

UN Convention on the Protection of Rights For All Migrant Workers and Members of Their Families

The following summary highlights some of the most important aspects of the convention on migrant workers, and can act as a general guide to the concepts and content of the document. However, the full text of the Convention provides a comprehensive definition of the rights of migrant workers and their families and should be consulted for a full understanding of its provisions. The text can be obtained in any of the six working languages of the United Nations by wiring to the U.N. Center for Human Rights, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland. The text is also available online at:

http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm

Preamble

The Preamble declares among its 16 points, that the States Parties—the nations signing and ratifying the Convention:

- Take into account the principles embodied in the basic instruments of the United Nations concerning human rights, such as the Universal Declaration of Human Rights, and conventions on women's and children's rights;
- Take into account the principles and standards of the international Labor Organization;
- Realize the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community;
- Consider the situation of vulnerability of migrant workers and their families, and that their rights have not been sufficiently recognized everywhere;
- Consider that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if the fundamental human rights of all migrant workers are more widely recognized;
- Are convinced of the need for international protection of the rights of all migrant workers and their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally.

Part I: Scope and Definitions

Article 1 states that the present Convention is applicable, except as otherwise provided, to all migrant workers and members of their families without distinction of any kind such as sex, race, color, language, religion or convictions, political opinion.

Article 2 defines the term migrant worker" as a person who is to be engaged in a remunerated activity in a State of which he or she is not a national. Other terms are also identified such as "frontier worker", "seasonal worker", and "specified-employment worker" for persons required to depart from the State of employment at the expiration of their authorized period of stay.

Articles 4 and 5 differentiate migrant workers and "members of the family" as documented, in a regular situation, or as non-documented, in an irregular situation.

Part II: Non-discrimination

Article 7 provides that non-discrimination with respect to rights shall exist without distinction of any kind on the basis of sex, race, color, language, religion or convictions, political or other opinion, national ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

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

This section defines rights of migrant workers and members of their families such as:

Article 8: freedom to leave any State, including their state of origin and the right at any time to re-enter their State of origin.

Article 9: the right to life.

Article 10: no subjugation to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11: prohibition against being held in slavery or servitude, or being required to perform forced or compulsory labor (excepting what is normally required of a person who is under detention in consequence of a lawful order, or in cases of emergency or calamity, or normal civil obligations).

Article 12 and 13: the right to freedom of thought, expression,

conscience, and religion: and the right to hold opinions without interference.

Article 16: the rights to liberty and security of person and effective protection by the State against violence. Verification of identity must be carried out in accordance with the law. No individual or collective arbitrary arrest or detention. Information on the reasons for arrest shall be given in a language the detained understands.

Article 17: if deprived of liberty, treatment with humanity and with respect for the inherent dignity of the human person and cultural identity. Detained migrants are entitled to the same rights as nationals in the same situation.

Article 18: the right to equality with nationals of the State before the courts and tribunals.

Article 21: it is unlawful other than by a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents. No authorized confiscation of such documents shall take place without delivery of a detailed receipt.

Article 22: prohibits measures of collective expulsion. Expulsion may only be in pursuance of a decision taken by the competent authority in accordance with law and the decision shall be communicated to migrant workers in a language they understand. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages.

Article 23: the right to have recourse to the protection and assistance of their State of origin.

Article 24: the right to recognition everywhere as a person before the law.

Article 25 requires treatment no less favorable than that which applies to nationals of the receiving State regarding remuneration.

Article 26: the right to take part in meetings and activities of trade unions; with no restrictions other than those prescribed by law.

Article 27 stipulates the same treatment for social security granted to nationals insofar as applicable requirements are fulfilled.

Article 28: the right to receive any medical care that is urgently required for the preservation of their life regardless of any irregu-

larity in their situation or that of their parents.

Article 29 provides children the right of access to education on the basis of equivalence with nationals.

Article 30 provides children the right to a name, to registration of birth, and to a nationality.

Part IV: Other Rights of Migrant Workers and Members of Their Families in a Regular Situation

Article 39 provides for the right to liberty of movement in the territory of the State of employment without any restrictions except those provided by law and are necessary to protect national security and public order.

Article 40 upholds the right to form associations and trade unions.

Article 41 provides for the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

Article 43 stipulates equality of treatment with nationals such as access to educational institutions, vocational guidance and training, housing, social and health services, cooperatives and self-managed enterprises, and participation in cultural life.

Article 44 recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society, and requires appropriate measures to ensure the protection of the unity of the family of the migrant worker.

Article 45 mandates that members of the family of migrant workers shall enjoy equality of treatment with nationals in the State of employment, in relation to access to educational institutions, vocational guidance, social and health services, and participation in cultural life. States of employment are to facilitate the integration of children of migrant workers in the local school system and to facilitate for the children of migrant workers the teaching of their mother tongue and culture.

Article 52 upholds the right to freely choose remunerated activity.

Article 53 provides that family members who have an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity.

Article 54 provides that without prejudice to the terms of their authorization, migrant workers shall receive equal treatment with nationals in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment.

Article 56 limits expulsion from a State of employment, to reasons defined in the national legislation of that State and subject to the safeguards established in Part III.

Part V: Provisions Applicable to Particular Categories

Articles 58 to 63 define particular categories of frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers and self-employed workers, and allow for certain limited exceptions to the rights set forth in part IV.

Part VI: Promotion of Sound, Equitable, Humane and Lawful Conditions

Article 64 mandates States Parties concerned to cooperate with a view to promoting sound, equitable and humane conditions.

Article 65 stipulates that States Parties shall maintain appropriate services to deal with international migration of workers, such as the formulation and implementation of policies, an exchange of information, consultation and cooperation with the other States Parties, provision of appropriate information particularly to employers, and provision of information and appropriate assistance to migrant workers.

Article 68 requires States Parties to collaborate to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation. Included are appropriate measures against the dissemination of misleading information; measures to detect and eradicate illegal or clandestine movements of migrant workers and to impose effective sanctions on persons or entities who organize such movements, and persons in an irregular situation.

Article 70 obligates the States Parties to take measures equal to those applied to nationals to ensure that working and living conditions of migrant workers are in keeping with the standards of fitness, safety, health and principles of human dignity.

Part VII: Application of the Convention

Article 72 establishes a Committee on the Protection of the Rights of All Migrant Workers and Their Families. Initially, it is to consist of ten and, after entry of the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. Members of the Committee shall be elected by secret ballot by the State Parties from a list of persons nominated by the State Parties.

Article 73 requires States Parties to report on the legislative, judicial, administrative and other measures they have taken to give effects to the provisions of the Convention as follows: within one year after the entry into force of the Convention: and thereafter every five years.

Article 77 provides for States Parties to permit the Committee to receive and consider claims by individuals regarding violations of any provisions.

Part VIII: General Provisions

Article 79: States retain the right to establish criteria for admission of migrant workers and their families but stipulate that legal and other treatment remain in accord with the Convention.

Article 82 prohibits renunciation of any rights and any pressure on individuals to relinquish any rights.

Article 83 requires States to ensure effective remedies to any violation, including review of claims by competent authorities, and enforcement of remedies when granted.

Part IX: Final Provisions

Article 85 through 87 provide for depositing at the UN, signing, ratification and entry into force of the Convention.

Article 88 disallows exclusion of application of any part of the Convention by States Parties.

Article 92 provides for arbitration in the case of disputes between States arising from the Convention not settled by negotiation.

Source: Proclaiming Migrant Rights, World Council of Churches and Churches' Committee for Migrants in Europe, Briefing Papers No. 3