			14 Nov 2001
Benin			11 June 1980	15 Sep 2005 (s)
Bolivia				12 Oct 2000
Bosnia & Herzegovina	2 June 1993	Annex III	2 June 1993	13 Dec 1996
Brazil	18 June 1965			
Burkina Faso	9 June 1961		9 Dec. 1977	26 Nov 2003
Cambodia				27 Sep 2004 (s)
Cameroon	3 Sept. 1962	Annexes I to III	4 July 1978	

State	Ratification ILO C. 97	Annexes excluded from ratification of C. 97	Ratification ILO C. 143	Ratification or Accession UN MWC (s) <i>signature only</i>
Cape Verde				16 Sept 1997
Chile				21 Mar 2005
Colombia				24 May 1995
Comoros				22 Sept 2000 (s)
Cuba	29 April 1952			
Cyprus	23 Sept. 1960	Annexes I to III	28 June 1977	
Dominica	28 Feb. 1983	Annexes I to III		
Ecuador	5 April 1978	Annexes I to III		6 Feb 2002
El Salvador				14 March 2003
Egypt				19 Feb 1993
France	29 March 1953	Annex II		
Gabon				15 Dec 2004 (s)
Germany	22 June 1959			
Ghana				8 Sept 2000
Granada	9 July 1952	Annexes I to III		
Guatemala	13 Feb 1952			14 March 2003
Guinea			5 June 1978	8 Sept 2000
Guinea-Bissau				12 Sept 2000 (s)
Guyana	8 June 1966	Annexes I to III		15 Sep 2005 (s)
Honduras				11 Aug 2005
Hong Kong (China SAR)*	22 Jan 1951*			
Indonesia				22 Sep 2004 (s)
Israel	30 Mar 1953			
Italy	22 Oct 1952		23 June 1981	
Jamaica	22 June 1962	Annexes I to III		
Kenya	30 Nov 1965	Annexes I to III	9 April 1979	
Kyrgyzstan				29 Sep 2003
Lesotho				16 Sep 2005
Liberia				22 Sep 2004 (s)
Libyan Arab Jamahariya				18 Jun 2004
Madagascar	14 June 2001	Annex III		
Malawi	22 Mar 1965			
Mali				5 Jun 2003

State	Ratification ILO C. 97	Annexes excluded from ratification of C. 97	Ratification ILO C. 143	Ratification or Accession UN MWC (s) signature only
Malaysia (Sabah)	3 March 1964	Annexes I to III		
Mauritania				22 Jan 2007
Mauritius	2 Dec 1969	Annexes I to III		
Mexico				8 Mar 1999
Republic of Moldova	12 Dec 2005			
Montenegro	3 June 2006	Annex III	3 June 2006	26 Oct 2006 (s)
Morocco				21 June 1993
Netherlands	20 May 1952			
New Zealand	10 Nov 1950	Annex I		
Nicaragua				26 Oct 2005
Nigeria	17 Feb 1955	Annexes I to III		
Norway	17 Feb 1955		24 Jan 1979	
Paraguay				13 Sept 2000 (s)
Peru				14 Sep 2005
Philippines			14 Sep 2006	5 July 1995
Portugal	12 Dec 1978		12 Dec 1978	
Saint Lucia	14 May 1980	Annexes I to III		
San Marino			23 May 1985	
Sao Tome & Principe				6 Sept 2000 (s)
Senegal				9 June 1999
Serbia	24 Nov 2000	Annex III	24 Nov 2000	11 Nov 2004 (s)
Seychelles				15 Dec 1994
Sierra Leone				15 Sept 2000 (s)
Slovenia	29 May 1992	Annex III	29 May 1992	
Spain	21 March 1967			
Sweden			28 Dec 1982	
Sri Lanka				11 Mar 1996
Syria				2 Jun 2005
Tajikistan	10 April 2007		10 April 2007	8 Jan 2002
Tanzania (Zanzibar)	22 June 1966	Annexes I to III		
The former Yugoslav Republic of Macedonia	17 Nov 1991		17 Nov 1991	
DR of Timor-Leste				30 Jan 2004
Trinidad & Tobago	24 May 1963	Annexes I to III		

State	Ratification ILO C. 97	Annexes excluded from ratification of C. 97	Ratification ILO C. 143	Ratification or Accession UN MWC (s) <i>signature only</i>
Togo			8 Nov 1983	15 Nov 2001 (s)
Turkey				27 Sep 2004
Uganda			31 March 1978	14 Nov 1995
United Kingdom	22 Jan 1951	Annexes I and III		
Uruguay	18 March 1953			15 Feb 2001
Venezuela	9 June 1983		17 Aug 1983	
Zambia	2 Dec 1964	Annexes I to III		

*\*Hong Kong is a Special Administrative Region of China. China notified regarding the continued application of ILO Convention 97 in Hong Kong on 1 July 1997, date of return of Hong Kong to the People's Republic of China.*

**Signature** is a preliminary step to ratification for International (UN) Conventions; accession is an 'all in one' acceptance of the Convention equivalent to ratification, signifying that the country has become a Contracting or State Party to the Convention.

Full texts and related information on the ILO Conventions are found on the ILO website, at [www.ilo.org/ilolex](http://www.ilo.org/ilolex).

A status chart, the text of the Convention, and resolutions and reports related to the human rights of migrant workers are found on the website of the UN High Commissioner for Human Rights, at [www.unhcr.ch](http://www.unhcr.ch).

## ANNEX 4

### GENERAL OBSERVATION OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (2001) FORCED LABOUR CONVENTION, 1930 (NO. 29)

[T]he Committee requests all governments to include in their next reports under the Convention information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation. Having regard to Article 1, paragraph 1, and Article 25 of the Convention, the Committee is seeking in particular information on the following aspects of law and practice.

- (1) Provisions of national law aimed at the punishment of:
  - (a) the exaction of forced or compulsory labour;
  - (b) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (reproduced in paragraph 73 of the General Report in Part One of this report);
  - (c) the exploiters of the prostitution of others.
- (2) measures taken to ensure that the penal provisions referred to under (1) are strictly enforced against those responsible for the forced labour of legal or illegal migrants, inter alia in sweatshops, prostitution, domestic service and agriculture; in particular, measures required in practice for court proceedings to be initiated and completed, including:
  - (a) measures designed to encourage the victims to turn to the authorities, such as:
    - (i) permission to stay in the country at least for the duration of court proceedings, and possibly permanently;
    - (ii) efficient protection of victims willing to testify and of their families from reprisals by the exploiters both in the country of destination and the country of origin of the victim, before, during and after any court proceedings, and beyond the duration of any prison term that might be imposed on the exploiter; and the participation of the Government in any forms of intergovernmental cooperation set up for this purpose;
    - (iii) measures designed to inform victims and potential victims of trafficking of measures under (i) and (ii), with due regard to any barriers of language and circumstances of physical confinement of victims;
  - (b) measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, the exploitation of the prostitution of others, and the running of sweatshops, including:
    - (i) the provision of adequate material and human resources to law enforcement agencies;
    - (ii) the specific training of law enforcement officers, including those working in immigration control, labour inspection and vice squads, to address the problems of trafficking in persons in a manner conducive to the arrest of the exploiters rather than of the victims;
    - (iii) international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons;
  - (c) cooperation with employers' and workers' organizations as well as non-governmental organizations engaged in the protection of human rights and the fight against the trafficking in persons, with regard to matters considered under (2)(a) and (b)(ii);
- (3) any difficulties encountered by the authorities in seeking to prevent or suppress the exaction of forced labour to which legal and illegal migrants may be subjected in practice, and measures taken or contemplated to overcome these difficulties.

## ANNEX 5

### EXAMPLES OF CEACR OBSERVATIONS AND DIRECT REQUESTS TO GOVERNMENTS

#### Observations

#### **CEACR: Individual Observation concerning Convention No. 29, Forced Labour, 1930 Indonesia (ratification: 1950) Published: 2005**

...

3. Exploitation of migrant workers. In its previous comments, the Committee requested the Government to provide full information in reply to the comments made by the ICFTU on the exploitation of migrant workers. The requirement for migrants to go through recruitment agencies and the absence of legislation laying down the rights of Indonesian migrant workers and regulating the labour migration process make these workers vulnerable to exploitation. According to the ICFTU, unskilled Indonesians wishing to work abroad have to go through recruitment agencies, which charge them extortionate processing and training fees. Migrant workers are thus severely indebted even before they start working abroad. They are legally required to sign contracts with the recruitment agencies and have little power to negotiate their terms. Some contracts are even drafted in a foreign language and applicants are forced to lie about their age, address and even their identity. These workers end up accepting whatever work they are offered, even if it is different from the work envisaged in the contract. They are therefore in a situation of vulnerability to exploitation and forced labour.

According to the ICFTU, prospective migrant workers are exploited before, during and after their period abroad. Agencies require prospective migrant workers to live in training camps for up to 14 months, where they may be forced to work for the recruitment agency staff. Furthermore, conditions in these centres are extremely difficult and certain workers do not always benefit from freedom of movement. The agencies generate substantial profits as the exploitation of migrant workers continues after their departure for host countries. Once they are abroad, migrant workers have to pay off agency fees, which are usually higher than the legal maximum set by the Government. Depending on the country to which they emigrate, the agency is paid a sum corresponding to a number of months salary, which varies according to the country. In these circumstances, it is difficult for the workers, who are mistreated and forced to work longer hours than the normal working day under harsh conditions, to leave because of the contracts they have signed and the money owed to recruitment agencies. These workers encounter difficulties in obtaining information and assistance from their consular authorities, particularly on any redress mechanisms. Finally, migrant workers also have to pay agency fees to renew their contracts, which are usually higher than the legal maximum. Some agencies, by using coercion and deception for the recruitment and transportation of migrant workers abroad, are engaged in the trafficking of persons and should be punished accordingly. In its communication received in August 2004, the ICFTU reiterates these allegations in full.

In reply, the Government indicates that the recruitment of Indonesian migrant workers comes under its responsibility. It is regulated by Decree No. 104A/MEN/2002 and is carried out through public and private recruitment agencies, of which there are currently around 400. Private recruitment agencies have to obtain an official licence, which is only issued after verification of certain criteria. The Government acknowledges that abuses may occur throughout the recruitment process of migrant workers. It therefore

supervises the activities of recruitment agencies and sanctions those which do not comply with the regulations. During the period 2002–03, a total of 61 agencies were sanctioned, 53 licences were withdrawn and legal proceedings were initiated against eight agencies. In cooperation with the police, the Ministry of Manpower and Transmigration raided several training and accommodation centres. The Government even suspended the sending of Indonesian workers to the Asian–Pacific area between February and August 2003.

The Government also provides information on the various stages of the recruitment process to which the ICFTU referred in its comments:

- agencies are under the obligation, under penalty of sanctions, to inform workers of the nature of the job proposed, the conditions of work and constraints relating to the destination country so that they can decide freely whether to agree to leave and sign the employment contract. If the job does not correspond to the one envisaged in the contract, the worker has to refer the matter to the competent government institution so that action can be taken against the agency or employer. Agencies have already been sanctioned in this respect (withdrawal of their licences, the obligation to compensate the worker) and the Government keeps a blacklist of those in violation;
- the Government establishes the cost of the placement of migrant workers on the basis of various factors, such as supply and demand, particularly with a view to preventing the worker being exploited by the agency. In this respect, the placement agreement concluded between the agency and the worker has to establish the rights and obligations of both parties, and particularly the cost of placement borne by the worker and the payment system. The Government verifies these agreements to prevent excessive costs being borne by workers;
- the preparation of workers in training centres and the living conditions in dormitories are duly regulated. The Government adds that it has not received any complaint from workers who, having completed their training, are placed in households while awaiting the document authorizing their departure abroad;
- the obligation to return to Indonesia upon completion of the contract is intended to allow workers to socialize with their families. Such a return is sometimes made compulsory by the host country. This obligation also affords workers the opportunity to extend their working contracts by themselves without going through the agency, thereby avoiding exploitation.

Finally, the Government indicates that it is aware of the lack of bargaining power of migrant workers and for this reason is seeking to improve their conditions through the conclusion of protocol agreements with host countries. Furthermore, a Bill on migrant workers' placement and protection is under preparation and is intended to: raise the minimum age for working abroad; increase the role of manpower offices in recruitment processes and placement at the regional level; limit the validity of the licences granted to agencies; limit the placement costs borne by workers; and increase sanctions for placement agencies which infringe the law.

The Committee notes all of this information. It observes that the Government is aware of the abuses which may occur during the course of the process of the placement of Indonesian migrant workers and is endeavouring to take measures to combat such abuses and to penalize those responsible for them. Whilst welcoming these government initiatives, the Committee would be grateful if the Government would continue to provide information, particularly on:

- the nature of the supervision carried out over the activities of placement agencies on the national territory, particularly with regard to the verification of placement agreements and employment

contracts and compliance with their terms, the cost of placement actually borne by the worker, the training provided, the living conditions in training centres and dormitories and waiting periods;

- the means available to the Ministry of Manpower and Transmigration to carry out these controls;
- the nature of the infringements reported, the penalties imposed and any court decisions with copies of the decisions;
- the facilities provided (assistance, redress mechanisms, etc.) to Indonesian migrant workers who are exploited in host countries and the protocol agreements signed with these countries, and to provide copies thereof.

Finally, the Committee hopes that the Bill on migrant workers' placement and protection will be adopted in the very near future. It requests the Government to provide information on the comments made on this subject by the Indonesian Trade Union Congress, which were forwarded to the Government on 15 November 2004.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=7699&chapter=6&query=%28C029%29+%40ref+%2B+%28Indonesia%29+%40ref&highlight=&querytype=bool&context=0>

**CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Republic of Korea (ratification: 1998) Published: 2007**

1. Article 1(a). Equality of opportunity and treatment on the grounds of race, colour and national extraction. The Committee notes the communication of the International Confederation of Free Trade Unions (ICFTU) dated 6 September 2005, and the response of the Government thereto, dated 24 May 2006. The ICFTU expressed concern that the inflexible nature of the Industrial Trainee System, allowing foreign workers to enter the country as trainees, and the employment permit system, under the Employment of Foreign Labourers Act, 2004, make migrant workers excessively dependent on the employer and thus vulnerable to exploitation and abuse, and also inhibits their mobility and access to higher-paying jobs. In order to move to higher-paying jobs, the ICFTU states that migrant workers then become undocumented, and consequently are even more vulnerable to pressure from their employer and risk deportation. The ICFTU also expressed concern that the Government is forcibly expelling undocumented foreign workers, in effect adhering to a policy of discrimination. The Committee notes that the Government acknowledges that there were considerable problems with the Industrial Trainee System, and states that the system is being abolished, and that the nation's foreign worker system will be placed under a single Employment Permit System, effective 1 January 2007. With respect to the allegation of restrictions on workforce mobility, the Government states that such a measure is inevitable to prevent confusion and to resolve workforce shortages. The Government also states that some mobility is, however, permitted. The Committee further notes the Government's assertion that basic labour rights of both native workers and foreign workers who are legally employed are ensured. The Committee also notes that the Government is taking measures to induce the voluntary departure of foreign workers.

2. The Committee notes that all the grounds set out in the Convention are to apply equally to migrant workers and nationals. As a result, schemes and policies related to migrant workers should not result in discrimination based on race, colour, national extraction, sex, religion, social origin or political opinion. Where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination against migrant workers on the basis of the grounds listed in the

Convention, in particular race, colour and national extraction. The Committee requests the Government to provide further details on the nature and extent of the Government incentives that have been put in place to induce foreign workers voluntary departure. The Committee also requests further information regarding the Employment Permit System, in particular how this system ensures that migrant workers are protected against discrimination on the grounds listed in the Convention, including based on race, colour and national extraction. Please also provide information on any other measures that have been taken or are envisaged to ensure migrant workers are not discriminated against in practice on the grounds enumerated in the Convention. The Committee would also welcome information on the number and nature of complaints made by migrant workers to the courts or administrative bodies, and the results thereof.

3. Legislative protection. Noting that the Government has not yet forwarded a reply to the Committee's previous observation, the Committee reiterates its request for information on the practical application of the relevant provisions of the National Human Rights Commission Act, including on the nature and outcome of any petitions filed, or investigations or surveys conducted under the Act with respect to employment and occupation.

The Committee is raising other points in a request addressed directly to the Government.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=7699&chapter=6&query=%28C029%29+%40ref+%2B+%28Indonesia%29+%40ref&highlight=&querytype=bool&context=0>

### **CEACR: Individual Observation concerning Employment Service Convention, 1948 (No. 88) Thailand (ratification: 1969) Published: 2007**

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2005 observation, which read as follows:

The Committee notes the information in the Government's report received in November 2004, which responded to the comments made in the Committee's 1999 direct request. In February 2005, the Committee received from the National Congress of Thai Labour (NCTL) an observation to which the Government supplied its own comments.

1. Measures to facilitate the movement of migrant workers and cooperation with private employment agencies. The NCTL states that fraudulent practices are still used against jobseekers wishing to work overseas. Part of the problem is the lack of confidence jobseekers have in the services provided by the Government or in the fairness of government regulations. The NCTL invites the Government to be more proactive in publicizing its public employment services in order to reach greater numbers of jobseekers wishing to work overseas. It also invites the Government to regularly review the measures taken. In this respect, the NCTL adds that the Committee on the Development of Employment and Jobseekers Protection (CDEJP) functions inefficiently, and many jobseekers are unaware of the CDEJP's services. The NCTL recommends providing the CDEJP with greater governmental support so that it can play a more active role.

2. In its reply, the Government enumerates the measures taken to address the deception against and exploitation of jobseekers by private recruitment agencies:

- Defensive measures: Private recruitment agencies are monitored to ensure compliance with national legislation, and violations result in severe punishment. The Department of Employment collaborates with the Immigration Bureau to monitor workers going overseas. At airport checkpoints, workers

must report in person and show valid documents indicating authorization to work abroad. The Government is continually engaged in campaigns to provide jobseekers with information on the procedures required to work abroad legally.

- Offensive measures: The Government has established counter-fraudulence centres in employment offices at the provincial level to distribute information about overseas employment as well as to receive claims from jobseekers deceived by private recruiters. The sanctions taken against private recruitment agencies in violation of laws are also duly registered.

3. The Committee recalls that the public employment service shall take appropriate measures to “facilitate any movement of workers from one country to another which may have been approved by the governments concerned” (Article 6, subparagraph (b)(iv) of the Convention and Paragraph 27(2) of the Employment Service Recommendation, 1948 (No. 83), regarding international cooperation among employment services in the field of international migration). Furthermore, necessary measures shall be taken to secure effective cooperation between the public employment service and private employment agencies (Article 11 of Convention No. 88). Also keeping in mind the Committee’s comments on the application of the Employment Policy Convention, 1964 (No. 122), the Committee hopes that the Government will strengthen its public employment service in order to adequately protect migrant workers. It asks the Government to provide further details on the arrangements made to give full effect to Article 11 of Convention No. 88. The Committee also refers to the more recent provisions adopted by the International Labour Conference at its 85th Session (1997) concerning the prevention of abuse against migrant workers recruited by private employment agencies contained in Convention No. 181 and Recommendation No. 188. It recalls that Convention No. 181 recognizes the role played by private employment agencies in the labour market and the need for cooperation between the public employment service and private employment agencies.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. The Government is asked to reply in detail to the present comments in 2007.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=241&chapter=3&query=Thailand%40ref%2B%20Observation%40ref%2B%23YEAR%3D2007&highlight=&querytype=bool&context=0>

### **CEACR: Individual Observation concerning Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) Pakistan (ratification: 1952) Published: 2007**

1. Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit. The Government refers in a report received in February 2006 to the operation of the Overseas Employment Corporation (OEC), which operates in the public sector and has been able, to date, to dispatch 125,000 Pakistanis in various professions for employment abroad. The OEC is utilizing modern techniques by striving to obtain maximum job opportunities for Pakistanis abroad. Foreign employers are required to ensure completion of the necessary documentation and to seek permission from the concerned Protector of Emigrants. Foreign employers initiate the process of recruitment by inviting applications from the general public, including interviews and tests. Neither regional nor provincial quotas are followed in the selection of workers. The Government also states that the Overseas Employment Promoters (OEPs) operate in the private sector and have established an association, that is, the Pakistan Overseas Employment Promoters’ Association (POEPA), along with provincial and regional heads. The POEPA deals with the issues and grievances confronted by the OEPs while processing the recruitment of Pakistanis for placement abroad. There exists a close liaison between POEPA and the Ministry of Labour, Manpower and Overseas Pakistanis to resolve issues and problems that are faced from time to time. The Ministry - under section 12 of the Emigration Ordinance, 1979 - has issued 2,265

licences - out of which 1,180 are actively functioning in the recruitment business.

2. In relation to the abolition of fee-charging employment agencies, as required by Part II of the Convention, the Government reiterates that draft rules have been framed to regulate the operation of fee-charging employment agencies. The Government also confirms that the policy of renewal of licences for OEPs is made for a period of one, two or three years. In relation to Article 9 of the Convention, the Government indicates that due to the economic conditions of Pakistan, levies have been established for migrant workers. Therefore, the Government is not in a position to adopt a policy of abolishing fee-charging employment services for migrant workers. It also adds that punitive action is taken against those OEPs that are involved in violations of the Emigration Ordinance, 1979, and Emigration Rules, 1979.

3. The Committee recalls the comments made by the All Pakistan Federation of Trade Unions (APFTU) on the application of the Convention, which were forwarded to the Government in June 2005. The APFTU stated that agencies are allowed to charge fees for recruitment abroad and that some of them are involved in human trafficking.

4. The Committee also recalls that in 1977 it noted the enactment of the Fee- Charging Employment Agencies (Regulation) Act, 1976, which provided for the licensing of fee-charging employment agencies and empowered the public authorities to prohibit all or any fee-charging employment agencies in any area where a public employment service has been set up. According to section 1(3) of the Act, the Act would come into full force when the federal Government notified the same in the Official Gazette. The Committee has from time to time requested the Government to take the necessary steps to bring the Act into operation in order to achieve the aim of Part II of the Convention, that is the progressive abolition of fee-charging employment agencies conducted with a view to profit. Taking into account the lack of progress in achieving the abolition of fee- charging employment agencies, the Committee asks the Government to provide information in its next report on the following issues:

- the measures taken to abolish fee-charging employment agencies, the numbers of public employment offices and the areas served by them (Article 3, paragraphs 1 and 2);
- the measures taken to consult employers' and workers' organizations as regards the supervision of all fee-charging employment agencies (Article 4, paragraph 3);
- with regard to overseas employment promoters, the measures taken to ensure that these agents may only benefit from a yearly licence renewable at the discretion of the competent authority (Article 5, paragraph 2(b)) and charge fees and expenses on a scale submitted to and approved by the competent authority (Article 5, paragraph 2(c)).

5. Revision of Convention No. 96 and protection of migrant workers. The Committee recalls that, in March 2006, a Multilateral Framework on Labour Migration has been published by the ILO which includes non-binding principles and guidelines for a rights-based approach to labour migration. It provides particularly for the licensing and supervision of placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188). Convention No. 181 recognizes the role played by private employment agencies in the functioning of the labour market. The ILO Governing Body invited the States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which would involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). The Committee invites the Government to keep it informed of any developments which, in consultation with the social partners, might occur to ensure full application of the relevant international labour standards for the placing and recruitment of workers abroad (Article 5, paragraph 2(d), of the Convention).

The Government is asked to report in detail to the present comments in 2008.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=285&chapter=3&query=Pakistan%40ref%2B%20Observation%40ref%2B%23YEAR%3D2007&highlight=&querytype=bool&context=0>

**CEACR: Individual Observation concerning Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) Malaysia, Peninsular Malaysia (ratification: 1957) Published: 2007**

In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure that foreign workers (and their dependants) who are nationals of countries that have ratified the Convention receive the same compensation as that granted to national workers in the event of occupational accidents. The Government indicates in its last report that, while it understands the Committee's concern, it is of the view that the current arrangement of separate workers compensation systems for local and foreign workers appears to function in a satisfactory manner and that the compensation payable to foreign workers is not inferior to that payable to Malaysian workers. The Government adds that a policy decision needs to be taken before the issue of non-conformity with the Convention is addressed.

The Committee regrets to note that the Government has not taken any measures to bring the national legislation into conformity with the Convention. It reiterates that the national legislation, which establishes, in case of employment injury, the principle of differing treatment between national and foreign workers, is not consistent with the Convention. In Malaysia, in the event of an employment accident, benefits are provided through two distinct national laws. By virtue of the Employee's Social Security Act, 1969, national workers are entitled to a pension, whereas according to the Workmen's Compensation Act, 1952, foreign workers are entitled to a lump-sum payment. Furthermore, the conditions governing affiliation to insurance against employment accidents differ between national workers (compulsory insurance when earnings are below RM3,000) and foreign workers (exclusion from compulsory insurance of non-manual workers earning over RM500).

The Committee is therefore bound once again to recall that, by virtue of Article 1, paragraphs 1 and 2, of the Convention, each Member which ratifies the Convention undertakes to grant, without any condition as to residence, to the nationals of any other Member which has ratified the Convention who suffer employment injury in its territory, or to their dependants, the same treatment as that granted to its own nationals in respect of workers compensation. The Committee considers that, since the compensation payable to foreign workers under the Workmen's Compensation Act is not considered to be inferior to that payable to national workers, all workers, whether they are nationals of Malaysia or foreign nationals, could be allowed to decide which of the two systems they prefer for their own personal coverage. Such a measure would be consistent with the fundamental principle established by the Convention, according to which States parties must implement the principle of equal treatment in respect of workmen's compensation between their own nationals and foreign workers (nationals of any other Member which has ratified the Convention), and have to ensure that it is possible for foreign workers or their dependants who suffer employment injury and return to their countries of origin to receive the payments abroad under special arrangements. The Committee accordingly expresses the firm hope that the Government will re-examine the matter and provide information in its next report on the measures taken or envisaged to bring the national law and regulations into conformity with the Convention. It also requests the Government to provide detailed statistical information on the number and nationalities of foreign workers employed in the country.

The Government is asked to reply in detail to the present comments in 2007.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8922&chapter=6&query=%28C019%29+%40ref+%2B+%28Malaysia%29+%40ref&highlight=&querytype=bool&context=0>

**CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Saudi Arabia (ratification: 1978) Published: 2005**

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**Discrimination against migrant workers on the basis of race, religion and sex**

2. The Committee notes that the ICFTU has alleged substantial discrimination against migrant workers on the basis of race, religion, sex and nationality. The Committee recalls that nationality is not one of the grounds of discrimination formally prohibited by Convention No. 111, but that migrant workers are nonetheless protected by the instrument in so far as they are victims of discrimination in employment and occupation on the basis of one or more of the prohibited grounds of discrimination in the Convention, including religion, race or sex (see paragraph 17 of the 1988 General Survey on equality in employment and occupation).

3. Articles 1 and 2 of the Convention. Religious discrimination. The Committee notes the comments by the ICFTU that migrant workers who are not Muslim must refrain from public display of religious symbols such as Christian crosses or the Hindu tilaka. The ICFTU further maintains that although discrimination against Hindus appears to have eased somewhat as job advertisements in newspapers no longer request applications from Muslims and Christians only, religious discrimination continues to exist, either directly when job advertisements exclude members of certain religious groups from applying, or indirectly, by preventing migrant workers from exercising their religion openly, which could deter applicants. The Committee notes the Government's reply that there is no discrimination of any kind in occupation or employment and that the Code on Labour and Workers includes the concept of non-discrimination as it does not deal with a worker's religion, political views, race or national origin and defines a worker as being a person, regardless of his or her beliefs. The Committee requests the Government to state whether job advertisements in fact still include references to religion, and to provide information on the measures taken or envisaged to address the perception of religious discrimination, both direct and indirect, in all its forms.

4. Discrimination based on race and national extraction. The Committee notes that the ICFTU refers to the concern expressed by the United Nations Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/8) about allegations of substantial racial prejudice against migrant workers, in particular those coming from Asia and Africa. In this regard, the ICFTU states that although the labour law protects nationals and non-nationals against performing work to which they have not agreed and protects them from abuse by their employer, including contract violations, physical abuse, providing misleading information and unfair treatment, employers of low-paid migrant workers widely disregard these provisions. In the same context, the Committee notes the statement made by the ICFTU that the labour sponsorship system entails a heavy dependency of the migrant worker on his or her employer and allows employers to exert disproportionate pressure on a worker. According to the ICFTU, this has a negative impact on the conditions of work of migrant workers as employers have forced migrant women and men to work excess hours without overtime pay or days of rest. Many employers are said to violate the provisions of the labour law, sometimes resulting in gross exploitation of migrant workers, such as reducing wages illegally and withholding vacation days and accumulated unpaid wages and benefits from their employees. The ICFTU further alleges that the migrant worker's heavy dependency on the employer also inhibits access to the complaint mechanisms of the Labour Disputes Department.

5. The Committee notes that the Government states that there is no discrimination in any form in any of the regulations in force and that there are special regulations governing the relationship between an employer and a migrant worker by virtue of the Council of Ministers Order No. 166 of 12/7/1421. As for the alleged reduction of wages, the Government states that if indeed such practice exists, it would be a blatant violation of the existing regulations and punishable by law. However, the Government indicates that some workers may see their wages diminish because of a distortion resulting from mediating offices in countries sending these workers, because wrong information is given on the exact amount of the wages. The Government is currently discussing the issue with all the concerned embassies and has requested their collaboration to address the issue.

6. The Committee notes the Government's statement that the allegations are too general and that if there are a few cases, this cannot be taken to be a general practice. The Government maintains that the accuracy of this statement is substantiated by the fact that foreign workers continue to come to Saudi Arabia for work. The Government further reiterates its previous statements that the Islamic Shari'a is the Constitution of the Kingdom and that its principles of dignity and the prohibition of injustice in all its forms provide for justice and equality. The Committee expresses concern, given the seriousness of the allegations, that the modalities of the foreign labour sponsorship system, especially the possibility for employers to exert disproportionate power on migrant workers, may lead to discrimination against migrant workers on the basis of race and national extraction with respect to their conditions of work.

7. In its previous observation, the Committee had drawn the Government's attention to Article 2 of the Convention, which requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice, with a view to eliminating any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin in respect thereof. It has also pointed to the importance of taking measures to address discrimination, both direct and indirect, in all its forms and requested the Government to take the necessary steps to ensure that the principles of the Convention in respect of promoting equality in employment and occupation on all the grounds listed in Article 1(1)(a) are fully applied, including the grounds of religion, political opinion, race and national extraction. The Committee finds no indication from the Government's report that any such measures have been taken. It urges the Government to ensure that all workers, including migrant workers, are protected against discrimination on all the grounds prohibited in Article 1(1)(a) of the Convention and to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice, which applies to all workers, including male and female migrant workers. It requests the Government in addition to carry out a detailed examination of the situation of migrant workers with a view to determining the situation in practice with regard to allegations of discrimination on the grounds of race and national extraction.

8. Discrimination based on sex. The Committee notes the statement by the ICFTU that migrant domestic workers have no protection under the labour law and are particularly vulnerable to exploitation and summary dismissals. Women are particularly affected, as a large majority of these workers are female. At least 1 million women from Sri Lanka, the Philippines and Indonesia are working legally in some of the lowest paid jobs and an overwhelming majority of them are domestic workers. Small numbers of women from Africa and other Asian countries are also employed in low status jobs. The ICFTU maintains that sex-based discrimination is a serious problem in Saudi Arabia and that there is a general pattern of discrimination and abuse of women migrant workers, including forced confinement, sexual harassment, sexual abuse and rape. In addition to complaints related to long hours of work, unpaid salaries, denial of benefits and intimidation from employers, the ICFTU states that many domestic workers share additional hardships, due to their isolated working environment. The ICFTU also claims that the rights of women

migrants are further compromised by the prevailing gender segregation, restrictions on freedom of expression and movement, and gender bias in the judicial system.

9. The Committee notes that the Government states, in reply, that domestic workers who live among Saudi families are in a position of security because of the care and attention paid to them by their treatment as members of the family. The Government also reiterates that it endeavours to protect the rights and dignity of all persons who live on its territory and to provide them with justice and equality. Considering the seriousness of the allegations made by the ICFTU with respect to female migrant domestic workers of African and Asian origin, the Committee requests the Government to provide information on the measures taken to ensure that these workers are protected in law and practice against abusive and discriminatory treatment in their living and working conditions.

10. Enforcement. The Committee notes the statement provided by the ICFTU that although progress has been achieved in filing complaints, enforcement remains a problem with respect to complaints submitted by migrant workers. The ICFTU refers in particular to the inability or reluctance of Saudi authorities to enforce judgements against employers of migrant workers and to the fact that the overwhelming majority of migrant workers, many of them women, have no knowledge of the relevant enforcement bodies, and no opportunity to access them or be informed of their rights. The Committee asks the Government to provide information on the measures taken or envisaged to inform migrant workers of their rights, to improve their access to the courts and other relevant bodies and to ensure the effective enforcement of judicial decisions regarding their complaints. Please also provide information on the number of complaints of discrimination based on race and sex received from male and female migrant workers and the remedies provided to these workers.

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Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8067&chapter=6&query=%28C111%29+%40ref+%2B+%28saudi+arabia%29+%40ref&highlight=&querytype=bool&context=0>

## Direct Requests

### CEACR: Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29) Japan (ratification: 1932) Submitted: 2007

Articles 2(1) and 25 of the Convention. Trafficking in persons for sexual exploitation.

1. The Committee notes the communications received from the Kanto Regional Council of the All Japan Shipbuilding and Engineering Union (ZENZOSEN) dated 24 May and 29 August 2005, as well as communications received from ZENZOSEN dated 27 and 28 August 2006. These communications all contain information on the problem of trafficking in persons for sexual exploitation in present-day Japan. Attached to the May 2005 communication from ZENZOSEN is a report of the ILO Special Action Programme to Combat Forced Labour and the ILO Office in Japan entitled “Human Trafficking for Sexual Exploitation in Japan”.

2. The Committee notes the Government’s communication dated 20 October 2005, in which it responds to the communications of ZENZOSEN in 2005, regarding the problem of trafficking in persons for sexual exploitation. The Government’s report includes a summary report dated 7 December 2004 and entitled, “Japan’s Action Plan of Measures to Combat Trafficking in Persons”. This report refers to the Inter-Ministerial Liaison Committee, a task force established in April 2004 to address the problem of trafficking in persons, and it summarizes a series of measures being carried out or contemplated under the Action

Plan. These include data collection activities, said to be needed to arrive at a “thorough understanding of the current situation of trafficking in persons”, as well as a series of “general and comprehensive measures to combat trafficking in persons”. The report indicates that the task force would undertake to examine and review the implementation of the Action Plan, the “status of progress in the policies of the Action Plan, information-sharing among ministries and agencies concerned and necessary policy coordination” and that in doing so, it “will cooperate and coordinate as necessary with the institutions concerned in order to protect victims of trafficking in persons”.

3. The Committee also notes the amendments in 2005 to the Penal Code and to immigration laws, which, inter alia: criminalize the act of buying and selling of persons and raises the penalty of imprisonment to seven years, ten years in the case of human trafficking for commercial purposes; institute tighter controls on the immigration and residency status of workers employed in entertainment, amusement, and sex industries; and provide for the granting of temporary residency status to protect victims of trafficking in persons.

4. The Committee notes the Government’s indication in its report that it would provide the Committee with a report on “the full range of measures” it is taking to combat the problem of trafficking in persons for sexual exploitation. The Committee requests that the Government in its next report include information regarding the ongoing work of the inter-ministerial task force as well as the results of its review and examination of progress on the implementation of the Action Plan.

5. Statistics on protection measures. The information from the MFA Internet site indicates that, in fiscal year 2005, 112 victims received protective services at Women’s Consultative Centres, an increase of 88 from the previous year, and that in April 2005 the Ministry of Health, Labour and Welfare began subsidizing private shelters and other facilities as an additional source of protection. The Immigration Bureau is reported to have granted temporary residency status to 47 victims in 2005 and, as of 31 March 2006, the International Office for Migration (IOM), with funding from the Government of Japan of approximately US\$ 160,000, reportedly had assisted in the safe repatriation of 67 victims to their home countries.

6. Statistics on enforcement measures. The Committee notes the “Record of Trafficking in 2005” attached to the communication of the AFSEU dated 28 August 2006. This is a report of statistics for the year 2005 prepared by the Government’s National Police Community Safety Bureau, which indicates that: 83 persons were arrested (an increase of 25 from the 58 of a year earlier), of whom 57 were employers and 26 brokers; that 117 victims from nine different countries (an increase of 40 from the 77 victims of the previous year) received protection at Women’s Consulting Offices; and that the new criminal code provisions on trafficking were applied for the first time in the arrest and prosecution of a Taiwanese owner and the arrest of two Indonesian brokers on the charge of selling persons. Statistics from the MFA Internet site indicate that the number of prosecutions for trafficking in persons increased from 48 offenders in 2004 to 75 offenders in 2005.

7. The Committee hopes that the Government will continue to provide updated information regarding its efforts to address the serious problem of trafficking in persons for sexual exploitation and, in particular, that it will keep the Committee informed regarding: progress (and difficulties) in the application of the 2005 Penal Code reform and other legislative amendments, including difficulties in establishing the level of documentary evidence required for proving a trafficking crime; statistics that include the number of trafficking prosecutions under the revised Penal Code that have resulted in the conviction and incarceration of traffickers.

Source: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=19290&chapter=9&query=%28C029%29+%40ref+%2B+%28Japan%29+%40ref&highlight=&querytype=bool&context=0>

## ANNEX 6

### GLOSSARY OF TERMS

**Affirmative action** – special temporary measures to redress the effects of past discrimination in order to establish equality of opportunity and treatment between population groups in society

**Child labour** – work undertaken by children under the legal minimum working age; regular work (14 or more hours per week) performed by children that hinders education and development, causes physical or psychological damage, or is hazardous as defined by the provisions of the ILO Worst Form of Child Labour Convention, 1999 (No. 182)

**Complaint** – the term for serious allegation made under Articles 26-34 in the ILO Constitution against a state for allegedly not implementing fully the provisions of the an ILO Convention it has ratified

**Convention** – international treaty that is legally binding after ratification

**Declaration** – a formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated. In ILO practice, this kind of act appeared with the Declaration of Philadelphia, which was incorporated into the Constitution on the occasion of the constitutional amendments of 1946. A second example is the Declaration concerning the Policy of Apartheid of the Republic of South Africa, adopted in 1964, updated in 1988 and abrogated in 1991 when it became superfluous. The aim of the Declaration on Fundamental Principles and Rights at Work is to underscore the renewed relevance and importance, in the context of globalization, of fundamental rights, the principle of which is already enshrined in the Constitution and the Declaration of Philadelphia.

**Direct request** – comment made by the Committee

of Experts on the Application of Conventions and Recommendations to governments, seeking more information or clarification on specific issues regarding the implementation of a ratified Convention

**Discrimination** – any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which nullifies or impairs equality of opportunity or treatment in employment or occupation. Discrimination can be direct or indirect.

**Direct discrimination** exists when unequal treatment between workers of different race, colour, sex or any other ground covered by the Convention stems directly from laws, rules or practices making an explicit difference between workers on these grounds. For example, laws which do not allow women to sign contracts. A labour law stipulating that internal rural migrants shall receive less pay in cities than the residents of these cities. Or, job advertisements which specify the appearance and sex of the candidates.

**Indirect discrimination** means rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by persons of one sex, race, colour or any other characteristics. For example, setting requirements for managerial or secretarial jobs which are irrelevant to the job such as height or weight levels that typically only people of one sex, race or colour can meet.

**Equality at work** – a fundamental value and principle enabling workers to claim a fair share of the wealth which they help generate.

The principle of **equal opportunity** aims to ensure that people can develop their economic

potential to the fullest, and can allocate their time and energy where productive use and reward are the highest.

The principle of **equal treatment** intends to ensure that people's work performance is rewarded according to productivity and merit, taking into account the objective characteristics of the job (e.g., skills, knowledge, responsibilities, working conditions), and without interference of considerations unrelated to merit (e.g., sex, race or religion).

**Forced labour** – all work or service that is exacted from a person under the menace of any penalty and for which the said person has not offered voluntarily, sometimes referred to as 'compulsory labour'

**Gender equality** – equal rights, responsibilities, opportunities, treatment and valuation of women and men, girls and boys in life and at work so that people of all ages and both sexes have equal chances to succeed in life. Gender equality includes the same human and workers' rights and the fair distribution of workload, decision making and income.

**Gender mainstreaming** – strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres to ensure that women and men achieve equality, and inequality is not perpetuated. It also refers to the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels.

**Instruments** – a general term for formal legal documents. In the ILO, this term includes Conventions, Recommendations and Protocols.

**Member States (of the ILO)** – countries that are members of the ILO and are bound by the terms of the ILO Constitution

**National extraction** – distinctions made on the basis of the place of birth, ancestry or foreign origin

of citizens in a country

**Observation** – comment made by the Committee of Experts on the Application of Conventions and Recommendations. Observations are generally used for serious or long-standing cases of a government's failure to fulfill its obligations under a Convention it has ratified.

**Positive action** – see **affirmative action**

**Protocol** – an instrument amending or supplementing an international labour Convention. The International Labour Conference adopts Protocols following the procedure which the ILO Constitution provides for international labour Conventions. An ILO member State can only ratify a Protocol if it has ratified the Convention that the Protocol relates to.

**Ratification** – an act by which a state formally agrees to be legally bound by a Convention's provision. It usually requires the approval of the state's legislative body (or bodies, in the case of federal states), which is in many cases the parliament.

**Recommendation** – guidelines that are not legally binding and do not have to be ratified because a Recommendation is effective upon adoption at the International Labour Conference. Recommendations usually supplement Conventions and provide more specific guidelines as to how the Conventions they accompany may be effectively applied. However, some Recommendations are not linked to any Convention.

**Refugee** – a person who is outside the country of his/her nationality and is unable or unwilling to avail him/herself of the protection of that country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion

**Representation** – the mildest form of complaint submitted to the ILO Governing Body by an employers' or workers' organization against a government for its failure to comply with the provisions of a Convention it has ratified

**Remuneration** – wages or earnings payable by an employer to an employed person according to a written or unwritten contract of employment for work or services performed or to be performed

**Resolution** – formal expression of an opinion on a particular subject adopted by the International Labour Conference

**Smuggling** – “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Protocol Against Smuggling of Migrants by Land, Sea and Air, 2000, art. 3a)

**Standard** – international agreement such as a Convention or a treaty which lays down the minimum provisions or guidelines on a specific subject

**Social origin** – an individual’s membership in a class, socio-occupational category—such as farmers—or a caste

**Trafficking in persons** – “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a treat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation. Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, art. 3a)

**Victim of trafficking in persons** – a person who has been deceived or forced into a situation of sexual or labour exploitation by means of trafficking in persons within or across international boundaries

**Tripartite/Tripartism** – defining characteristic of the ILO structure, referring to three parties, namely governments, representatives of workers’

and employers’ organizations. The three parties are represented on the ILO’s main bodies, participate in the decision making, including the formulation of international labour standards and supervision of their implementation.

**Xenophobia** – unreasonable fear, distrust, or hatred of strangers, foreigners, or anything perceived as foreign or different

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