



Module 6: Protecting migrant workers and their family members

▶ Learning objectives

1. Introduction
2. Adopting a rights-based approach to labour migration
3. Why do migrant workers need protection?
4. UN instruments for the protection of migrant workers
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6. A shared responsibility throughout the labour migration cycle
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Learning objectives

By the end of this Module, participants will have:

- ▶ 1. Considered the implications of adopting and applying a rights-based approach to labour migration
- ▶ 2. Identified the shared roles and responsibilities of countries of origin and countries of destination when it comes to the protection of migrant workers throughout the entire migration cycle
- ▶ 3. Reviewed the main international labour standards pertaining to labour migration and their application
- ▶ 4. Examined the measures that can be put in place to ensure that adequate protection is guaranteed also to those groups who may be more in need, due to the nature of their situation (e.g. seasonal workers, domestic workers, irregular migrants, women)
- ▶ 5. Analysed the different avenues for ensuring that migrant workers have adequate access to justice and dispute-settlement mechanisms.



1. Introduction

The lack of labour protection for migrant workers undermines protection for all workers. From its very inception, the ILO has resolved to protect “the interests of workers employed in countries other than their own” (ILO Constitution, 1919, Preamble, recital 2) and has pioneered the development of specific international standards for the governance of labour migration and protection of migrant workers.

The many international labour standards adopted over the years by the International Labour Conference of the ILO are the most important instruments for safeguarding the dignity and rights of migrant workers. In principle, all international labour standards, unless otherwise stated, are applicable to migrant workers.

In this Module, we will look at the many aspects that come into play when building a system for the protection of migrant workers, from adopting a rights-based approach to defining roles and responsibilities throughout the migration cycle; we will look at the existing International Labour Standards governing migration; and we will pay special attention to groups of migrant workers who, by virtue of their situation, may require a stronger level of protection. We will then conclude by considering how to ensure that migrant workers have access to justice and to labour dispute and grievance-settlement mechanisms.



2. Adopting a rights-based approach to labour migration

The expression “human rights” refers to those liberties and benefits which, by accepted contemporary values, all human beings should be able to claim “as of right” in the society in which they live. These rights are contained in the International Bill of Rights, comprising the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, 1966, and have been developed by various other treaties based on this core (e.g. the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and the International Convention on the Elimination of All Forms of Racial Discrimination, 1965).

When they are able to live in dignity and freedom, migrants are better able to contribute to society, both economically and socially. However their ability to do so is directly linked to the extent to which their civil, political, social, economic and cultural rights are ensured, and access to justice and accountability mechanisms guaranteed. Migrants cannot reach their full potential as development actors without having meaningful possibilities to participate in public life and without being fully integrated into society as a whole. At the local level, this essentially means equal access to services such as housing, fair employment, education, health and public participation. However, many migrants are exposed to human rights abuses, especially those in an irregular situation, and can face discrimination, exclusion, exploitation in their jobs and abuse at all stages of the migration process. At times even the most basic labour protection and healthcare rights can be denied, particularly to irregular migrants, which can lead to cases of physical and sexual abuse, forced labour, enslavement, trafficking and extremely low levels of living and working standards, which – in the worst case scenario might be fatal.

AN HRBA approach emphasizes that human rights are interdependent and inalienable, and that there is no hierarchy between different sets of rights. It is a conceptual framework based on international human rights standards and is operationally directed to promoting and protecting human rights. It seeks to analyse and redress discriminatory practices. It is also about empowering people to know and claim their rights, and about increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. This means giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognize and know how to respect those rights, and make sure they can be held to account.

The HRBA to development is operationally directed at promoting and protecting human rights by integrating the HRBA into the development project cycle. The whole conceptualization, design and implementation of any development initiative (including migration and development initiatives) is thereby required to include the human rights perspective. This includes specific indicators to measure enhanced rights protection and specific actions that address the root problem of why the rights being addressed in the project are not guaranteed. It therefore rather identifies beneficiaries of projects as “rights holders” with entitlements, along with corresponding “duty bearers” (usually the state/ government) and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty bearers to meet their obligations.

The adoption of a rights-based approach to migration places the migrant at the centre of migration policies and management, and pays particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national and local action plans and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia. Human rights mechanisms, such as the

Special Rapporteur on the Human Rights of Migrants and the Committee on Migrant Workers, have been clear in stating that although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their immigration status.

Following the rights-based approach, we can identify three key dimensions for safe, fair and just labour migration:

- ▶ **Equal rights to legal migration opportunities for women and men:** Ensure equitable access to and participation in safe and legal migration opportunities and their protection from exploitation and violence.
- ▶ **Equal rights within the migration process for women and men:** Ensure safe and secure recruitment, transit, remuneration, control over earnings, decent working conditions, a right to personal and family life, access to legal services, decision-making, and relevant health care and information.
- ▶ **Equal rights realized through migration:** Facilitate and encourage the potentially positive outcomes of migration for women and men. For women, this means, for example, increased autonomy and power to negotiate employment conditions in the destination country; having control over earnings and more decision-making power in the family in the origin country; and having an increased capacity to build and maintain social networks.

POINT FOR REFLECTION: What are the elements that in your opinion show that an HRBA applies or not to migrants in your territory?



3. Why do migrant workers need protection?

While for many migrant workers, labour migration can be a very positive experience, for millions of them, decent work continues to be a hard-to-reach goal, especially for low-skilled workers, those that find themselves in an irregular situation, those working in the informal economy and those who face difficult working conditions (low wages, excessive working hours, lack of social security coverage, lack of occupational safety and health protection) as well as lack of opportunities to immigration regularization. Migrants' contribution to development and economic growth depend on their job and working conditions. However, large numbers of them confront situations including withholding of wages, illegal deduction of fees, insufficient daily, weekly and holidays' rest periods, no payment of overtime and annual leave, withholding of passports and other identity documents, unjustified demands to carry out tasks other than those specified in the contract (such as cleaning other family members' houses) and unjustified terminations.

Often, even those in a regular migration situation may find themselves unprotected in labour markets without the recognition of the right to equal treatment and opportunities with regard to national workers, and often with difficulties in guaranteeing their fundamental rights at work.

Even before they leave home, migrant workers are at risk. Those who are travelling or the first time may lack accurate information about the jobs available and the working and living conditions they are likely to encounter overseas. And they will find many complex administrative processes that are difficult to understand. Most recruitment is in the hands of private agencies in countries of origin and destination, ranging from large firms to small unregistered brokers. This has become a multibillion dollar transnational industry forming the basis of an extensive "migration infrastructure".

These agencies have helped expand opportunities for migrant workers and provided valuable services. But some agencies use unscrupulous recruiters who entice vulnerable people with false promises to justify

charging them extortionate fees. In the most serious cases, when migrants arrive at their destination, they may be required to do a different job or find that there is no job waiting for them at all. Often in debt after paying the various fees and expenses, migrants are forced into accepting any job they can find, regardless of the conditions.

Studies into the living and working conditions of low-skilled migrants reveal indicators of abuse commonly associated with forced labour and exploitation and that the incidence is widespread. These indicators include deception about wages, type of work and legal status, withheld wages, retained passports or identity documents, physical confinement, substandard working conditions and threats of denunciation to the authorities. Forced labour is the antithesis of decent work.

Irregular migration exposes migrants to discrimination, exploitation, abusive working and living conditions, and in some cases loss of their lives which amplifies the need for establishing and strengthening effective labour migration governance frameworks.

Two main principles are enshrined in the ILO Conventions on migrant workers:

Equality Of Opportunity and Treatment with respect to employment and occupation aims at ensuring equal access to employment, vocational training and education, job promotion and advancement, job security, and equal pay for work of equal value and conditions of work. Ensure that workers' performance is rewarded according to productivity and merit, taking into account the objective characteristics of the job (e.g. skills, knowledge, responsibilities, working conditions), and without interference of considerations unrelated to merit (e.g. sex, race or religion)

Combating Discrimination in Employment And Occupation including any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (for which there is no objective or legitimate justification)

Gender-specific challenges in the protection of migrant workers

The feminization of labour migration is a global trend, although unfolding at different speeds and intensities. Women are migrating for employment at almost the same scale as men and now account for nearly half of the estimated 258 million migrants worldwide.

Labour migration, particularly of “low-skilled” workers, tends to be highly gendered, with male migrants going mainly into the construction, agricultural and manufacturing sectors; and female migrants concentrated in “feminized” service occupations such as domestic work.

In fact, in many parts of the world domestic workers have the face of migrant women. Because of the nature of the work they perform, the place where they perform it (in private households) and often because of their migration status, migration domestic workers face numerous challenges to having their work valued as such, their rights respected and enforced under national legislation, and their voices and concerns duly represented.

For many women, as for men, migration can represent a positive experience and have important emancipating and empowering impacts. However, female migrants are often confronted with gender-specific disadvantages and vulnerability in the migration process and in their employment. Women workers, especially young female migrants, often end up in situations of double or even triple discrimination, disadvantage, marginalization and vulnerability.

- ▶ **Lacking social/labour protection:** Migrant women are highly concentrated in domestic work, a low-paid occupation often lacking labour and social protection. At the same time, the nature of the work means they are isolated from peer and support networks and more vulnerable to abuse. Domestic workers are often unaware of their rights and often do not have effective means to seek legal redress in case of violations of those rights.
- ▶ **Dependency:** Strong dependency on a specific employer makes women workers involved in domestic work vulnerable to general mistreatment and sexual harassment. When they are not allowed to change employers or are required to have their visas sponsored by a national as in the “kafala” system (within the context of the Middle East), workers are under the near complete control of the employer/sponsor. This dependency is extreme in the case of domestic workers as they frequently share living and working space with the employer. Additionally, households typically fall outside the mandate of labour inspection and the lines between personal and employment relationships tend to become blurred.
- ▶ **Irregular status:** Migrant women can enter a country irregularly or can fall into irregularity because they fail to comply with relevant requirements in the destination country, such as losing employment. In some cases, restrictive policies introduced by countries of origin on the mobility of migrants in the domestic work sector (e.g. age bars, consent from spouses, or even pregnancy testing prior to departure), leave no or limited legal migration channels open to women and can push many into irregular paths, with higher risk of abuse. In some cases, national legislation in destination countries criminalizes migrants who leave their job, arguably forcing them to stay in exploitative workplaces.

The example of domestic workers

The growing demand of households for domestic services triggered a rise in levels of labour migration in recent decades. In addition to the many challenges domestic workers face in their home countries, migrant domestic workers are often confronted with a number of vulnerabilities linked to precarious recruitment processes and irregular immigration status, which can lead to violations of their human and labour rights. Their vulnerabilities emerge in the form of the absence of adapted assistance and protection mechanisms, social and cultural isolation due to language and cultural differences, lack of clear terms and conditions of their employment, absence of labour law coverage and/or enforcement in the country of destination, and restrictions on freedom of movement and association.

The most important ILO Convention with respect to domestic workers is the **Domestic Workers Convention, 2011 (No. 189)** and its accompanying **Recommendation 201**. **Convention No. 189** promotes decent hiring, working, and living conditions for all domestic workers, including migrants.

Taking into account the specific challenges that migrant domestic workers face, the Convention advocates the use of written contracts that are enforceable in the host country, the establishment of clear conditions under which migrant domestic workers are entitled to repatriation, and the institution of safeguards against the abusive practices of Private Employment Agencies operating across borders.

Moreover, **Convention No. 189** urges sending and receiving countries to cooperate with a view to the effective implementation of the Convention's provisions. **Convention**

No. 189 reaffirms the rights of domestic workers across many policy areas. In Particular, it reiterates the applicability of other key ILO instruments (see box 2.2), such as the **ILO Declaration on Fundamental Principles and Rights at Work, 1998**, which commits Member States to respect and promote universal principles and rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

In addition to **Convention No. 189**, **Recommendation No. 201**, and the fundamental rights conventions, the widely ratified ILO conventions of general application – such as those dealing with labour inspection, protection of wages, social security, and safety and health at work – are particularly relevant to this group of workers.



NEARLY ONE IN EVERY FIVE DOMESTIC WORKERS
IS AN INTERNATIONAL MIGRANT.



4. UN instruments for the protection of migrant workers

There are a number of international instruments governing labour migration.

(a) The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Migrant Workers Convention – ICRMW)

The ICRMW is a United Nations multilateral treaty governing the protection of migrant workers and families. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003. In accordance with article 7 of the Convention, States parties undertake 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 ICRMW 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 (the right to non-discrimination).

Other rights which are applicable to all migrant workers and members of their families include:

- ▶ the right to life;
- ▶ the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
- ▶ freedom of expression;
- ▶ the right to property;
- ▶ the right to a fair trial;
- ▶ the right to receive urgent medical care; and,
- ▶ the right to not be treated less favourably than nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment

The ICRMW provides for further rights, which are only applicable to migrant workers and members of their families who are documented or in a regular situation, which include: the right to free movement; the right to enjoy equality of treatment with nationals in relation to access to educational/vocational guidance and training institutions and services, housing, social and health services, and to participation in cultural life; the right to transfer earnings and savings from the State of employment to any other State; and equality in treatment in regard to dismissal and the enjoyment of unemployment benefits

Reflection

The above are some of the key global instruments that are of specific relevance to the management and governance of labour migration. Do you know which of these instruments have been signed and ratified by your government? Do you know to what extent the provisions of these instruments have been incorporated into your domestic/national legislation?

(b) Other relevant binding international instruments

In developing a rights-based approach to labour migration governance, it is important to also take into account and incorporate the provisions of the core global human rights instruments into labour migration policy. The core human rights instruments are as follows:

Abbreviation	Full Name	Date Adopted
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984
CRC	Convention on the Rights of the Child	20 Nov 1989
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006

Do you want to know more about the core human rights and other global human rights instruments?

Visit <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

DO YOU WANT TO KNOW MORE? Module 2 covers the Legal, Institutional and Policy Frameworks on Labour Migration

(c) Global non-binding Instruments:

The 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development (more commonly referred to as the Sustainable Development Goals or SDGs) was adopted by all United Nations Member States in 2015. It is the global framework for development during the period 2016 – 2030 and was developed in response to the challenges and opportunities in achieving balanced and sustainable global development and eradicating extreme poverty, inequality and injustice. It defines global sustainable development priorities and aspirations for 2030 and seeks to mobilize global efforts around a common set of goals and targets. The SDGs call for worldwide action among governments, business and civil society to end poverty and create a life of dignity and opportunity for all.

There are 17 SDGs that reflect the inter-relatedness of economic, social and political dimensions in achieving sustainable development. Of the 17 SDGs, 5 goals and their indicators are related to migration broadly and labour migration specifically, as follows:

The UN Global Compact for Safe, Orderly and Regular Migration

The Global Compact for Safe, Orderly and Regular Migration (also known as the Global Compact on Migration or GCM) is a non-binding instrument that was approved by 164 nations during the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration on 10 December 2018 in Morocco and endorsed by the United Nations General Assembly on 19 December 2018 with 152 countries voting in favour of the resolution. The GCM provides a comprehensive set of objectives and commitments related to a range of aspects pertaining to international migration. While all of the objectives and commitments contained in the GCM may be of value in terms of the management and governance of labour migration, Objectives 5 and 6 are specifically relevant:

OBJECTIVE 5: Enhance availability and flexibility of pathways for regular migration: commitment to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration. To realize this commitment, these are some of the actions, specific to labour migration, that are proposed:

- ▶ Develop **human rights-based** and **gender-responsive** bilateral, regional and multilateral labour mobility agreements (...) drawing on relevant ILO standards, guidelines and principles, in compliance with international human rights and labour law;
- ▶ Facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements;
- ▶ Review and revise existing options and pathways for regular migration, with a view to optimize skills matching in labour markets and address demographic realities and development challenges and opportunities;
- ▶ Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels;
- ▶ Promote effective skills matching in the national economy by involving local authorities and other relevant stakeholders, particularly the private sector and trade unions;
- ▶ Foster efficient and effective skills-matching programmes by reducing visa and permit processing timeframes for standard employment authorizations, and by offering accelerated and facilitated visa and permit processing for employers with a track record of compliance; and,

- ▶ Facilitate access to procedures for family reunification for migrants at all skills levels through appropriate measures that promote the realization of the right to family life and the best interests of the child;

OBJECTIVE 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work: commitment to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination. To this end, here are some of the proposed actions:

- ▶ Promote signature, ratification, accession and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour;
- ▶ Build upon the work of existing platforms that have overcome obstacles and identified best practices in labour mobility, by facilitating cross regional dialogue;
- ▶ Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices in order to prevent debt bondage, exploitation and forced labour;
- ▶ Establish partnerships with all relevant stakeholders, including employers, migrant workers organizations and trade unions, to ensure that migrant workers are provided written contracts and are made aware of the provisions therein, the regulations relating to international labour recruitment and employment in the country of destination, their rights and obligations, as well as on how to access effective complaint and redress mechanisms, in a language they understand;

- ▶ Enact and implement national laws that sanction human and labour rights violations, especially in cases of forced and child labour, and build partnerships that promote conditions for decent work, prevent abuse and exploitation;
- ▶ Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies, ensuring that international human rights and labour law is observed to prevent all forms of exploitation, slavery, servitude, and forced, compulsory or child labour;
- ▶ Take measures that prohibit the confiscation or non-consensual retention of work contracts, and travel or identity documents from migrants;
- ▶ Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector;
- ▶ Ensure migrants working in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace;
- ▶ Ensure the consideration of the specific needs and contributions of women migrant workers, especially in domestic work and lower-skilled occupations, and adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse, including sexual and gender-based violence, as a basis to promote gender-responsive labour mobility policies; and

In addition, the GCM has two further objectives that are of relevance to labour migration, as follows:

Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences and

Objective 22: Establish mechanisms for the portability of social security entitlements and earned benefits.



5. ILO instruments for the protection of migrant workers

From its very inception, the ILO has resolved to protect “the interests of workers employed in countries other than their own” (ILO Constitution, 1919, Preamble, recital 2) and has pioneered the development of specific international standards for the governance of labour migration and protection of migrant workers to ensure equality of treatment.

The many international labour standards adopted over the years by the International Labour Conference of the ILO are the most important instruments for safeguarding the dignity and rights of migrant workers. In principle, all international labour standards, unless otherwise stated, are applicable to migrant workers, irrespective of nationality and immigration status, unless otherwise stated. This does not affect, however, each State’s prerogative to regulate access to its territory and labour market.

The ILO promotes a rights-based approach to the management and governance of labour migration. This is reflected in the International Labour Standards (ILS) that set out the basic principles and rights at work. ILS establish the essential legal framework that is the first step towards achieving progress in promoting rights at work, creating decent jobs, improving working conditions, extending social protection and supporting sustainable enterprises. ILS reflect the outcome of negotiations among the three ILO constituents: governments, workers’ and employers’ organisations, and are adopted by vote by a plenary sitting of the International Labour Conference (ILC). ILS take the form of conventions, which are legally binding on the ILO member States that have ratified them, and recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented and the related recommendation supplements it by providing more detailed guidelines on the application.

The International Labour Organization's (ILO) strategy on labour migration and mobility in the African region is guided by its International Labour Standards (ILS) and Decent Work Agenda.

(a) Binding ILO instruments for protecting migrant workers

In principle, all international labour standards, unless otherwise stated, are applicable to all migrant workers irrespective of migration status.

The International Legal Framework guiding ILO's Labour Migration and Labour Mobility Work is mainly composed of four migrant workers' International Labour Standards (ILS), five specific ILS related to migrant workers' social protection, six ILS containing specific provisions on migrant workers, the eight Fundamental Conventions, and the four Governance Conventions underlined by the ILO Declaration on Social Justice for a Fair Globalization and its follow-up:

There are two specific conventions pertaining to labour migration and migrant workers, as follows:

Four migrant workers' International Labour Standards

- ▶ [Migration for Employment Convention \(revised\), 1949 \(No. 97\)](#)
- ▶ [Migration for Employment Recommendation \(revised\), 1949 \(No. 86\)](#)
- ▶ [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No.143\)](#)
- ▶ [Migrant Workers Recommendation, 1975 \(No. 151\)](#)

Specific International Labour Standards related to migrant workers' social protection

- ▶ [Maintenance of Social Security Rights Convention, 1982 \(No. 157\)](#)
- ▶ [Maintenance of Social Security Rights Recommendation, 1982 \(No. 167\)](#)
- ▶ [Employment Injury Benefits Convention, 1964 \(No. 121\)](#)
- ▶ [Equality of Treatment \(Social Security\) Convention, 1962 \(No. 118\)](#)

- ▶ [Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#)
- ▶ [Equality of Treatment \(Accident Compensation\) Convention, 1925 \(No. 19\)](#)

International Labour Standards containing specific provisions on migrant workers

- ▶ [Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#)
- ▶ [\(particularly Sections X. Migrants affected by crisis situations; and XI. Refugees and returnees.\)](#)
- ▶ [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#)
- ▶ [Domestic Workers Convention, 2011 \(No. 189\)](#)
- ▶ [Domestic Workers Recommendation, 2011 \(No. 201\)](#)
- ▶ [Private Employment Agencies Convention, 1997 \(No. 181\)](#)
- ▶ [Private Employment Agencies Recommendation, 1997 \(No. 188\)](#)

The eight Fundamental Conventions

- ▶ [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)
- ▶ [Minimum Age Convention, 1973 \(No. 138\)](#)
- ▶ [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#)
- ▶ [Equal Remuneration Convention, 1951 \(No. 100\)](#)
- ▶ [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)
- ▶ [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)
- ▶ [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)
- ▶ [Forced Labour Convention, 1930 \(No. 29\)](#)

The four Governance Conventions

- ▶ [Labour Inspection Convention, 1947 \(No. 81\)](#)
- ▶ [Employment Policy Convention, 1964 \(No. 122\)](#)
- ▶ [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)
- ▶ [Tripartite Consultation \(International Labour Standards\) Convention, 1976 \(No. 144\)](#)

Do you want to know more on the ILO's labour mobility strategy in Africa?

The ILO's labour mobility strategy in Africa is informed by the following continental policy frameworks:

- ▶ **Africa's Agenda 2063**
- ▶ **The 2014 African Union Commission's (AUC) Ouagadougou + 10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa**
- ▶ **The AU's Revised Migration Policy Framework for Africa and Plan of Action (2018–2030)**
- ▶ **The AU's Free Movement of Persons Protocol or "Protocol to the Treaty establishing the African Economic Community relating to the Free Movement of Persons, Right of Residence and Right of Establishment"**

Convention No. 97: Migration for Employment Convention (Revised), 1949

The convention defines "Migrant for employment": a person who migrates from one country to another with a view to being employed otherwise than on her or his own account. The term includes any person regularly admitted as a migrant for employment."

The Convention does not apply to:

- ▶ frontier workers;
- ▶ short-term entry of members of the liberal professions and artistes; and
- ▶ seafarers.

Each State which ratifies the Convention undertakes to make available on request to the ILO and to other States information on:

- ▶ national policies, laws and regulations relating to emigration and immigration;

- ▶ special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- ▶ agreements concluded in this field.

It also has to:

- ▶ satisfy itself that there is maintained a free service to assist migrants for employment and provide them with information;
- ▶ take appropriate steps against misleading propaganda relating to emigration and immigration;
- ▶ take measures to facilitate the departure, journey and reception of migrants for employment;
- ▶ maintain appropriate medical services for the migrants for employment and members of their families;
- ▶ ensure that the services provided by its public employment service to migrants for employment are rendered free;
- ▶ permit these workers to transfer part of their earnings and savings, in accordance with national laws and regulations concerning export and import of currency.

It has to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

- ▶ In so far as such matters are regulated by laws or regulations, or are subject to the control of administrative authorities:
- ▶ remuneration, hours of work, holidays with pay, restrictions on home work, minimum age for employment, training, women's work and the work of young persons;
- ▶ membership of trade unions and enjoyment of the benefits of collective bargaining;
- ▶ accommodation.
- ▶ Social security, subject to the following limitations:
- ▶ arrangements for the maintenance of acquired rights and rights in course of acquisition;
- ▶ special arrangements (benefits payable wholly out of public funds and allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension).
- ▶ Employment taxes, dues or contributions.
- ▶ Legal proceedings relating to the matters referred to in the Convention.

Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are free of charge.

A migrant for employment who has been admitted on a permanent basis and the members of her or his family authorized to accompany the worker cannot be returned to their territory of origin because the migrant is unable to follow her or his occupation by reason of illness contracted or injury sustained subsequent to entry, unless:

- ▶ the person concerned so desires; or
- ▶ an international agreement to which the State concerned is a party so provides.

The authorities in States between which the number of migrants is sufficiently large have to, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the Convention.

The migrant for employment must be granted the right to transfer part of her or his earnings and savings, taking into account the limits allowed by national laws and regulations concerning export and import of currency.

Finally, the Convention contains three Annexes. Each State which ratifies the Convention may, by a declaration appended to its ratification, exclude from its ratification any or all of the Annexes, which cover:

- ▶ the regulation of recruitment, placing and conditions of labour of migrants for employment: (a) recruited otherwise than under government-sponsored arrangements for group transfer (Annex I); or (b) recruited under such arrangements (Annex II);
- ▶ exemption from customs duties for the importation of the personal effects, tools and equipment of migrants for employment (Annex III).

Recommendation 86: Migration for Employment Recommendation (Revised), 1949

The Recommendation contains guidance on, among other matters, the organization of the free service provided to assist migrants and the types of assistance that it should provide, as well as the information that States should make available to the ILO.

It provides for the regulation of intermediaries undertaking the recruitment, introduction or placing of migrants for employment. It calls for:

- ▶ the facilitation of migration, among other measures, through vocational training and access to schools;
- ▶ the adoption of measures to permit family reunification;
- ▶ the possibility for migrants for employment authorized to reside in a territory and the members of their families authorized to join them to be admitted to employment in the same conditions as nationals, or at least the limitation of restrictions in this respect.

A State should refrain from removing from its territory a migrant for employment who has been regularly admitted (and, where appropriate, the members of her or his family) on account of her or his lack of means or the state of the employment market, unless an agreement to this effect has been concluded between the country of emigration and the country of immigration concerned.

The State of origin of a migrant worker who has retained her or his nationality and returns there should admit such a person to the benefit of measures for relief and for promoting the re-employment of the unemployed, without any condition as to previous residence or employment.

In appropriate cases, States should conclude bilateral agreements relating to the application of Convention No. 97 and Recommendation No. 86. For this purpose, the Annex to the Recommendation contains a Model Agreement intended to serve as a guide for States.

Convention No. 143: Migrant Workers (Supplementary Provisions) Convention, 1975

The Convention is intended to combat migrations in abusive conditions; and promote equality of opportunity and treatment for migrant workers.

Migrants in abusive conditions (Part I)

Each State which ratifies the Convention undertakes to respect the basic human rights of all migrant workers. It has to systematically seek to determine, in consultation with the representative organizations of employers and workers:

- ▶ whether there are illegally employed migrant workers on its territory; and
- ▶ whether there depart from, pass through or arrive in its territory any movements of migrants for employment subjected to conditions contravening relevant international instruments, or national laws or regulations.

States have to take the necessary measures to prevent and eliminate these abuses, including measures against the organizers of illicit or clandestine movements of migrants for employment and against those who employ workers who have immigrated in illegal conditions. One of the purposes of these measures must be to prosecute the authors of manpower trafficking, whatever the country from the which they exercise their activities.

They also have to establish the systematic exchange of information on this subject, in consultation with representative organizations of employers and workers.

Provision has to be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for sanctions against persons who:

- ▶ illegally employ migrant workers;
- ▶ organize movements of migrants for employment involving abuses;
- ▶ knowingly provide assistance to such movements.

The representative organizations of employers and workers have to be consulted in regard to the laws and regulations and other measures provided for in the Convention and designed to prevent and eliminate abuses and must have the possibility of taking initiatives for this purpose.

A migrant worker who resides legally in a country and who has lost her or his employment:

- ▶ must not be regarded as being in an irregular situation by the mere fact of the loss of employment; and
- ▶ must enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, alternative employment and retraining.

A migrant worker in an irregular situation and whose position cannot be regularized must enjoy equality of treatment for her or himself and her or his family in respect of rights arising out of past employment as regards remuneration; social security; and other benefits.

In case of dispute about these rights, he must have the possibility of presenting her or his case to a competent body, either personally or through a representative.

In case of expulsion of the worker or her or his family, the cost must not be borne by them.

Equality of opportunity and treatment (Part II)

Each State which ratifies the Convention undertakes to declare and pursue a national policy designed to promote and guarantee equality of opportunity and treatment for migrant workers and members of their family who are lawfully within its territory in respect of employment and occupation; social security; trade union and cultural rights; and individual and collective freedoms.

It has to:

- ▶ seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of this policy;
- ▶ enact such legislation and promote such educational programmes;
- ▶ take measures aimed at acquainting migrant workers as fully as possible with the policy adopted by the State, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;
- ▶ repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- ▶ in consultation with representative organizations of employers and workers, formulate and apply a social policy which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, (without adversely affecting the principle of equality of opportunity and treatment), their special needs;
- ▶ encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue;
- ▶ guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity.

A State may:

- ▶ make the free choice of employment subject to a minimum prescribed period of residence (not exceeding two years);
- ▶ make regulations concerning recognition of occupational qualifications, after consultation with the representative organizations of employers and workers.

States have to collaborate to facilitate the reunification of the families of migrant workers legally residing in their territory. Any Member may, by a declaration appended to its ratification, exclude either Part of the Convention from its acceptance. In such case it may at any time cancel that declaration by a subsequent declaration.

RECOMMENDATION No. 151: Migrant Workers Recommendation, 1975

Equality of opportunity and treatment

Migrant workers lawfully within the territory of a State or whose position has been regularized should enjoy effective equality of opportunity and treatment with nationals in respect of, among other matters:

- ▶ access to vocational guidance and placement services;
- ▶ access to vocational training and employment of their own choice;
- ▶ advancement;
- ▶ security of employment and the provision of alternative employment;
- ▶ remuneration (for work of equal value);
- ▶ conditions of work;
- ▶ membership of trade unions.

Appropriate measures should be taken with a view to:

- ▶ fostering public understanding of these principles;
- ▶ examining complaints and securing the correction of any practices regarded as in conflict with these principles;
- ▶ informing migrant workers and their families, in a language with which they are familiar;
- ▶ advancing their knowledge of the language or languages of the country of employment;
- ▶ promoting their adaptation to the society of the country of employment and assisting them to preserve their national and ethnic identity and their cultural ties with their country or origin.

Equality of treatment for migrant workers whose position cannot be regularized, as envisaged in Convention No. 143, should include trade union membership and the exercise of trade union rights.

Social policy

Each State should, in consultation with representative organizations of employers and workers, formulate and apply a social policy which enables migrant workers and their families to share in advantages enjoyed by its nationals.

In this context, it should take account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as these migrant workers may have until they are adapted to the society of the country of employment.

This social policy should be periodically reviewed and evaluated and where necessary revised.

It should include:

- ▶ measures to facilitate the reunification of families;
- ▶ measures for the protection of the health of migrant workers; and
- ▶ social services to which migrant workers and their families should have access.

Employment and residence

A migrant worker regularly admitted to the territory of a State and who loses her or his employment should be allowed an extension of the authorization of residence with a view to seeking alternative employment; and to reinstatement or compensation in the event of unjustified termination of employment.

A migrant worker who is the object of an expulsion order should have the right of appeal, which should stay the execution of the order, subject to the requirements of national security or public order.

A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of her or his stay therein:

- ▶ to any outstanding remuneration, including severance payments;
- ▶ to benefits which may be due in respect of any employment injury suffered;

- ▶ to compensation in lieu of any annual holidays not used; and
- ▶ to reimbursement of any social security contributions which do not give rise to entitlement to benefits.

Where any claim to these rights is in dispute, the worker should be able to have her or his interests represented before the competent body.

(b) Non binding ILO instruments for protecting migrant workers

The ILO Multilateral Framework on Labour Migration was published in 2006 sets out 15 non-binding principles and accompanying guidelines for implementation, to work towards the achievement of a rights-based approach to labour migration. The Framework draws on a range of international instruments and specifically, on the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143), and the accompanying Recommendations Nos. 86 and 151.

The 15 principles and guidelines cover the following areas:

- ▶ Decent Work;
- ▶ Means for International Cooperation on Labour Migration;
- ▶ Global Knowledge Base;

Do you want to know more?

To learn more about the ILS Conventions and Recommendations, please take a look at:

<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

- ▶ Effective Management of Labour Migration;
- ▶ Expanding avenues for regular labour migration;
- ▶ Social Dialogue;
- ▶ Consultations with civil society and migrant associations;
- ▶ Protection of migrant workers;
- ▶ The applicability of International Labour Standards and other international instruments to migrant workers;
- ▶ The application and enforcement of national laws and regulations to protect the rights of migrant workers;
- ▶ Prevention of and protection against abusive migration practices;
- ▶ The promotion of orderly and equitable labour migration processes;
- ▶ Licensing and supervision of recruitment and placement services for migrant workers;
- ▶ Social Integration and Inclusion; and,
- ▶ Migration and Development.

ILO Guidelines on Fair Recruitment

The objective of these non-binding ILO general principles and operational guidelines for fair recruitment is to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment. The general principles are:

- ▶ Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
- ▶ Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
- ▶ Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
- ▶ Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
- ▶ Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
- ▶ Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
- ▶ No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
- ▶ The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being

recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.

- ▶ Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
- ▶ Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.

- ▶ Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
- ▶ Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

The operational guidelines are meant to inform governments, enterprises and public employment services.

Do you want to know more?

To find out more about the Fair Recruitment Initiative go to:

<https://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>

Do you want to know more?

To find out more about the ILO Multilateral Framework on Labour Migration go to:

https://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm

Selected ILO instruments with provisions on migrant workers:

- ▶ Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- ▶ Employment Service Convention, 1948 (No. 88)
- ▶ Social Security (Minimum Standards) Convention, 1952 (No. 102)
- ▶ Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- ▶ Maintenance of Social Security Rights Convention, 1982 (No. 157)
- ▶ Private Employment Agencies Convention, 1997 (No. 181)
- ▶ HIV and AIDS Recommendation, 2010 (No. 200)
- ▶ Domestic Workers Convention, 2011 (No. 189)
- ▶ Domestic Workers Recommendation, 2011 (No. 201)
- ▶ Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)

Focus on the ratification status in Africa

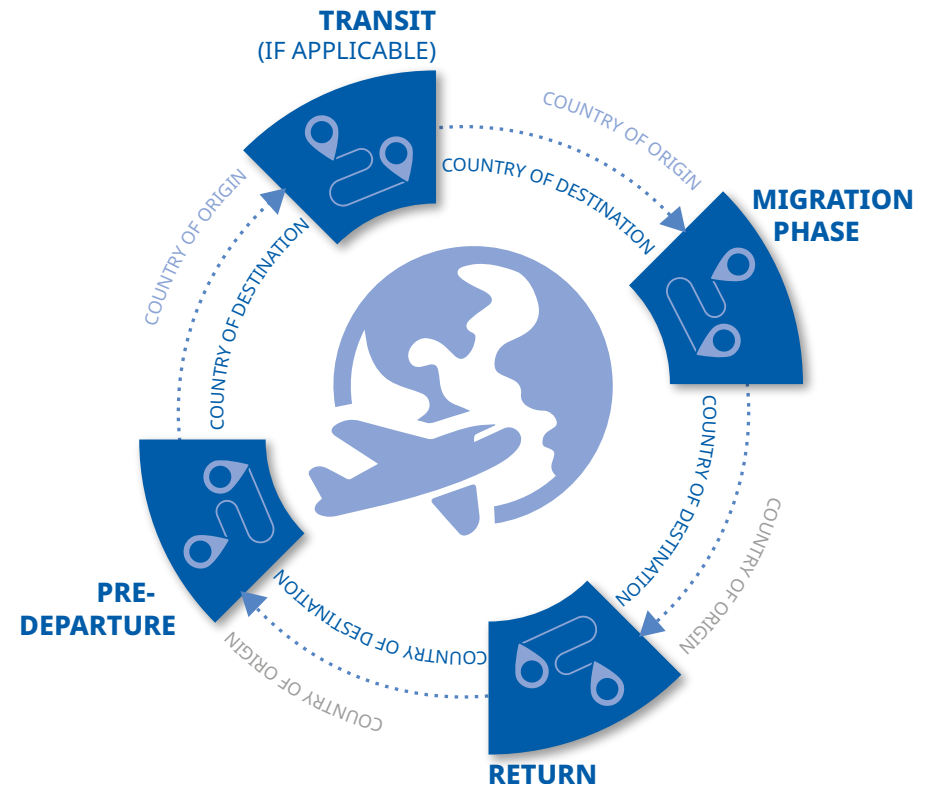
1. In Africa, ILO's Convention No. 97 has been ratified by 11 Member States: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Morocco, Nigeria, Tanzania Zanzibar, and Zambia.
2. In the African Continent, ILO's Convention No. 143 has been ratified by 8 Member States: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Madagascar, Mauritania, Togo, and Uganda.
3. Sierra Leone is in the process of depositing the instrument of ratification of both Conventions.
4. The 2016 "Promoting Fair Migration, General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations" identified the following countries in Africa as having reported intention to consider ratification : Algeria (C. 143), Benin (C. 97), Senegal (both), Sudan (both), Uganda (C. 97).
 1. The Government of Sudan reported that it was currently considering ratification of the two Conventions;
 2. The Government of Benin indicated that ratification of Convention No. 97 would be included in the annual workplan for 2016 of the General Labour Directorate, and ILO technical support would be appreciated in this regard;
 3. The Government of Uganda (in relation to Convention No. 97) indicated that the instruments were among those identified to be considered for ratification.
 4. The Government of Senegal (in relation to both Conventions) stated that the possibility of ratification was being studied.
 5. The Government of Algeria stated that, with respect to the ratification of Convention No. 143, the issue required reflection in order to harmonize the labour migration governance scheme.



6. A shared responsibility throughout the migration cycle

The three basic stages in the labour migration process are before workers leave their home countries, after they leave and while they work in destination countries, and after they return to their home countries. While origin and destination countries share the responsibility to protect the rights of migrant workers, their respective responsibilities differ for two reasons. First, different events take place during workers' migration experiences in their own countries before they leave, than take place after their departure and during their work in destination countries. Second, origin and destination countries have the ability to exercise more supervision in their own countries and much less ability to control what takes place in another. Therefore, during the first stage before migrants leave home, greater responsibility to protect their rights rests on their countries of origin. During the second stage, that is, after their arrival and while they work, greater responsibility rests on countries of destination. During the third stage when they return home, greater responsibility shifts back again to their countries of origin. Although different events are taking place in origin and destination countries that require different approaches to protection during these times, they can and should cooperate with each other in the search for the best approaches to protect migrant workers and further their rights.

The responsibility for the protection of migrants' rights does not lie in one single country: it lies all along the path migrants follow, and all along the migration cycle.



The following tables indicate some of the initiatives that actors in both origin and destination countries can implement to address the risks and vulnerabilities faced by migrants all along the migration cycle.

Do you want to know more?

Module 5 focuses on International Cooperation in the Context of Labour Migration

	When	What	Who	
Responsibilities of the country of origin	Pre-departure phase	Ensure clear information on costs, terms and conditions of work and that it is in a language that is understood	Government and social partners	
		Education about risks of illegal recruitment practices and trafficking and what to do if victimized	Government and social partners; civil society organizations; police authority	
		Regulate, license and supervise private recruiters and ensure compliance	Government	
		Require written employment contracts containing minimum standards of terms and conditions of employment	Government; Employer's organizations	
		Simplify and reduce the costs of administrative processes	Government	
		Provide information about the culture and conditions of life that exist in the destination country before they leave	Social partners; civil society organizations	
	Transit (if applicable)	Contact information for assistance in the destination territories, including sources of emergency assistance	Government and social partners; civil society organizations; local authorities; Consular services	
		Coordination to provide information wherever private recruiters, traffickers, and smugglers search for persons to transport across borders for work, be it in cities, small towns, or the countryside, and coordination of police forces to enforce regulations. The transit territories should provide access to emergency care when needed.	Government, but also other local actors	
		Migration phase	Coordination and partnerships with migrants /diaspora associations	Civil society organizations; diaspora associations; social partners
			Establish local services for the family left behind, such as financial literacy to manage remittances and access to health and education	Government but also civil society organizations and local authorities
			Perform community outreach to families of migrants who are particularly vulnerable to abuse, such as women or those who are isolated, especially domestic workers and children	Community and civil society organizations
			Cooperate with transit and destination countries to assist their citizens who have been victimized by traffickers and smugglers and to locate and sanction the perpetrators	Government and consular authorities, police cooperation, judiciary cooperation
	Bilateral agreements with destination countries spelling out how responsibilities are to be shared		Government	
	Return phase	Establish consular services with labour attaches and both male and female staff to whom migrant workers may come for assistance.	Government, consular authorities, Labour attachés	
		Assist workers in investing their remittances in a productive way, including by setting up enterprises or micro-enterprises.	Social partners; local associations	
		Assist migrants and their family with social and professional reintegration back into their communities upon their return (e.g. access to school for children of migrants and supporting free language courses if necessary)	Government and social partners; civil society organizations	
			Ratify social security agreements allowing the transfer of social security benefits acquired abroad	Government

Focus on: The role of labour attachés

The role of labour attachés is particularly important in countries where a large number of their citizens work. Consular services can also perform outreach to certain groups of migrant workers who are particularly vulnerable to abuse, such as women, or those who are isolated, especially domestic workers, who are mostly women and thereby doubly vulnerable. They may be called upon to provide emergency assistance, especially when their citizens have nowhere else to turn. They can facilitate the systematic transmission of information regarding abusive employers and industries to officials at home to take measures to prevent their citizens from migrating to work for them

	When	What	Who
Responsibilities of the country of destination	Pre-departure phase	Engage in bilateral and multilateral dialogue and cooperation to promote a human rights-based approach to migration, and discuss solutions to prevent trafficking and smuggling locally	Government
		Inform about the human and labour rights of migrants	Government, social partners
		Provide information to origin countries about known, unethical recruiters and abusive employers, so that immediate preventive action can be taken	Government, police authority, judiciary
		Engage in bilateral and multilateral dialogue and cooperation to combat irregular migration, trafficking, and smuggling	Government
		Provide for portability of social security benefits	Government
		Guarantee labour and social rights for migrants entering and working under temporary or circular migration schemes	Government
	Transit (if applicable)	Coordination to provide information wherever private recruiters, traffickers, and smugglers search for persons to transport across borders for work, be it in cities, small towns, or the countryside, and coordination of police forces to enforce regulations. The transit territories should provide access to emergency care when needed.	Government, police, judiciary
	Migration phase	Provide written information in a language migrant workers can understand on labour and employment rights, social and welfare rights, and where to seek assistance	Government, social partners
		Monitor the application of laws and the protection of migrants' human rights	Government, judiciary, labour inspectors
		Ensure equal treatment for locals and migrants and respect to human rights for migrants at local level, as well as their access to basic services (health, insurance, education etc.)	Government, social partners, labour inspection
		Pay attention to migrants who are especially vulnerable, such as those with irregular status, women and minors	Government, advocacy associations
		Ensure that migrants have free access to and information on complaint procedures	

		When	What	Who
Responsibilities of the country of destination	Migration phase		Facilitate the systematic transmission of information to prevent abuses of migrants in various sectors	All stakeholders involved
			Facilitating the social, economic and political integration of migrants and their families	All stakeholders and actors involved in a coordinated effort
			Set up programmes to fight against xenophobia and racism as well as facilitating and encouraging the setting up of migrant associations/cultural associations to promote multiculturalism	Government and social partners; civil society organizations
			Laws and regulations should provide equal treatment of regularly admitted migrant workers with national workers in the workplace e.g. restrictions on migrant workers being tied to a single employer should be removed	Government
			Ensure that migrant workers are covered by their labour and employment laws as well as FPRW	Government
			Ensure that laws and regulations protecting migrant workers are actually enforced and are effective deterrents.	Government
			Ensure legal accountability of people responsible for violation of migrant workers' rights	Government, judiciary
			Complaint procedures and remedies for violations should be freely available to migrant workers	Government, judiciary
		Establish Migrant resource centers	Government but also social partners (in some countries these are managed by Trade Unions)	
	Return phase		Provide information about the possibility of investment in the territory of origin, as well as their rights back home	Government but also social partners
			Provide pre-return access to training, to maximize the use of skills acquired during the migration stay	Government but also social partners
			Inform returnees on their social protection rights once they have returned, particularly if there is a social security agreement in existence between the country of origin and that of destination, and facilitate returnees' access to this mechanism	Government but also social partners
			Provide social, economic and psychological support for migrants who have suffered abuse/exploitation, e.g. victims of trafficking	Social partners, civil society organizations

Do you want to know more?

This publication gives more detailed insights on the topic: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_180060.pdf



7. Access to justice

It is stating the obvious that migrants have rights and that human rights are also migrants' rights. It is equally a truism that there exists nevertheless a dire gap between the rights migrants hold by virtue of law, and their practical implementation. The right to access to justice is therefore critical in such a context: the more precarious and difficult the situation of a migrant is, the more crucial it will be for this person to have a meaningful access to ways to claim his or her rights. Access to justice is at the heart of effective protection of human rights. It is also fundamental in addressing impunity, providing remedies and ensuring the rule of law.

“Access to justice” refers to the ability of persons to make full use of the existing legal processes designed, formally or informally, to protect their rights in accordance with substantive standards of fairness and justice. In other words, it is the possibility to make use of the processes established to provide redress where rights may have been violated.

Access to justice can also be defined as ensuring that the legal and judicial process and outcomes are “just and equitable.” The right may not be fully realized when only a system securing access to justice is put in place; instead, what is critical is that the individual is enabled to have practical access to such a system, also taking into account their specific situation and their individual disadvantages and vulnerabilities. What counts is that such remedies are effective and that they provide fair and impartial justice, without discrimination.

Migrants in irregular situations usually have no voice in the public and political fora. Access to justice is all the more crucial for them because the vast majority do not have the right to vote and thus can only rely on the judiciary to claim their rights. Thus, in addition to being a right in itself, meaningful access to justice is also a tool to ensure fulfilment of other rights. Moreover, providing migrants, regardless of their status, with a standing in the judicial system reduces risk of impunity for wrongdoings within the society in general. This contributes not only to migrants' protection, but also to strengthening the rule of law, social cohesion and stability.

A number of ILO and United Nations Conventions call for establishing complaint mechanisms for migrant workers. In its technical cooperation guidance, the ILO indicates that complaint mechanisms should be based on a differentiated approach, allowing for settlement among the concerned parties before choosing adjudication. Although some countries require that recruitment and labour rights complaints are filed in labour courts, this often contributes to an expensive, prolonged and excessively legalistic process for settlement. Establishing an administrative grievance procedure to supplement adjudication in court can provide a more efficient system for resolving complaints.

In essence, the core elements of the right to access justice are generally considered to be: 1) the recognition as a person before the law; 2) the equality before the courts and tribunal; 3) the right to a fair trial and due process guarantees and 4) the right to an effective remedy. For remedies to be accessible to migrants, these general principles not only

require that States ensure “access to justice and to effective remedies through national courts, tribunals and dispute-settlement mechanisms, regardless of their immigration status”¹ but also that States “ensure that they are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations”.²

An effective access to justice is therefore an essential prerequisite for a good human rights protection, for migrants as for any individual. It is also critical to counter impunity and foster social. In short, it is an essential condition for the respect of the rule of law.

International and regional human rights norms and standards provide for an extensive legal framework to provide and guarantee access to justice for migrants, which is a necessary precondition to the protection, respect and fulfilment of the other rights of migrants. However, due to their – often – precarious status and situations, many migrants are still facing numerous and grave obstacles in accessing and obtaining justice. To address these difficulties, laws, policies and procedures must be in conformity with international standards and must be properly implemented. National legislations should decriminalize irregular migration and put in place adequate legal firewalls in order to protect migrants’ rights and make their access to justice a reality, as opposed to a mere possibility on paper.



1 UN, HRC, Report of the Special Rapporteur on the situation of human rights defenders, (n. 25) para. 66(i)

2 Ibid.



Key messages:

- ▶ 1. The many international labour standards adopted over the years by the International Labour Conference of the ILO are the most important instruments for safeguarding the dignity and rights of migrant workers. **In principle, all international labour standards, unless otherwise stated, are applicable to migrant workers.**
- ▶ 2. The adoption of a rights-based approach to migration places the migrant at the centre of migration policies and management, and pays particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national and local action plans and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia.
- ▶ 3. The ILO promotes a rights-based approach to the management and governance of labour migration. This is reflected in the International Labour Standards (ILS) that set out the basic principles and rights at work. ILS establish the essential legal framework that is the first step towards achieving progress in promoting rights at work, creating decent jobs, improving working conditions, extending social protection and supporting sustainable enterprises.
- ▶ 4. Two main principles are enshrined in the ILO Conventions on migrant workers: Equality Of Opportunity And Treatment and Combating Discrimination In Employment And Occupation including any distinction, exclusion or preference

based on race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (for which there is no objective or legitimate justification)

- ▶ 5. The most important ILO Convention with respect to domestic workers is the **Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation 201. Convention No. 189** promotes decent hiring, working, and living conditions for all domestic workers, including migrants.
- ▶ 6. There are two specific conventions pertaining to labour migration and migrant workers: **Convention No. 97: Migration for Employment Convention (Revised), 1949** and **Convention No. 143: Migrant Workers (Supplementary Provisions) Convention, 1975**. This Convention is intended to combat migrants in abusive conditions and promote equality of opportunity and treatment for migrant workers.
- ▶ 7. Although different events are taking place in origin and destination countries that require different approaches to protection during these times, they can and should cooperate with each other in the search for the best approaches to protect migrant workers and further their rights.
- ▶ 8. The right to access to justice is critical in the context of migration: the more precarious and difficult the situation of a migrant is, the more crucial it will be for this person to have a meaningful access to ways to claim his or her rights. In essence, the core elements of the right to access justice are generally considered to be: 1) the recognition as a person before the law; 2) the equality before the courts and tribunal; 3) the right to a fair trial and due process guarantees and 4) the right to an effective remedy.



Knowledge Assessment Test:

1. What are the core elements of access to justice for migrant workers?

- (a) Equality before the courts and tribunal
- (b) Equal access to education
- (c) Equal access to job markets

2. Which SDG mentions the states' duty to "provide access to justice for all"?

- (a) 16
- (b) 17
- (c) 4

3. Which of the following is usually considered part of the definition on access to justice for migrant workers? More than one answer is possible

- (a) A2J means that migrants should have access to legal procedures.
- (b) A2J means that migrants should have the right to work.
- (c) A2J means that migrants should be aware and understand the rights they have.

4. Organisations in consultation with governments

- (a) True
- (b) False

5. One of the limitations of the Global Compact for safe, orderly and regular migration is that it doesn't cover migrants in an irregular situation and only focuses on regular migrants.

- (a) True
- (b) False

6. The ILO Multilateral Framework on Labour Migration is a set of...

- (a) Non-binding principles and guidelines for a rights-based approach to labour migration
- (b) Binding principles and guidelines for a rights-based approach to labour migration

7. Why a rights-based approach to labour migration?

- (a) International labour migration should not be immune from application of Rule of Law
- (b) International minimum standards ground and guide formulation of (labour) migration policies at national and regional level
- (c) In the context of ILO, international labour standards are discussed and agreed by governments, workers' and employers' organizations (ILO's tripartite constituents) who - together with migrant workers - are the key stakeholders in the world of work
- (d) Human beings, as men and women workers and their family members, are at the heart of international labour migration
- (e) Independent and transparent monitoring is essential to ensure compliance and foster improvements to national law and policy

8. Fair recruitment concerns:

- (a) Both national and migrant workers
- (b) National workers
- (c) Migrant workers

9. Taken together, C97 and C143 recognize that: (pick the one which is NOT CORRECT)

- (a) Labour migration process needs to be regulated within a rights-based rule of law framework and supported by social dialogue
- (b) Social and legal consequences of labour migration also need addressing
- (c) Destination countries are solely responsible for ensuring the protection of migrant workers on their territory.
- (d) Once admitted to employment, regular migrant workers should enjoy equal treatment with nationals
- (e) Migrant workers, including those in an irregular situation, should enjoy the basic human and labour rights in core international human rights instruments and Fundamentals Principles and Rights at Work

10. Only ILO conventions and recommendations related to labour migration apply to migrant workers

- (a) True
- (b) False

Correct answers: 1a, 2a, 3a and c, 4b, 5b, 6a, 7: all are correct; 8a, 9c, 10b.



Proposed exercises:

1

1. Lured by a job, trapped in forced labour

- ▶ **Type:** Group Exercise
- ▶ **Time:** up to 1hrs
- ▶ **Modality:** Residential / online
- ▶ **Level of difficulty for the Trainer:** easy
- ▶ **Objective:** Concrete application of key instruments and concepts

This exercise can take the form of a guided plenary discussion, a group discussion, or an online forum discussion (individual or group). If conducted in groups, make sure to have a moment of feedback from each group in plenary and capture the key results on a whiteboard or collaborative virtual board.

Ask participants to watch the video and answer the questions:

- ▶ What is the key challenge in this situation?
- ▶ What measures could be put in place to address the challenge and overcome it?

- ▶ What stakeholders should be involved? What role would they play?
- ▶ If you were to advise the government entities involved, what would your policy advice be?
- ▶ If you were to advise the migrant person involved, what would your advice be?

Link to the video: <https://www.youtube.com/watch?v=pD0IT6q08bU>



2

2. The ILO conventions in practice

- ▶ **Type:** Group Exercise
- ▶ **Time:** up to 90 min
- ▶ **Modality:** Residential / online
- ▶ **Level of difficulty for the Trainer:** intermediate
- ▶ **Objective:** Concrete application of key instruments and concepts

The objective of this exercise is to take a deep dive into the concrete application of International Labour Standards by analysing a series of case studies.

This exercise can take the form of a guided plenary discussion, a group discussion, or an online forum discussion (individual or group).

- ▶ If conducted in groups, divide participants into groups and assign each group a case study among the ones listed here. At the bottom of each case study, participants will find some guiding questions. They should discuss the potential answers in their group and formulate a response, then nominate a rapporteur to present the group's response in plenary.
- ▶ If conducted online, participants can choose one or more cases and reply through the forum.
- ▶ If conducted in the form of a guided plenary discussion, the trainer can briefly describe each case and project the guiding questions onto a slide then open the floor for discussion.

Please find here below the case studies:

PEDRO:

Pedro, who lives in Wonderland, found employment in a factory of the neighbouring country, Superland. The borders are open as there is a bilateral agreement between these two countries that allows freedom of movement for workers. Each night, after work, Pedro returns to Wonderland where he continues to live with his wife and his kids. Quickly, he realizes that his salary is two times lower than that of his colleague Samuel who lives in Superland even though they occupy the same post. Pedro wants to put an end to this situation. He knows that Superland has ratified the Convention 97 and would like to use this instrument to defend his rights. Will his endeavours be successful? State your comments.

ALICE:

Alice is a citizen of Babyland. As it is a demographically young country and that employment possibilities are very limited, she decides to go to Papyland where the need for medical personnel is very high. Although she arrives with a tourist visa, she has no difficulties finding work in a private hospital as a nurse. Years pass, Alice still has not regularized her situation but continues to work in the same hospital. She is particularly concerned about these precarious circumstances so she decides to join OSN which is well known labor union in Papyland. However, this union rejects her since she does not have citizenship and that she is in an irregular situation. One year later, she is discovered and is about to be deported at her own expense. Papyland and Babyland have both ratified Conventions 143 and 97 but Babyland has not ratified Convention 87 relating to freedom of association. Was OSN right to refuse Alice from being in the association? What are Alice's rights within Convention 143 and 97?

DJIBRIL

Djibril is a computer engineer and a citizen of Technoland. At the end of his studies fifteen years ago, he went to Paradisland to establish a career. He received a work visa without and difficulties since engineers from Technoland are particularly sought after. Today, Djibril is very well integrated in this destination country and has been working for PEAR for the last 10 years. Following the retirement of the director of his companies division, Djibril decides to apply for the newly vacant position. He is convinced that he will get the job, seeing as he is one of the senior most employees as well as having passed all the exams with flying colours. However, the posting is given to Lionel, a young man of 28 years old who has only been working in the company for one year and who clearly does not have Djibril's expertise. Therefore, he decides to contact the labour union of the company so as to negotiate with the employer stating that he has been a victim of discrimination. The employer justifies his choice under the pretext that Djibril's cannot have the job because of his nationality. His reasoning is that the responsibilities are too great since it would require interaction with both public and private institutions. Paradisland didn't ratify C97 nor C143. What are your comments?

3

3. World café: the migration cycle

- ▶ **Type:** Group Exercise
- ▶ **Time:** up to 2hrs
- ▶ **Modality:** Residential / online
- ▶ **Level of difficulty for the Trainer:** advanced
- ▶ **Objective:** Reflection and systematization of learning

Set the scene: prepare four large tables and cover them with brown paper or flipchart paper then put some markers and sticky notes on each table. Write on each table one of the phases of the migration cycle: pre-departure phase, transit phase, migration phase, return phase (a different one on each). Ask a volunteer to join each table and act as ambassador.

Explain the rules: the exercise starts when the music starts. Participants can join any table they want while the music plays, but they must be seated when the music ends. If all the seats at the table they chose are full, they have to move to a different table. When they are seated, they will have 15 minutes to discuss the topic on their table.

They will consider each of the phases of the migration cycle and reflect on the challenges faced by migrant workers during this phase and the specific need for protection. They will also indicate who are the actors involved.

They can capture the results of their discussion by writing on the table, drawing, making graphs, arrows etc. there are no limits to creativity. This will be repeated four times, and everyone has to visit each table at least once, except for the ambassador, who never moves.

After 15 minutes start the music again and give participants time to move to a different table. Then stop the music and give them 15 minutes to discuss. This should be repeated for a total of four rounds.

At the end of the fourth round, thank participants for their discussion and ask the ambassadors from each table to present the results of each round of discussion, then allow time for any potential questions or feedback.