

How to Strengthen Protection of Migrant
Workers and Members of their Families

with

International Human Rights Treaties

a do-it-yourself kit

by

THE INTERNATIONAL CATHOLIC MIGRATION COMMISSION



January 2004

TABLE OF CONTENTS

I. Introduction

II. A short Walk through the International Migrant Workers Convention

III. Comparing relevant provisions in seven core international human rights instruments

A. Table I Characteristics and treaty monitoring bodies

B. Table II Related provisions in seven core international human rights instruments

C. Table III Provisions specific to the International Migrant Workers Convention

IV. The Convention at a Glance: PowerPoint Slide Presentation

V. For information and further reference

Introduction

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

Hannah Arendt, The Origins of Totalitarianism

According to United Nations figures, there are currently some 175 million international migrants in the world. This is less than 3 percent of the world population, but is a large enough proportion for migration issues to constantly make headlines in all world regions, increasingly be used in electoral campaigns, or be the subject of a number of migration management initiatives, at the regional or global level. However, few of these processes focus on the human rights of migrants. Yet, migrants are at the centre of the migration phenomenon.

States are legitimately concerned with issues of sovereignty, the preservation of the welfare of their own citizens, ensuring social cohesion and fighting against transnational organized crime. Likewise, they have collectively drafted an impressive body of international and regional human rights norms and standards and voluntarily entered into a series of obligations when ratifying some of these human rights treaties. As much as they want the rights, dignity and integrity of their own citizens to be respected at home and abroad, they must be encouraged to respect the rights and protect non-citizens present on their territory, including migrant workers.

This “do-it-yourself kit” is born out of combined frustration. First, at the slow pace of ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (MWC) adopted in 1990, which entered into force on 3rd July 2003. Second, out of listening to arguments stating that the Convention is not necessary, since the rights of migrant workers are adequately covered in the six main other international human rights treaties. Over 115 countries have ratified all six treaties.

But the kit is also proposed out of a firm belief that short, synthetic information on the Convention will help dispel a number of myths and misunderstandings about:

- ✓ Commonalities and specificity of the Convention with respect to the six other core international human rights treaties (See “A short Walk through the Convention”; Tables II and III)
- ✓ Characteristics of the human rights treaty monitoring bodies (See Table I)
- ✓ The context for its adoption and its overall scope (see PowerPoint Presentation)

It seeks to equip individuals, non-governmental organisations, other interested stakeholders, including members of national administrations and diplomats involved in reporting or experts studying compliance with UN human rights norms and standards, with a concise and cross referenced collection of information. The combined documents proposed tap into existing literature and research and expand upon it to offer concrete tools for mapping out and implementing respect for the human rights applicable to migrant workers and members of their families. The kit compares the various treaty monitoring bodies, including their membership, reporting schedules, working methods and costs and gives details about the contents and adoption of the relevant treaties. It provides concrete

comparable data for informed decision on issues relating to implementation of the Convention.

The MWC is the one single international human rights treaty adopted by the United Nations to protect one set of individuals who often find themselves in vulnerable situations because they are outside of their State of origin. To-date, it has some 25 States Parties that will soon begin to report on the implementation of the Convention to the treaty monitoring committee elected in December 2003. In the meantime, and pending more universal ratification, a vast majority of the remaining 166 UN Member States will periodically report on implementation of the six other international human rights treaties. These monitor respect for and implementation of civil and political; economic, social and cultural rights; the right of women; the rights of children and, finally seek to ensure freedom from racial discrimination. Likewise the various human rights treaties all contain strong non-discrimination clauses, making most of their contents applicable to “everyone”, hence to migrant workers and members of their families.

In this context, the International Catholic Migration Commission encourages human rights advocates, including migrants’ rights advocates, to assist States in approaching the treaty monitoring system serviced by the Office of the High Commissioner for Human Rights in an integrated manner and to make full use of it. It is our hope that this do-it-yourself kit will encourage civil society to supply experts of the various committees with focused, succinct, objective, reliable and well-targeted information on the situation of migrant populations in countries under scrutiny. We also contribute this compilation with a view to better inform government officials, parliamentarians, and members of national human rights institutions involved in or tasked with looking at the situation of migrant workers at the national level.

Migrants are not a threat, and migration is largely a positive experience. The conventions referenced in this kit contain concrete ingredients for integrated, well-designed and sustainable national integration policies. Their provisions contribute to creating societies and communities that welcome migrants; ensure that migrants respect the cultural identity of the inhabitants of host countries and comply with their laws and regulations; ensure equality and thus stability and social cohesion; combat racial and other forms of discrimination, and exploitation; and impose sanctions on those who use violence, threats or intimidation against migrant workers and members of their families.

United Nations human rights norms and standards and their implementation verification mechanisms form a unique machinery where States freely agree to come and report periodically. The United Nations is an exceptional endeavour in the history of humanity. It still is very new and there is room for improvement. As reform of the overall UN human rights treaty monitoring bodies is being discussed, it is important that stakeholders in the discussion be informed about its newest addition and about the specificity of the rights of the category of non-citizens protected in the Migrant Workers Convention.

A short walk through the International Migrant Workers Convention¹

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

The six main treaties include:

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)

The International Covenant on Civil and Political Rights (ICCPR, 1966)

The Convention on the Elimination of All forms of Racial Discrimination (ICERD, 1965)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)

The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984)

The Convention on the Rights of the Child (CRC, 1989)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted on 18 December 1990, and which entered into force on 1st July 2003, reiterates a number of rights applicable to migrant workers and members of their families included in those international instruments and highlights a few additional specific ones. It provides a synthesis of the human rights of migrants organized as a tool kit to better address the specific vulnerability they find themselves in when they are outside their State of origin and at all stages of the migration process. It is the first universal codification of the rights of Migrant Workers and their family members in a single instrument².

Such a model for an international convention consolidating the rights of one specific group of persons has already been recognized and endorsed by the 174 States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 192 States Parties to the 1989 Convention on the Rights of the Child.

At times, the Convention provisions read exactly as those of existing instruments, but for the replacement of the term “persons” or “individuals” by that of “migrant workers and members of their families”. It also addresses specific protection needs, and at times gives additional guarantees to migrant workers’ rendered vulnerable by their absence from their country of origin. Furthermore, the phrase “members of their families” affords protection to migrant workers’ spouses and their dependent children.

One of the objectives of the Convention is the incorporation of **minimum standards** that States parties must apply to migrant workers and members of their families under their

¹ This presentation should be read together with Table II comparing the main characteristics and provisions in the seven core international human rights instruments and Table III detailing the specificity of the Convention.

² Juhani Lonnröth, « The International Convention on the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation », *International Migration Review*, Number 25, 1991

jurisdiction, including when they are working and living in irregular situations. Besides responding to the non-discrimination clauses in the various human rights treaties, the rationale for recognizing and listing rights of undocumented migrant workers is explicitly stated in the preamble. It recognizes that irregular migrants are frequently exploited and face serious human rights problems; that certain employers seek such labour in order to reap the benefits of unfair competition; that appropriate action should be encouraged to prevent and eliminate clandestine movements and trafficking in migrant workers while assuring the protection of the human rights; and that the recourse to the employment of irregular migrants will be discouraged if the fundamental human rights of all migrant workers are more widely recognized. This approach is key to the Convention and is perhaps the least understood by countries reluctant to ratify the Convention.

Most articles on **civil and political rights** included in Part III of the Convention reiterate corresponding articles in the International Covenant on Civil and Political Rights. Articles on the right to physical and moral integrity and the right to procedural guarantees are to be found in the Convention against Torture. The Convention includes a small number of additional civil and political rights, such as the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their state of origins whenever the rights recognized under the Convention are impaired (Art. 23); protection against collective expulsion (Arts. 22 and 56); as well as other articles specific to the condition of migrant workers.

It is unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permit (Art. 21).

Economic, social and cultural provisions are broadly derived from the International Covenant on Economic, Social and Cultural rights. According to some scholars, in some cases, the Convention is more restrictive than the Covenant.

Upon termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and their personal effects and belongings (Art. 32). States parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers and members of their families (Art. 71).

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

It also recognizes the right to receive urgent medical care for **undocumented migrants** and the right to maintain the cultural identity of all migrant workers and members of their families. All MW can participate in and join trade unions and other associations for the promotion and protection of their economic, social, cultural and other interests (Art. 40). Children of migrant workers have a right to a name, to be registered at birth and to a nationality (Art. 29, corresponding to Arts. 7 and 8 of CRC). They also have the right to access to education on the basis of equality of treatment with nationals. Access to public

pre-school educational institutions and schools shall not be refused by reason of the irregular situation of either parents (Art. 30).

Migrant workers in a regular situation enjoy further rights including the right to be fully informed by their states of origin and employment about conditions applicable to their admission and concerning their stay and the remunerated activities in which they may engage (Art. 37); they can form trade unions (Art. 40) they can participate in public affairs of their State of origin and vote or be elected at elections of that State (Art. 41); and – to some extent – may enjoy political rights in the State of employment (Art. 42). They enjoy the same opportunities and treatment as nationals in relation to various economic and social services (Art. 43). States shall take appropriate measures to ensure the protection of the unity of the families of migrant workers. States parties may facilitate family reunification according to Article 44, but the Convention does not speak of a right to family reunification (this language however had been used in the final document of the first World Conference on Racism). Documented migrants can choose their remunerated activity (Art. 49) and must enjoy the same protection as nationals against dismissals, and similar unemployment benefits (Art. 54). Finally, they enjoy guarantees against expulsion (Art. 56).

Migrant **women** are protected from discrimination in the application of the Convention. Article 1 states that “the present Convention is applicable, except otherwise provided hereafter, to all migrant workers and members of their families **without distinction of any kind such as sex...**”. Article 2(1) defines a “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which **he or she** is not a national.”

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

Finally, the Convention establishes a **treaty monitoring body**, made up of 10 independent experts “of high moral standing, impartiality and recognized competence in the field covered by the Convention (72(b)). The Committee on Migrant Workers, elected six months after the entry into force of the Convention (in December 2003), will examine the initial and periodic reports submitted by each State party. Its first session will take place in Geneva on 1-5 March 2004. It will also consider in its deliberations comments and materials provided by the International Labour Office (74). The Committee can also receive individual complaints. To activate this mechanism States parties need to formally recognize the competence of the Commission to do so, by making a declaration under Article 77. None of the current 25 States parties have made this declaration³.

Among the specificity of the Convention is that it not only defines the obligation of States with respect to migrants as individuals. According to Part VI, States Parties must also promote **sound, equitable and humane conditions for international migration**. This

³ *Ratifications: Azerbaijan, Belize, Bolivia, Bosnia & Herzegovina, Burkina Faso, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Kyrgyzstan, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Timor-Leste, Uganda, Uruguay.*

Signatures: Bangladesh, Chile, Comoros, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone, Togo and Turkey.

includes formulating and implementing policies regarding migration, exchanging information with other States parties, providing information to employers and to workers on policies, law and regulations and providing information and appropriate assistance to migrant workers and members of their families (Art. 65). Article 66 regulates the right to undertake operations for the recruitment of workers for employment, which shall be restricted to public services. States must take measures regarding the orderly return of migrant workers and members of their families to their State of origin (Art. 67). States parties shall also collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (Art. 68). This section is particularly relevant at the beginning of the 21st century as migration is increasingly discussed in a number of international and regional migration fora.

Contrary to commonly held beliefs, violations of the human rights of migrant workers do not only take place in states of destination. They often begin in States of origin, with corruption, denial of fundamental rights and discrimination. During their journey, migrant workers are also often harassed and exploited in countries of transit. The Convention addresses all stages of the migration phenomenon.

The Convention synthesizes a wide gamut of rights relevant to migrant workers and members of their families. Through ratification, States will reaffirm the recognized principles and obligations already accepted and entered into by the 115 United Member states that have ratified all of the six other main human rights treaties. The Convention offers a consolidated instrument for more effective protection of a group whose members are vulnerable due to their very absence from their State of origin. It is paradoxical that with 174 ratifications for the Convention on the Elimination of All Forms of Discrimination against Women and 192 for the Convention on the Rights of the Child, the UN Secretary General has only received 25 ratifications so far.

The International Catholic Migration Commission encourages State administrations, national Parliaments and National Human Rights Institutions to study the Convention. Further, ratifying the Convention on migrant workers is an issue of social justice, and should be viewed by States as an opportunity to strengthen measures against racism, racial discrimination and xenophobia and to build social cohesion. While it can be argued that the Convention is long and therefore difficult to ratify, research on obstacles to ratification demonstrate that lack of familiarity and misperception about the content of the Convention, including the scope of some of its articles, still constitute key elements in the low level of ratification from Western and other affluent States.