

# **Southern African Migration Project**

## **The UN Convention on the Rights of Migrant Workers: The Ratification Non-Debate**

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**Vincent Williams  
Jonathan Crush  
Peggy Nicholson**

**Series Editors: Jonathan Crush and Vincent Williams**

*Editorial Note:*

*This is a revised version of a paper prepared for the international UNESCO project on obstacles to ratification of the UN Convention. Sections 2 through 5 draw extensively on the excellent UNESCO analysis of Pécoud and de Guchteneire (2004). The purpose of this paper is to raise awareness of the UN Convention in South and Southern Africa and to stimulate a debate on ratification.*

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## **1.0 Introduction**

1.1 In recognition of the need to explicitly define and uphold the rights of migrants, and in particular migrant workers and their families, the United Nations General Assembly approved the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) on 18 December 1990 (Appendix A).

1.2 The significance of the Convention has been identified as follows:

- Migrant workers are viewed as more than labourers or economic entities. They are social entities with families and accordingly have rights, including that of family reunification.
- The Convention recognizes that migrant workers and members of their families, being in countries where they are not citizens, are often unprotected. Their rights are often not addressed by the national legislation of receiving states or by their own states of origin. Therefore, it is the responsibility of the international community, through the UN, to provide measures of protection.
- The Convention provides, for the first time, an international definition of migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment that would serve to uphold basic human rights of other vulnerable migrants as well as migrant workers.
- Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognised for documented migrant workers and members of their families, notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.
- The Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families, including an end to their illegal or clandestine movements and to irregular or undocumented situations.
- The Convention attempts to establish minimum standards of protection for migrant workers and members of their families that are universally acknowledged. It serves as a tool with which to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards.

1.3 The decision of the UN to draft and adopt this convention was a strong statement of international consensus concerning the need for greater protection of the rights of migrant workers and their families. To date, 34 countries have ratified and a further 15 countries have signed the convention, but a study of the ratifications and signatures suggests that it is in the main developing countries and those traditionally regarded as 'sending' countries that have done so. In addition, from the African continent, there are only 13 ratifications and 8 signatures. Of these, only two countries; namely, Seychelles and Lesotho are member states of the Southern African Development Community (SADC).

1.4 In order to better understand the relevance of the Convention to South Africa, it is necessary to

examine the history of the ICMW and why other countries have been so hesitant to ratify it. Second, it is necessary to provide an overview of migrant rights in South Africa. If migrant rights are already sufficiently protected then ratification should present no obstacle to the South African government. The purpose of this policy brief is therefore to raise awareness of the Convention in South and Southern Africa and to examine the response of the South African government to ratification. SAMP will examine the position of other SADC states in future studies. The brief is organized as follows:

- background on the origins and content of the Convention
- summary of the attitudes of other states to ratification of the Convention
- analysis of why the South African government has not signed or ratified the Convention and
- identify the specific obstacles to ratification in the South African context.

The brief concludes with a set of recommendations and proposed strategies to promote ratification by the South African government.

## **2.0 Origins of the Convention**

- 2.1 In contrast with many rights-based UN Conventions, the ICMW has traversed a particularly rocky road. The roots of the ICMW lie in the two ILO Conventions (Convention No 47 of 1949 and No 143 of 1976) which were designed to provide basic protection for labour migrants (Böhning 1991). Developing country dissatisfaction with the 1976 ILO Convention led to moves to develop a UN Convention. A UN working groups was established in 1979, chaired by Morocco and Mexico. Over the course of the next decade, the working group produced a Convention which was eventually adopted by the General Assembly in December 1990.
- 2.2 According to standard UN procedure, in order to come into force, the Convention needed to be ratified by 20 individual states. By the late 1990s, the Convention seemed moribund. Only a handful of states had ratified it and the threshold seemed as far away as ever. In contrast, the 1979 UN Convention on the Elimination of All Forms of Discrimination took two years to come into force and is now supported by 177 states. Or again, the 1990 UN Convention on the Rights of the Child came into force after only two years and has been almost universally ratified.
- 2.3 In the late 1990s, renewed international attention was given to the Convention (Taran 2001a). Ratification by 20 states was finally achieved in 2003 and the Convention came into force. The renewed drive for ratification came from two directions. Within the UN, the Commission on Human Rights appointed a Working Group of Intergovernmental Experts on the Rights of Migrants in 1997. In 1999, as a follow-up, the UN appointed a Special Rapporteur on the Human Rights of Migrants. In 2000, December 18 became International Migrants Day. An NGO-backed global campaign for the ratification of the Convention gathered momentum and helped push the Convention over the 20-state threshold. The International NGO Platform on the Migrant Workers Convention (IPMWC) was a coalition of non-governmental organisations set up with the aim to facilitate the promotion, implementation and monitoring of the Convention through (see <http://www.december18.net> and <http://www.migrantsrights.org>)

- Following up the work of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee) by maintaining a close contact with the Committee Secretariat and the Committee members, without prejudice to their independence.
  - Following, from a migrants' rights perspective, the work of the six other UN human rights treaty bodies, primarily in close cooperation with other NGO groupings monitoring these treaty bodies.
  - Facilitating the flow of information on migrants' rights between the treaty bodies and relevant NGOs, migrants rights groups and other interested organisations.
  - Facilitating the flow of information on migrants' rights within the NGO community.
  - Encouraging existing national migrants' rights coalitions to work on the preparation of NGO submissions.
  - Supporting national coalitions with the preparation of their submissions and increasing their capacity to do so.
  - Promoting the benefits of national coalitions where such a coalition does not yet exist and encouraging NGOs to form a coalition.
  - Contributing to raising awareness about the existence, activities and recommendations of the Committee, including with UN-accredited media representatives in Geneva.
- 2.4 By late 2005, 34 states (or 17% of the UN membership) had ratified the Convention and another 15 had signed it. The momentum for further ratifications is likely to continue (Taran 2001b). The General Assembly of the Organization of American States urged ratification in 2002 as did the European Parliament in 2003. In 2004 the European Social and Economic Commission encouraged the member states to ratify the Convention within a two year period. Meanwhile, both the ILO and UNESCO have undertaken research on the obstacles to ratification, including in South Africa. In 2005, the Global Commission on International Migration (GCIM) (2005) pointed out the widespread violation of migrant rights globally but did not explicitly endorse the IMWC. The UN Secretary General's Report for the UN High Level Dialogue simply points out that the Convention must be seen as one of seven core UN international human rights instruments.

### **3.0 Obstacles to Ratification**

- 3.1 The obvious question is why, in comparison with other UN Conventions, the IMCW took so long to come into force and still does not enjoy widespread support among UN member states. Few states have provided explicit reasons for their stance but several general reasons have been suggested by recent analysts (Iredale and Piper 2003, Pécoud and de Guchteneire 2004, Piper 2004):

- The IMCW is seen very much as a successor to the ILO Conventions which themselves have not enjoyed universal support. The 1949 Convention has only been ratified by 43 states, the 1975 Convention by 18 (Böhning 1991).
- Within the UN, the Convention was always seen as marginal since it did not relate easily to any of the six core UN Conventions.
- Some migrant-sending states were concerned about the treatment of their citizens in other countries and could see advantages in ratification. Mexico, Morocco and the Phillipines all quickly ratified. Migrant-receiving states almost unanimously failed to ratify.
- The distinction between ratifying and non-ratifying states broke down along developed-developing country lines. No developed countries ratified the Convention and none of the major industrial states of Europe and North America.
- Migrants have rarely been seen as a marginal group in need of the same kinds of protection as other vulnerable groups (children, refugees, torture victims etc.).
- Migrants are generally seen in negative terms more as a threat to citizens' rights than as people in need of protection from citizens, employers and receiving states.
- The increase in undocumented or irregular migration worldwide has become a major focus of attention among many states. Many states view undocumented migrants as criminals if not a direct threat to social order and the provision of services to citizens. Xenophobia is growing worldwide and this is not a conducive climate in which to argue for or make commitments to, as the ICMW recommends, rights for migrants of any kind, let alone rights for undocumented migrants.
- Countries that did not send or receive many migrants have obviously had little interest in the ICMW. That situation has begun to change with the globalization of migrant movements.
- The Convention is sometimes seen as outdated, even by its supporters. As Pécoud and de Guchteneire (2004) note: "the Convention was thought of in the seventies, drafted in the eighties and was open for ratification in the nineties." However, a good convention should stand the test of time and become more, not less, relevant.
- Migration has become ever-more globalized with more and more states sending or receiving g migrants or both. Sending states that might once have ratified the ICMW are less likely to do so as they become recipients of migrants. Indeed, rather than seeing the ICMW as more necessary, states seem increasingly threatened by it.
- While many states have diasporas, many migrants have gone as individuals rather than under organized recruitment schemes, States have not traditionally seen those who leave as a positive light and have not been concerned about what happens to them after they leave.

- The ICMW is viewed by some states either as offering rights that are either contradictory to those well-established in domestic law and constitutions, or as simply duplicating rights that are already well-entrenched.
- Some states might be in agreement with parts, or even the larger part, of the ICMW but do not wish to ratify certain principles. The Convention, by nature, is an all or nothing package. In other words, some states undoubtedly rejected the package because they disagreed with some of its principles.

UNESCO's ongoing global survey of the obstacles to ratification has identified four separate sets of factors: administrative difficulties; cost considerations; political considerations and obstacles and objections to the content of the Convention

3.2 In terms, first, of administrative obstacles to ratification, a range of non-ratifying countries see the implementation of the ICMW as bureaucratically difficult if not impossible. Reasons given by various states include:

- Implementation of the ICMW would require considerable inter-departmental cooperation since the Convention has implications for the policies and regulations of several ministries
- Incorporation of the principles of the ICMW into departmental practices and regulations would require significant capacity in under-resourced and over-stretched bureaucracies
- Many states have little experience with policy-making around migration issues. They often lack appropriate legal instruments and have no political position on migration.
- States have no capacity to compare existing legislation and practices with the ICMW and bring the former into line with the latter

These administrative obstacles provide no substantive basis for rejecting the ICMW. Rather they are capacity issues around implementation. Many states have signed on to other UN Conventions despite similar capacity problems.

3.3 The second set of logistical objections to the ICMW relate to the costs for ratifying states. Under the Convention, sending states incur costs *inter alia* in pre-departure briefings of migrants; allowing migrants to vote in elections at home; affording due process to undocumented migrants and detaining them in separate facilities; and bureaucratic costs of implementation and monitoring. Again, these objections do not provide sufficient grounds for non-ratification. States that object to the ICMW have ratified other Conventions regardless of the cost implications.

3.4 The third and fourth set of obstacles, relating to political factors and to the content of the ICMW are more substantive and require more in-depth discussion.

#### **4.0 Political Factors and the ICMW**

4.1 UNESCO identifies a number of political factors that have stood in the way of ratification



(Pécoud and de Guchteneire 2004). The most important include (a) the political economy of labour migration (b) social and political traditions, (c) solidarity of the non-ratifiers (d) reticence about the UN; (e) welfare and economic uncertainty, (d) representation of migration issues, (e) security concerns and (f) competing agreements.

- 4.2 With regard to the political economy of labour migration, UNESCO notes that many states would find the granting of rights to migrants counter-productive economically (Pécoud and de Guchteneire 2004). . In other words, migrants are seen as disposable, and often ultra-exploitable, labour units essential to particular economic sectors or the economy as a whole. Granting a whole range of rights to such people would have potentially serious economic costs. In addition, most states protect local employers over foreign employees. Many states, South Africa included, would rather deport migrants than sanction employers for employing them. Because labour export is an increasingly competitive business globally, supplier states are concerned that pushing for migrant rights will reduce their global competitiveness.
- 4.3 With regard to social and political “tradition”, UNESCO points out that in many states ethnic minorities regularly enjoy fewer rights than ethnic majorities (Pécoud and de Guchteneire 2004). Migrants are often part of such minorities and, as such, the idea of affording them “special protection” is not well-entrenched in many states. Quite the contrary.
- 4.4 UNESCO suggests that a big disincentive to ratification is the degree of solidarity that has grown up, particularly among western developed countries, around non-ratification (Pécoud and de Guchteneire 2004). The negative attitudes of one towards the ICMW quickly become the attitudes of all. Under these circumstances there is no incentive and little pressure for these states to “break rank” and ratify.
- 4.5 With regard to suspicion of the UN, this manifests itself either in general suspicion towards a general Convention such as the ICMW, a belief that migration is not an issue of UN concern or a conviction that migration is a national issue. As such, states have the right to decide who should be in their territory and what rights they should enjoy. The ICMW represents “unnecessary interference” in a matter of sovereign jurisdiction.
- 4.6 Migration is generally perceived in negative terms by citizens of receiving countries. Xenophobia is alive and growing in many states. Citizens feel that migrants have too many rights already. As a result, particularly where the migration issue is a rallying-point for political populism, governments feel that extending further rights and protections to migrants is a political risk.
- 4.7 In the “war on terror” world, many governments perceive migration primarily as a security challenge or threat. This is not an auspicious climate in which to advocate greater rights and freedoms for migrants.
- 4.8 In many parts of the world, there are bilateral agreements between supplier and receiving states governing the movement of migrants between them. These bilateral agreements are seen as more sensitive to local realities and many also attempt to protect migrants from exploitation. A country that is party to such bilateral agreements may see little need, and indeed costly additional obligations, if it also ratifies the ICMW.

## **5.0 Objections to Content**

- 5.1 Pécoud and de Guchteneire (2004) point out that there are two kinds of objections to the content of the Convention: (a) substantive objections and (b) objections based on misunderstanding. Certainly the Convention contains articles that are simply unacceptable to some states for a variety of economic and political reasons. Table 1, from a study of the Asia-Pacific, provides several examples of these kinds of concern.
- 5.2 More problematical is that the content of the Convention is simply unknown to many governments and policy-makers. Few have systematically examined its legal implications. Japan, New Zealand and Canada have done so but the latter refuses to make the opinion of the Department of Justice public. One of the most common misperceptions, according to UNESCO, is that the Convention offers unwarranted rights to irregular migrants and therefore would encourage irregular migration. UNESCO contends that there is little appreciation that the Convention actually fosters the fight against irregular migration (Pécoud and de Guchteneire 2004).

## **6.0 Study Methodology**

- 6.1 The research for this policy brief was conducted primarily by means of in-depth interviews with key informants in government, the private sector and non-governmental organisations (NGOs). A complete list of interviewees is attached as Appendix B. A review of the policies and legislation in South Africa applicable to migrant workers was also undertaken.
- 6.2 In preparation for the interviews, the research team produced a matrix that highlighted the key provisions of the ICMW. This was made available to all of the key informants prior to interview. Interviews were unstructured but followed an interview guide that had been prepared in advance by the research team. Where possible, interviews were conducted face to face, but due to time and other logistical constraints, several interviews were conducted telephonically.

## **7.0 Migrant Rights Violations Under Apartheid**

- 7.1 In the apartheid period, labour migrants were systematically, and with state sanction, subject to extreme exploitation and human rights violations. South Africa's black union movement made considerable advances in the 1980s and rolled back some of the worst forms of abuse (particularly in the mining industry). However, some sectors, such as commercial agriculture were virtually untouched. Post-apartheid research in sectors such as mining, commercial agriculture, domestic work and construction clearly demonstrated that the exploitation and rights violations of the apartheid era did not automatically cease in 1994 (Crush 1999). Indeed, in sectors such as mining, the gains of the 1980s were rolled back as the mining companies began to contract out to smaller companies operating outside the bounds of the industry's collective agreement (Crush et al 2001).
- 7.2 The violation of migrant rights was an intrinsic part of the Aliens Control Act. When it came to the mining industry, most migrants fell outside the Act. The Act made provision for bilateral agreements to govern recruiting and employment. This led to the idea of the "two gates" policy,

one for black migrants, the other for white immigrants. In truth, however, the second gate applied only to the mining industry and, to a much lesser degree, white agriculture. Other black migrants were forced to enter clandestinely where they were tolerated by the state or rounded up and set to work in highly exploitative conditions in sectors short of labour such as farming.

- 7.3 South Africa's Bilateral Labour Agreements (BLA's) with neighbouring states are diplomatic treaties that date back decades and were last updated in the 1970s. The treaty with Malawi is defunct.. The treaty with Mozambique was actually signed by the Portuguese colonial government. These treaties, now badly outdated, still govern the entry of mine and farm workers to South Africa from Mozambique, Botswana, Lesotho and Swaziland.
- 7.4 The bilateral labour treaties ensure that contract migration to South Africa is governed by regulations not by legal statute. The new 2002 Immigration Act, through the corporate work permit system (see below), has now entrenched the provisions of the BLA's into law. The treaties place considerable power and autonomy in the hands of the employers and for this reason were seen as the "cornerstone" of the apartheid-era migrant labour system. As a supplement to the treaties, the mining industry also has contracts or agreements with their own workers that set out the basis and conditions on which the migrants are employed.
- 7.5 Since 1994, there have been numerous calls to renegotiate, modernize or abolish these old treaties. Attention has also repeatedly been drawn to the potentially unconstitutional aspects of the treaties, such as compulsory deferred pay. However, there has been little apparent progress. The over-riding issue is that they provide a second and (according to several commentators) an unfair means of access to foreign labour for particular industries. But there are also other issues that are to be noted in the debate about the BLA's (Crush and Tshitereke 2001). The fact that the BLA's are diplomatic agreements and therefore fall within the realm of the Department of Foreign Affairs complicates matters. However, the agreements involve both workers and migrants and this brings the Departments of Labour and Home Affairs into the equation. Thus, it is not immediately apparent which government departments engage in the debates about the agreements.
- 7.6 The Presidential Labour Commission of 1995, the 1997 Draft Green Paper on International Migration and the trade union movement have all called for the scrapping of the BLA's and in particular, expressed concern about the provision that provides for compulsory deferred pay- a system whereby a percentage of the worker's wages is transmitted to the government of his country of origin. However, the trade union movement is at loggerheads with the governments of the countries of origin, many of whom depend on the compulsory deferred pay system to boost their foreign exchange reserves.
- 7.7 In a submission commenting on the draft Immigration Act, the Congress of South African Trade Unions (COSATU, 2002) expressed its serious concern with the fact that the Act did not address the fundamental problems associated with the migrant labour system, but that in fact the system continued to operate outside of the realm of the Immigration Act. In other words, the system of corporate work permits amounted to an exemption of the provisions of the Act that other employers are subjected to.

7.8 Until 2002, and the passage of a new Immigration Act, migration to South Africa was governed by the apartheid-era Aliens Control Act (ACA). The ACA was the subject of a systematic legal analysis in 1997 which demonstrated that many of the provisions were unconstitutional and inconsistent with the new South African Bill of Rights (Crush 1998). The Act continued to licence enforcement practices that began in the apartheid period and continued thereafter, if anything with added intensity. Human rights organizations inside and outside South Africa, including the state-funded South African Human Rights Commission, Lawyers for Human Rights and Human Rights Watch systematically documented ongoing and pervasive exploitation and abuse of migrants and refugees by the police. These exposes were ridiculed by then Minister of Home Affairs and the Commissioner of Police. Not only did the Department of Home Affairs deport over 1 million migrants in the first ten years of democracy but it did so with minimal due process, something which the new Act clearly recognizes.

## 8.0 Migrant Rights After Apartheid

8.1 Since 1994 a series of laws designed to protect and promote the rights of workers have been passed or amended. None of these laws makes any distinction between workers who are citizens or permanent residents and those who are migrants. It is assumed, therefore, that the laws apply equally to all workers, irrespective of residence status, including temporary, seasonal and permanent migrant workers as well as undocumented workers. However, while this may be true in principle, the manner in which these laws are implemented and enforced often means that migrants are excluded. A brief description of the relevant policies and legislation follows.

8.2 *The Labour Relations Act of 1995 (LRA)* ensures the rights to:

- Fair labour practices;
- Form and join trade unions and employers' organizations;
- Organize and bargain collectively; and
- Strike and lock-out

Furthermore, the LRA promotes conciliation and negotiation as a means of settling labour disputes.

8.3 *The Basic Conditions of Employment Act of 1997 (BCEA)*, as the title implies, is the primary piece of legislation that establishes and enforces the basic conditions of employment for all workers (with the exception of those employed in the defence, intelligence and security establishments). The BCEA prescribes working hours, including overtime and compensation for overtime work; types of leave; remuneration procedures; termination of service procedures and minimum wages for domestic, farm and seasonal workers. The BCEA also criminalizes child labour and imposes a jail penalty of up to three years (a child is defined as anyone under the age of 15).

8.4 *The Employment Equity Act of 1998* was written to promote and protect the right of workers to equal opportunities by eliminating unfair discrimination on the grounds of race, gender, sexual orientation and so, including ethnic or social origin, language and birth. In terms of the EEA, the Department of Labour has also promulgated a Code of Good Practice on key aspects of HIV/Aids and Employment that sets out guidelines for employers and workers to implement to ensure that individuals with HIV are not unfairly discriminated against.

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- 8.5 *The Skills Development Act of 1998* sets out the manner in which employers must take responsibility for ensuring the development of skills of their workforce. This Act functions in conjunction with the affirmative action components of the Employment Equity Act as well as the Development Levies Act of 1999, which prescribes that all employer organizations have to contribute to a Skills Development Fund that is administered by the Department of Labour.
- 8.6 *The Unemployment Insurance Act of 2001* makes it compulsory for employers to register any persons who works for more than twenty four hours per month with the Unemployment Insurance Fund (UIF). This includes farmers who must register farm workers (since 1997) and since April 2003 domestic workers are also covered by the Act and must be registered for UIF contributions.
- 8.7 *The Occupational Health and Safety Act of 1993* makes it the responsibility of both employer and employee to ensure health and safety at the workplace. However, the role of the employer in ensuring the protection of workers is emphasized, including the need to take preventative measures and informing workers of potentials threats and hazards.
- 8.8 *The Compensation for Occupational Injuries and Diseases Act of 1993* whose main objective is to provide for compensation for disabilities caused by occupational injuries or diseases, or for death resulting from such injuries or diseases. The fund is made up of contributions from employers and unlike the UIF, no deductions are made from employees as a contribution to the fund.
- 8.9 All the above policies and legislation fall within the jurisdiction of the Department of Labour which is responsible for the administration, implementation and enforcement thereof. In addition, however, several statutory bodies have been established to advise and provide oversight in terms of the operation and implementation of the above legislation. These are the:
- Advisory Council for Occupational Health & Safety
  - Commission for Conciliation, Mediation and Arbitration (CCMA)
  - Commission for Employment Equity
  - Compensation Board
  - Employment Conditions Commission (ECC)
  - National Economic Development and Labour Council (NEDLAC)
  - National Productivity Institute (NPI)
  - National Skills Authority (NSA) and the
  - Unemployment Insurance Board
- 8.10 The labour laws described above are all designed to give effect to paragraph 23, clauses 1 – 6 of Chapter Two (Bill of Rights) of the South African Constitution of 1996. In addition to those specific clauses, Chapter Two also explicitly prohibits slavery, servitude and forced labour (par. 13). It should be noted, however, that while the above rights are conferred on ‘everyone’, only citizens have the right to choose their trade, occupation or profession freely (par. 22).
- 8.11 It should be noted, in the context of this discussion, that migrant workers are specifically excluded from employment equity legislation pertaining to previously or historically

disadvantaged groups and affirmative action. Thus, while the law makes provision for preference to be given to ‘designated groups’ (black people, women and disabled people) in terms of employment, this only applies to citizens and permanent residence and not to migrants.

- 8.12 As noted above, with the exception of the right to choose their trade, occupation or profession freely, migrant workers are entitled to the same levels of protection afforded to citizens. Consequently, the institutions and bodies referred to above should have it within their respective mandates, the protection and promotion of the rights of migrant workers. However, unlike in the arena of social welfare (see below) there have not been any substantial cases involving migrant workers and it remains to be seen whether and how effective these bodies will be in extending their mandate to encompass migrant workers.
- 8.13 As with labour laws, there are several laws that deal with the provision of social and welfare services to citizens and residents. Of these, the most important is the Social Assistance Act of 1992, subsequently amended by the Welfare Laws Amendment Act of 1997. In the language of the original draft of the Social Assistance Act, it is expressly stipulated that person who wish to apply for social welfare assistance must be able to provide proof of South African citizenship. However, in Chapter Two of the Constitution, there is no such restriction and every person has the right to all social and welfare services provided by the State. The amendment of the Act in 1997 does not address the question of access by those who are not citizens, but given that the Constitution is the supreme law, it is logical that migrants are entitled to these services, provided that they can prove residence in South Africa.
- 8.14 The Immigration Act of 2002 also makes provision for migrants (documented and undocumented) to have access to these services on the basis that it would be unconstitutional to turn them away on the basis of citizenship or legal status. However, the Act requires that service providers should endeavor to establish the legal status of a person prior to providing the service. In the event of being unable to do so or if the person is found to be in South Africa without appropriate documentation, it is a legal requirement to report this to the Department of Home Affairs. Failure to report such persons is a punishable offence.
- 8.15 In a recent court case, in which Mozambican migrants applied for court intervention after they were denied access to social welfare on the grounds that they were not South Africa citizens, judgement was handed down in favour of the migrants (Constitutional Court, 2003). The judge found the denial of grants to be unconstitutional. By extension, this judgement will become established jurisprudence and would apply to all social and welfare services provided by the State.
- 8.16 However, there is evidence that migrants (documented and undocumented) are routinely denied services on the basis that they are not citizens. This is consistent with the perception that migrants place an additional and unsustainable burden on the resources available to provide social and welfare services.

## **9.0 The 2002 Immigration Act**

- 9.1 In 1996 the Department of Home Affairs (responsible for immigration) initiated a process of rewriting South Africa’s immigration policy. By the department’s own admission, the Aliens Control Act was neither sufficient nor desirable to meet the challenges of migration in a post-apartheid South Africa. Even though the ACA had been amended in 1995 to remove the most blatantly racist and discriminatory provisions, the Act remained true to its original intention,

which was to restrict and control the movement of persons. For this reason, the Minister responsible for immigration embarked on the process of not merely amending the existing law, but rewriting it in its totality.

- 9.2 The process of redrafting South Africa's immigration law was protracted, controversial and highly politicized (Crush and McDonald 2001). The process was not helped by the fact that the ANC was often at loggerheads with the Minister of Home Affairs and his Italian advisor Mario Oriani-Ambrosini. In addition, there was no articulated government policy to guide the drafters of either the Green or White Papers or the subsequent legislation. Draft legislation was modified several times at the Cabinet stage and eventually passed into law in a cloud of controversy. Human rights groups and unions expressed considerable concern throughout the process about the proposed new legislation. Immediately after the departure of Buthelezi, the Act was amended in several particulars. None of these modifications were based on concerns about the protection of rights.
- 9.3 The outcome of this highly controversial and lengthy process (it took six years to complete) was a law that was actually not significantly different from the old law in terms of how its core purpose was defined; namely to focus on the control of the movement of persons and particularly to prevent "illegal migration." While the Act makes reference to the benefits of migration and the need to encourage skilled persons and investors to migrate to South Africa, as well as the need to reduce levels of xenophobia, the manner in which the implementation of the Act is prescribed is essentially an attempt to involve, not only other government departments, but also private and public institutions in the enforcement of migration law. As with the Aliens Control Act, the new Act continues to use the language of migration control and enforcement (as opposed to migration management) and it explicitly makes allowance for 'the shifting of resources' away from administration and bureaucracy to enforcement and control. The Act also makes it a legal requirement for various government departments and private institutions to become involved in the implementation and enforcement of immigration law
- 9.4 The first part of the Immigration Act of 2002 sets out its objectives, which can be summarized as follows:
- To facilitate the legal movement of persons to and from, and their sojourn in South Africa;
  - To reduce the administrative and bureaucratic requirements associated with the processing and issuing of permits;
  - To prevent and reduce illegal migration;
  - To encourage and facilitate co-operation between various organs of government in the implementation of immigration law; and,
  - To engage in public awareness programmes to reduce levels of xenophobia

While the objectives of the Act are perhaps laudable, even if contradictory when looked at more closely, it is apparent that the focus of the Act, in the manner in which it is to be implemented, is on the prevention and reduction of illegal migration.

- 9.5 Specifically in relation to labour migration, the intentions of the Act are to:
- Prevent and reduce unauthorized access to the South African labour market, particularly of semi-skilled and unskilled workers;
  - Sanction agencies and employers who are involved in the recruitment and employment of unauthorized workers;
  - Encourage people with ‘much-needed’ skills to relocate to South Africa temporarily or permanently;
  - Ensure that the employment of foreigners does not unduly disadvantage South African citizens and permanent residents, both at the high and low ends of the migration scale (highly skilled and unskilled); and,
  - Make the Department of Labour the primary authority in the implementation and enforcement of immigration law as it pertains to labour migration.
- 9.6 The Act provides for several means whereby migration to South Africa for the purposes of employment can be achieved, of which the three most important are as follows:
- **General Work Permit:** this is for individuals who have an offer of employment in their possession and need to obtain authorization to enter and work in South Africa. The prescribed procedure to obtain a work permit dictates that the Department of Labour must provide certification that no suitable South African citizen or permanent resident could be recruited prior to the issuing of such a permit.
  - **Corporate Work Permit:** in terms of this provision, private sector corporations may, upon application, be authorized to employ a predetermined number of foreign workers without the need to apply for a separate work permit (as above) for each foreign employee. In this instance, it is both the Department of Labour and the Department of Trade and Industry that must provide certification that the corporate applicant is reliant on or in need of foreign workers. The Act also specifies that such corporate entities may enter into agreements with foreign governments to regulate the recruitment and employment of their citizens- a provision that effectively maintains the operation of the current Bilateral Labour Agreements.
  - **Quota Work Permit:** the regulations that accompany the Act determine that there are certain economic sectors within which there are shortages of skilled personnel and establish that a certain number of foreigners may be employed by corporations in those identified sectors until the overall quota has been filled. The quotas a predetermined on the basis of consultations with the Department of Trade and Industry.

In all three scenarios, the Department of Labour is required to verify that the persons employed will enjoy the same remuneration and benefits and will work under the same conditions as citizens and permanent residents.

- 9.7 As indicated earlier, most of the provisions of the new Act are predicated on the belief that there are large numbers of foreigners who wish to enter South Africa for the purpose of employment. It appears, therefore, that the new procedures (that are even more cumbersome than those of the Aliens Control Act) are designed to ensure that access is restricted. In essence, it is only those persons with the necessary resources or alternatively, those who are assisted by means of the corporate work permit, who would be able to obtain documents to work in South Africa legally.



The inherent risk in developing this kind of restrictionist policy is that it is likely to drive the migration of semi-skilled and unskilled persons underground. In other words, with little or no opportunity to access the South African labour market legally, many men and women will resort to working illegally, further exposing themselves to potential abuse and exploitation.

- 9.8 As described above, the Immigration Act of 2002 has specific provisions relating to the recruitment and employment of migrant workers. In addition, the Act prescribes sanctions and an enforcement mechanism (see below) to ensure that these provisions are complied with. However, other than references to the fact that migrant workers need to be afforded the same remuneration, benefits and conditions of work as citizens and permanent residents, the Act does not explicitly define what these are. This lack of explicit definition is consistent with the view of the drafters of the Act; namely, that immigration policy and law is about entry into and exit out of the country, and that other government departments are responsible for formulating and implementing policies and regulations that govern the stay of foreigners in the country. It is in this context that the regulatory framework governing labour relations in South Africa is relevant.

## **10.0 Obstacles to Ratification in South Africa**

- 10.1 As is apparent from the foregoing analysis, the applicable labour and related policies, laws and regulations of post-apartheid South Africa are not actually inconsistent with the provisions of the ICMW. If anything, there is a substantially close correlation between what the ICMW tries to achieve and what South African law provides for. Of course, the questions to be asked are firstly, to what extent is South Africa's regulatory framework applicable to migrant workers and their families? and secondly, why has South Africa not ratified the ICMW?
- 10.2 Chapter Two of the South African Constitution of 1996, which contains the Bill of Rights, is phrased in a manner that suggests that all persons, with some exceptions, are entitled to all the rights contained therein. These include rights of equality and non-discrimination, access to education, health, welfare and other social services and housing among other things. The only rights specifically reserved for citizens are those related to freedom of movement and residence, occupation and profession and political rights. South Africa's labour and related legislation are drafted in a manner to give effect to the entitlements set out in the Bill of Rights.
- 10.3 All interviewees were consistent in their view that preference should be given to South African citizens and permanent residence with respect to access to the South African labour market. The Chairperson of the Parliamentary Portfolio Committee on Labour was particularly insistent on this point. While she agreed that the rights of migrant workers needed to be upheld and protected, she strongly argued that this could not be to the detriment of citizens and permanent residents.
- 10.4 However, without exception, all the interviewees agreed that South Africa's labour legislation applies equally to migrant workers and to nationals, and that no distinction or denial of rights can be instituted on the basis of nationality or citizenship. They were also clear that, as with the Convention, a distinction should be made between documented and undocumented migrants. But some, particularly the interviewees from the National Union of Mineworkers (NUM) and

the Congress of South African Trade Unions (COSATU), were adamant that once a person had been employed, he or she should be entitled to the full protection of South Africa's labour legislation, irrespective of their legal status. As one interviewee noted - 'a worker, is a worker, is a worker.' In this respect, it is not just South Africa's labour law that is applicable, but also the Constitution, which outlaws discrimination on the basis of nationality or origin.

- 10.5 The concern remains, however, that by promoting the rights of migrant workers and their families in the manner proposed by the ICMW, local workers may be (seen to be) disadvantaged, and this is clearly an issue of concern, particularly to elected representatives in government at all levels. In this respect, the 'equality with nationals' provisions of the Convention may indeed pose some difficulties.
- 10.6 In commenting about the extension of rights to migrant workers, one interviewee spoke of 'double standards' - implying that on the face of it, migrant workers are supposed to enjoy all the rights that citizens enjoy, but that in practice, this is not the case. Another interviewee made a similar point and used the phrase 'government speaks with forked tongue'. He argued that while government seems to implicitly and sometimes explicitly support the extension of worker rights to migrant workers, this is not directly and clearly reflected in its policy and regulatory frameworks.

#### **11.0 Knowledge and Awareness of the ICMW**

- 11.1 Perhaps one of the biggest obstacles to ratification of the ICMW is the fact that awareness and knowledge of it in South Africa is limited. With the exception of two of the interviewees who were familiar with and had knowledge of the provisions of the Convention, all the others indicated that they had 'heard of it' but were not familiar with its contents and in two cases, the interviewees had not heard of the Convention prior to receiving the request for an interview.
- 11.2 Again, all the interviewees agreed that to their knowledge, the Convention had never been formally tabled or discussed in South Africa and they confirmed that familiarity with it was limited to a few individuals in government who may have had the opportunity to participate in international forums where the Convention had been discussed.
- 11.3 A suggestion put forward by the interviewee from COSATU was that perhaps as a first step towards ratification, a broad-based awareness programme or campaign could be conducted to explain the origin, purpose and contents of the ICMW.
- 11.4 One of the questions put to all interviewees was whether they believed that the implementation, reporting and monitoring requirements imposed by the Convention would pose an administrative burden on the South African government that may be regarded as too cumbersome and, therefore, could potentially pose an obstacle to ratification. While most of the interviewees suggested that they did not think that this would be sufficient grounds for non-ratification, the Deputy-Chairperson of the South African Human Rights Commission made the point that South African was already a signatory and has ratified several other international conventions that have similar reporting and monitoring requirements and that in her view, it was merely a matter of adding an additional convention. She thus firmly expressed the view that this would not be a problem for the South African government.

- 11.5 Given the significant degree of congruence between South Africa's domestic law and the Convention, there appears to be no substantive reasons (other than those described below) why South Africa should not ratify the Convention. However, as pointed out by one of the interviewees, ratification of the Convention does introduce an element of international accountability which means that, not only would the South African government have to report on its progress with implementing the Convention, but other parties to the Convention could also hold them accountable for non-implementation or violation. In this respect, one of the interviewees noted that in the context of the Southern African sub-region, the South African government was particularly notorious for introducing new or amending its existing applicable migration policies and regulations without consulting or informing the governments of countries whose nationals would be affected by such changes. If South Africa was a signatory to the Convention, any such moves that might constitute a violation of the rights of migrant workers, could be challenged in terms of the Convention.
- 11.6 At a broader level, the issue of international accountability was also linked to the question of political sovereignty by one of the interviewees. He argued that the principles that underpin immigration policies and laws are related to the sovereignty of the nation-state, the integrity of national borders, and the sole right of the state to govern entry into its national territory. He suggested that there would be some concern that ratification of the Convention and adherence to its obligations and provisions could be interpreted as government having lost control over its sovereign right to make decisions about who may enter the country, under what conditions and what they would be entitled to once they have been allowed entry.
- 11.7 South Africa's labour legislation and regulations provide for a range of mechanisms to promote and protect the rights of workers, including migrant workers. However, it is clear that the ability and capacity of government to enforce labour law to achieve compliance is lacking. While there have been reported cases of government taking action against employers for contravening the law, these have been inconsistent and sporadic. One of the interviewees reported that a senior official in the Department of Labour candidly admitted that, until such time as the Department had sufficient capacity to enforce labour law, it was unlikely to ratify the Convention because doing so would make it liable to taking steps to ensure its implementation and that it lacked the capacity to do so. On the basis of this, it appears as if there would be a willingness, certainly on the part of the responsible department to ratify the Convention, but that this willingness is constrained by concerns about a lack of capacity.
- 11.8 Despite a protracted process of migration policy-making, migration policy issues generally, and the rights of migrants specifically, has not received much attention in the policy and public domains. To the extent that migration has been placed on the policy agenda, it has largely been restricted to concerns about the need to retain or to recruit sufficient numbers of skilled personnel in particular sectors of South Africa's economy. This is in part because migration is considered to be a political 'hot potato', but also because of the relative absence of persons in government who has substantial interest or expertise in migration.
- 11.9 Most government officials as well as politicians acknowledge the importance of migration as a 'cross-cutting' issue, but few are willing to take it up and place it firmly on the policy agenda of government. In a broad range of policy documents related to education, health, labour and so

on, cursory reference is made to migration as one of the factors to be considered, but none of these documents contain substantive detail. Even the Department of Home Affairs, which is responsible for the development of migration policy and law and the enforcement thereof, treats migration as an administrative and bureaucratic matter, rather than an important policy matter that has implications for the whole of government.

- 11.10 In this respect, it is important to note that the Department of Social Development has identified migration as one of the key components in its projection of anticipated demographic changes, along with mortality and fertility. However, very little substantive research, planning or policy development has taken place in this regard.

## **12.0 Conclusion**

- 12.1 Based on the interviews conducted, it is clear that at the top of the list of reasons for South Africa not ratifying the UN Convention on the Rights of all Migrant Workers and Members of their Families, is the fact that there is little awareness and knowledge of the Convention itself. All interviewees concurred that if it was made clear that the provisions and purpose of the Convention are not substantively different from what is already contained in South Africa's domestic policies and laws, this would overcome the first hurdle.
- 12.2 The second issue related to the capacity of government to implement not only its own policies and legislation, but also any additional obligations that may emanate from ratifying the Convention is an important one. This is related to the issue of accountability. It appears that officials in government do not want to be obligated by international law to do something that they fear they are unable to do and in the overall context of wanting to promote ratification, serious attention has to be paid to what exactly the requirements and obligations might be for the South African government, and to develop its capacity to meet these requirements and fulfill its obligations.
- 12.3 Thirdly, there is the question of political sovereignty. To what extent does the Convention inhibit the right of South Africa to make decisions and formulate its own policies and regulations regarding the entry, sojourn and entitlements of migrants? This question is also related to the debate about the rights of citizens versus the rights of migrants and as previously noted, is an important political question.
- 12.4 Phrased differently – to what extent does political will already exist or need to be created for the South African government to ratify the Convention? Clearly, this question is also related to how much is known about the Convention and the obligations that it imposes on government.
- 12.5 If the above issues can be addressed satisfactorily, it will provide significant impetus towards the ratification of the Convention by the South African government. However, for as long as migration policy continues to be a low priority issue for both government and civil society, the likelihood that South Africa will take the first steps towards ratifying the Convention is low.
- 12.6 While the issue of capacity will have to be dealt with in order to effectively implement the Convention, for ratification to even be considered, there must first be a renewed focus among government on the rights of migrant workers and their families. The fact that, for the most part,

neither government nor civil society institutions have adopted migration as a high priority issue only facilitates the lack of political will in government.

- 12.7 The first step in promoting ratification in South Africa will be for the government to assess existing legislation in order to see how it compares to the Convention. By uncovering areas where the current policy fails, the government will have a better understanding of why a more detailed, comprehensive agreement such as the Convention is necessary. It will also provide a look at what additional resources would be needed for the implementation of the Convention, as well as where the two overlap. In many respects, the current policy in South Africa already embodies the Convention's institutions and protections on a much broader scale. A comparison could expose these similarities and show which parts of the existing legislation could be easily extended to migrant workers. While it is unlikely that government will take on such an assessment on its own, civil society organizations can play an integral role in driving this process by conducting preliminary studies and publicising the results.
- 12.8 Once South Africa begins to genuinely consider ratification, the capacity of government will ultimately become an issue. However, government does not necessarily have to possess the capability needed to implement the Convention in its entirety before ratification can take place. Once the Convention is ratified, government can work gradually through timelines set for implementation and enforcement, starting with areas of the Convention that are the most certain and straightforward. Civil society organisations can also play an important role in helping to develop this capacity through providing research and training.
- 12.9 Another way in which to promote ratification will be to position the Convention in the context of the Southern African (SADC) sub-regional agenda. In the past, South Africa has shown increased receptiveness to policies taken up on a broad, regional scale. Considering the Convention's emphasis on the entire process of migration and its provisions on collaboration, it would be extremely difficult for a country in Southern Africa to effectively implement the Convention on its own. Ratification on a regional scale would serve as a mechanism through which Southern African countries could hold each other accountable to the obligations of the Convention. Existing agreements such as the SADC Protocol on the Facilitation of Movement of Persons and the Social Charter on the Fundamental Rights of Workers could serve as a foundation for this cooperation and enforcement.
- 12.10 Before more technical questions such as the details of implementation can be fully addressed, government must be made aware that ratification of the Convention will not require the adoption of an entirely new set of policies, laws and regulations, but firstly, a re-interpretation of existing policies, laws and regulations and its applicability to migrant workers and their families and, secondly, the amendment of existing policies, laws and regulations to the extent required.

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**REFERENCES**

- Böhning, Roger, 1991. "The ILO and the UN Convention on Migrant Workers: The Past and Future" *International Migration Review* 25(4): 698-709
- Bosniak, Linda, 1991. "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention" *International Migration Review* 25(4): 737-70
- COSATU, 2002. Labour Submission to the Home Affairs Portfolio Committee on the Immigration Bill (<http://www.queensu.ca/samp/ImmigrationBillComments/Cosatu.htm>)
- Crush, Jonathan, ed., Beyond Control: Immigration and Human Rights in a Democratic South Africa (Cape Town: Idasa Publishing, 1998).
- Crush, Jonathan, 1999. "The Discourse and Dimensions of Irregularity in Post-Apartheid South Africa" *International Migration* 37: 125-49
- Crush, Jonathan and David McDonald, 2001. "Evaluating South African Immigration Policy After Apartheid" *Africa Today* 48(3): 1-14.
- Crush, Jonathan and Clarence Tshitereke, 2001. "Contesting Migrancy: The Foreign Labour Debate in Post-1994 South Africa" *Africa Today* 48(3): 49-72.
- Crush, Jonathan, Theresa Ulicki, Teke Tseane and Elizabeth Jansen Van Veuren, 2001. "Undermining Labour: The Social Implications of Sub-Contracting on the South African Gold Mines" *Journal of Southern African Studies* 27(2001): 5-32.
- Global Commission on International Migration. 2005. *Migration in an Interconnected World*:
- International Migrants Rights Watch Committee, 1998. *ACHIEVING DIGNITY: Campaigner's Handbook for the Migrants Rights Convention*
- Iredale, Robyn and Nicola Piper, 2003. *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers: The Asia-Pacific Perspective*. Paris: UNESCO.
- Constitutional Court, 2003. *Khoza v Minister of Social Development; Mahlaule v Minister of Social Development* (CCT 12/03, CCT 13/03), Constitutional Court, March 2004.
- Pécoud, A. and P. de Guchteneire, 2004. "Human Rights and the United Nations: An Investigation into the Obstacles to the UN Convention on Migrant Workers' Rights" *Global Migration Perspectives Series No. 3*, Global Commission on International Migration, Geneva.
- Piper, Nicola, 2004. "Rights of Foreign Workers and the Politics of Migration in South-East and East Asia" *International Migration* 42(5).

Taran, Patrick. 2001a. "Status and Prospects for the UN Convention on Migrants' Rights" *European Journal of Migration and Law* 2(1): 85-100.

Taran, Patrick. 2001b. "Human Rights of Migrants: Challenges of the New Decade" *International Migration* 38(6).

**APPENDIX A: Status of the Convention in October 2005**

Ratifications:

1. Algeria, 21.04.05 - Africa
2. Azerbaijan, 11.01.99 - Asia
3. Belize 14.11.01 - Latin America
4. Bolivia 12.10.00 - Latin America
5. Bosnia & Herzegovina 13.12.96 - Europe
6. Burkina Faso 26.11.03 - Africa
7. Cape Verde 16.09.97 - Africa
8. Chile 21.03.05 - Latin America
9. Colombia 24.05.95 - Latin America
10. Ecuador 05.02.02 - Latin America
11. Egypt 19.02.93 - Africa
12. El Salvador 14.03.03 - Latin America
13. Ghana 08.09.00 - Africa
14. Guatemala 14.03.03 - Latin America
15. Guinea 08.09.00 - Africa
16. Honduras 11.08.05 - Latin America
17. Kyrgyzstan 29.09.03 - Asia
18. Lesotho 16.09.05 - Africa
19. Libyan Arab Jamahiriya 18.06.04 - Africa
20. Mali 05.06.03 - Africa
21. Mexico 08.03.99 - Latin America
22. Morocco 21.06.93 - Africa
23. Nicaragua 26.10.05 - Latin America
24. Philippines 05.07.95 - Asia
25. Senegal 09.06.99 - Africa



26. Seychelles 15.12.94 - Africa
27. Sri Lanka 16.03.96 - Asia
28. Syria 02.06.05 - Asia
29. Peru 14.09.05 - Latin America
30. Tajikistan 08.01.02 - Asia
31. Timur Leste 30.01.04 - Asia
32. Turkey 27.09.04 - Europe
33. Uganda 14.11.95 - Africa
34. Uruguay 15.02.01 - Latin America

**Signatures:**

1. Argentina, 10.08.04 - Latin America
2. Bangladesh 07.10.98 - Asia
3. Benin 15/09/05 - Africa
4. Cambodia 27.09.04 - Asia
5. Comoros 22.09.00 - Africa
6. Gabon 15.12.04 - Africa
7. Guinea-Bissau 12.09.00 - Africa
8. Guyana 15.09.05
9. Indonesia 22.09.04 - Asia
10. Liberia 22.09.04 - Africa
11. Paraguay 13.09.00 - Latin America
12. Sao Tome and Principe 06.09.00 - Africa
13. Serbia and Montenegro 11.11.04 - Europe
14. Sierra Leone 15.09.00 - Africa
15. Togo 15.11.01 - Africa

**APPENDIX B: LIST OF INTERVIEWS**

Dr. Sally Peberdy – Project Manager, Southern African Migration Project

Mr. Vic Esselaar – Consultant, South African Chamber of Mines

Ms. Prakashnee Govendor – Legal Officer, Congress of South African Trade Unions (COSATU)

Dr. Zonke Majodina – Deputy-Chairperson, South African Human Rights Commission

Mr. Humbulani Tshikalange – National Union of Mineworkers

Ms Onewang Rebecca Kasienyane - Member of Parliament and Chairperson of the Parliamentary Portfolio Committee on Labour

**APPENDIX C: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Adopted by General Assembly resolution 45/158 of 18 December 1990**

**PREAMBLE**

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

## **PART I: SCOPE AND DEFINITIONS**

### ***Article 1***

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

**Article 2**

For the purposes of the present Convention:

1. The term "migrant worker" refers to 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.
2.
  - (a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;
  - (b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
  - (c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
  - (d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
  - (e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
  - (f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
  - (g) The term "specified-employment worker" refers to a migrant worker:
    - (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
    - (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
    - (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;
  - (h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

**Article 3**

The present Convention shall not apply to:

- (a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons sent or employed by a State or on its behalf outside its territory who participate in

development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

***Article 4***

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

***Article 5***

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

***Article 6***

For the purposes of the present Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit," means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

**PART II : NON-DISCRIMINATION WITH RESPECT TO RIGHTS**

***Article 7***

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, 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**

***Article 8***

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

***Article 9***

The right to life of migrant workers and members of their families shall be protected by law.

***Article 10***

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

***Article 11***

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term "forced or compulsory labour" shall not include:
  - (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
  - (b) Any service exacted in cases of emergency or clamity threatening the life or well-being of the community;
  - (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

***Article 12***

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### ***Article 13***

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputation of others;
  - (b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;
  - (c) For the purpose of preventing any propaganda for war;
  - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

### ***Article 14***

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

### ***Article 15***

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

### ***Article 16***

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State



against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

### ***Article 17***

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be

separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

***Article 18***

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
  - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
  - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
  - (e) To examine or have examined the witnesses against them and to obtain the attendance and

- examination of witnesses on their behalf under the same conditions as witnesses against them;
- (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

### ***Article 19***

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

### ***Article 20***

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

### ***Article 21***

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents

shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

***Article 22***

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

***Article 23***

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

***Article 24***

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

***Article 25***

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

***Article 26***

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

***Article 27***

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

***Article 28***

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

***Article 29***

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

***Article 30***

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

***Article 31***

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. 2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

***Article 32***

Upon the 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, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

***Article 33***

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

- (a) Their rights arising out of the present Convention;
- (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

***Article 34***

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

***Article 35***

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

**PART IV : OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS  
OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION**

***Article 36***

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

***Article 37***

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

***Article 38***

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

***Article 39***

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other

rights recognized in the present Convention.

***Article 40***

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

***Article 41***

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

***Article 42***

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

***Article 43***

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
  - (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
  - (b) Access to vocational guidance and placement services;
  - (c) Access to vocational training and retraining facilities and institutions;
  - (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
  - (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
  - (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;



(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

***Article 44***

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

***Article 45***

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

***Article 46***

Migrant workers and members of their families shall, subject to the applicable legislation of the States

concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

- (a) Upon departure from the State of origin or State of habitual residence;
- (b) Upon initial admission to the State of employment;
- (c) Upon final departure from the State of employment;
- (d) Upon final return to the State of origin or State of habitual residence.

***Article 47***

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

***Article 48***

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

- (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
- (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

***Article 49***

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

***Article 50***

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis

of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

### ***Article 51***

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

### ***Article 52***

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

**Article 53**

1. Members of a migrant worker's family who have themselves 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 under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.
2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

**Article 54**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
  - (a) Protection against dismissal;
  - (b) Unemployment benefits;
  - (c) Access to public work schemes intended to combat unemployment;
  - (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.
2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

**Article 55**

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

**Article 56**

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.
2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.
3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

**PART V : PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES  
OF MIGRANT WORKERS AND OF THEIR FAMILIES**

**Article 57**

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

***Article 58***

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

***Article 59***

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

***Article 60***

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

***Article 61***

1. Project-tied workers, as defined in article 2, paragraph 2 (of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph I (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties

concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

**Article 62**

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

**Article 63**

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

**PART VI : PROMOTION OF SOUND, EQUITABLE, HUMANE AND  
LAWFUL CONDITIONS CONNECTION WITH INTERNATIONAL  
MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES**

**Article 64**

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

**Article 65**

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

- (a) The formulation and implementation of policies regarding such migration;
- (b) An exchange of information, consultation and co-operation with the competent authorities of other

States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

### ***Article 66***

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement. 2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

### ***Article 67***

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

### ***Article 68***

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

***Article 69***

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

***Article 70***

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

***Article 71***

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

**PART VII : APPLICATION OF THE CONVENTION**

***Article 72***

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical



distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals; (b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### ***Article 73***

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have

taken to give effect to the provisions of the present Convention:

- (a) Within one year after the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.
3. The Committee shall decide any further guidelines applicable to the content of the reports.
4. States Parties shall make their reports widely available to the public in their own countries.

#### ***Article 74***

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.
2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.
3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on

Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

**Article 75**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

**Article 76**

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;
- (d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;
- (e) The Committee shall hold closed meetings when examining communications under the present article;
- (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### ***Article 77***

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
- (b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

***Article 78***

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them

**PART VIII : GENERAL PROVISIONS**

***Article 79***

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

***Article 80***

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

***Article 81***

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

***Article 82***

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

***Article 83***

Each State Party to the present Convention undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted. Article 84 Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

**PART IX : FINAL PROVISIONS**

***Article 85***

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

***Article 86***

- 1. The present Convention shall be open for signature by all States. It is subject to ratification.
- 2. The present Convention shall be open to accession by any State.
- 3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

***Article 87***

- 1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
- 2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

***Article 88***

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its

application.

***Article 89***

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary-General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

***Article 90***

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

***Article 91***

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take

effect on the date on which it is received.

***Article 92***

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

***Article 93***

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.



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