



Asia-Pacific RPM for UNGA HLD on
International Migration and Development

Roundtable 1 – Ensuring Respect for
and Protection of the Rights of All
Migrants and Promoting Legal and
Orderly Labour Migration

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International Standards on
Migrant Workers: Issues
and Protection Challenges



Presentation outline

1. Why do migrant workers need specific protection?
2. Normative framework on protection of the rights of all migrants, including migrant workers, and governance of labour migration
3. Issues and protection challenges

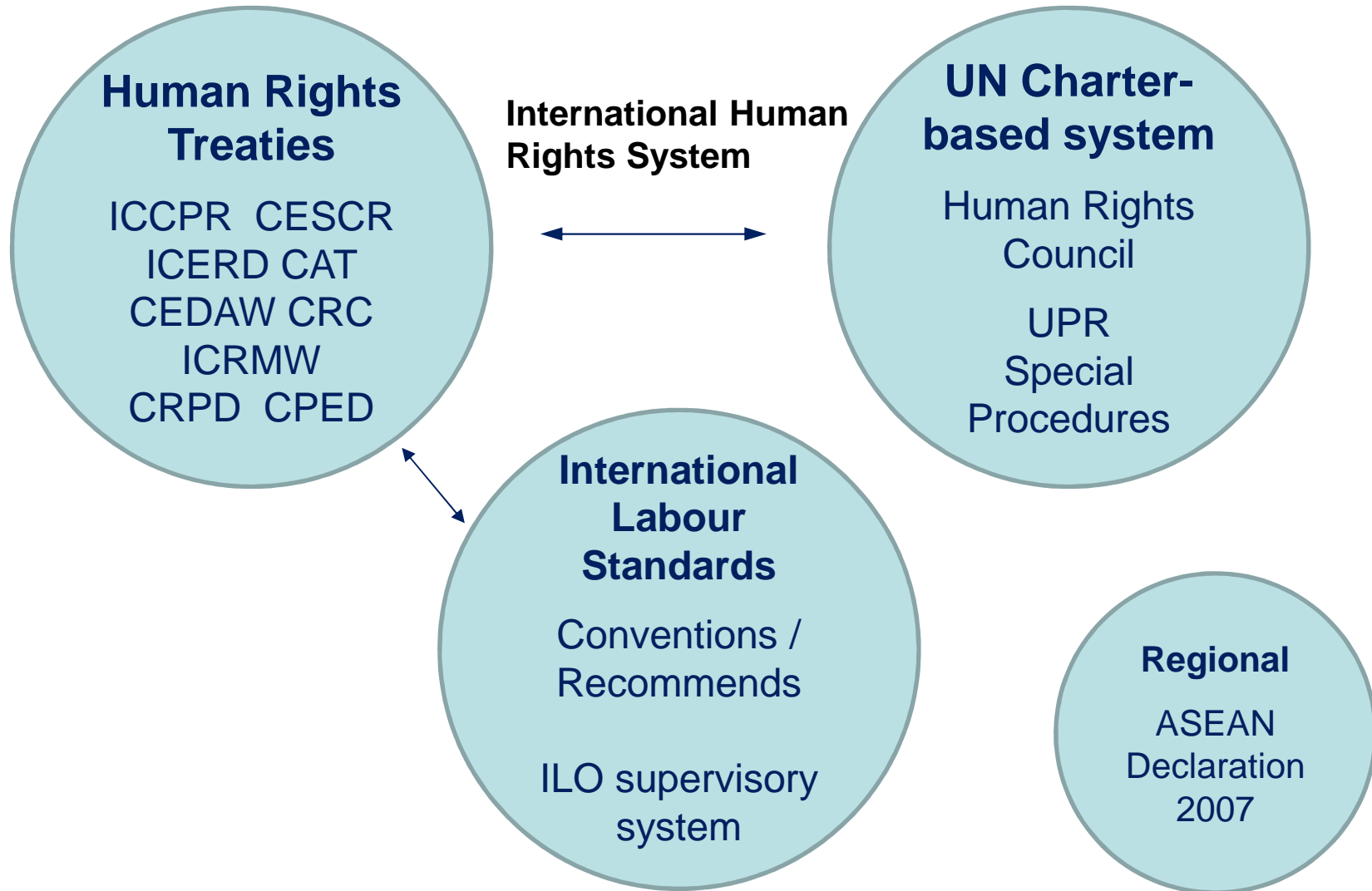


Why specific protection and policies? Violations of migrant workers' rights

- At risk of exploitation in recruitment process
- Non-citizens and rarely benefit from full equal treatment
- Often in low-skilled “precarious” employment
 - Agriculture, domestic work, construction
- Multiple discrimination, especially women migrant workers
- More at risk if in an irregular situation

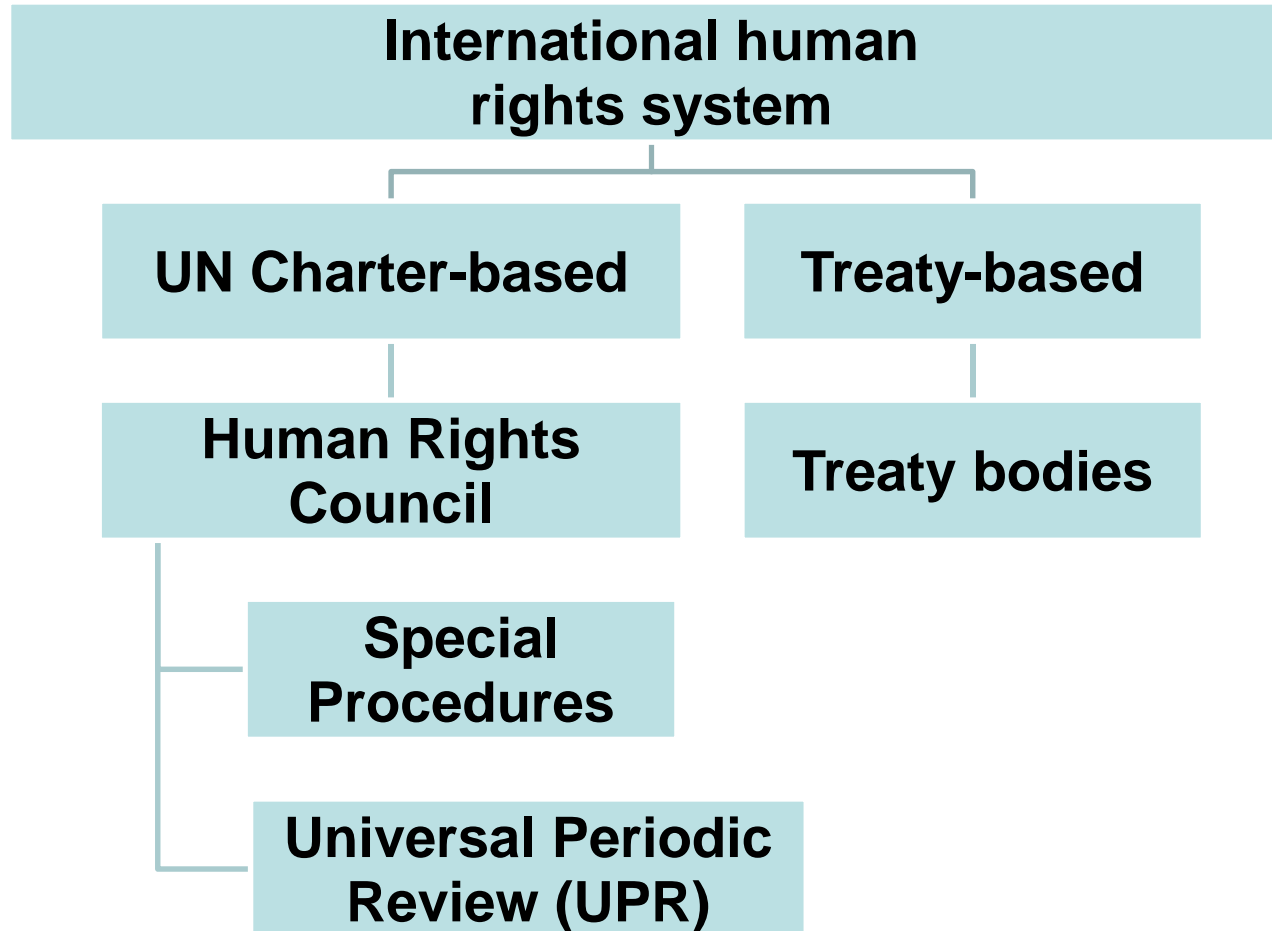


Normative framework protecting all migrants





International Human Rights System





ILO Mandate and International Labour Standards

- ILO Constitution, 1919 (as amended) – principles of social justice protecting all including
 - “...workers when employed in countries other than their own” and
 - “labour is not a commodity”
- International Labour Standards (ILS)
 - Fundamental Conventions
 - Governance Conventions
 - ILS generally
 - Standards specifically protecting migrant workers
- In principle, ILS cover all workers irrespective of nationality and immigration status unless otherwise stated



Applicable International Labour Standards

➤ ILO Fundamental Rights Conventions (widely ratified)

C87 Freedom of Association and Protection of the Right to Organise Convention, 1948

C98 Right to Organise and Collective Bargaining Convention, 1949

C29 Forced Labour Convention, 1930

C105 Abolition of Forced Labour Convention, 1957

C138 Minimum Age Convention, 1973

C182 Worst Forms of Child Labour Convention, 1999

C100 Equal Remuneration Convention, 1951

C111 Discrimination (Employment and Occupation) Convention, 1958

➤ Governance Conventions (examples)

C81 Labour Inspection Convention, 1947 (and C129: agriculture)

C122 Employment Policy Convention, 1949 (see also R169)

C144 Tripartite Consultation (ILS) Convention, 1976



Applicable International Labour Standards

➤ Instruments of general application

- C95 Protection of Wages Convention, 1949
- C131 Minimum Wage Fixing, 1970
- C183 Maternity Protection Convention, 2000

➤ Instruments with express provisions on migrant workers

- C181 Private Employment Agencies Convention, 1997
- C19 Equality of Treatment (Accident Compensation) Convention, 1925
- C102 Social Security (Minimum Standards) Convention, 1952
- C118 Equality of Treatment (Social Security) Convention, 1962
- C121 Employment Injury Benefits Convention, 1964
- C157 Maintenance of Social Security Rights Convention, 1982
- R200 HIV and AIDS Recommendation, 2010
- C189 Domestic Workers Convention, 2011 (and R201)**



Applicable International Labour Standards

➤ Instruments on labour migration and protection of migrant workers

C97 Migration for Employment Convention (Revised), 1949

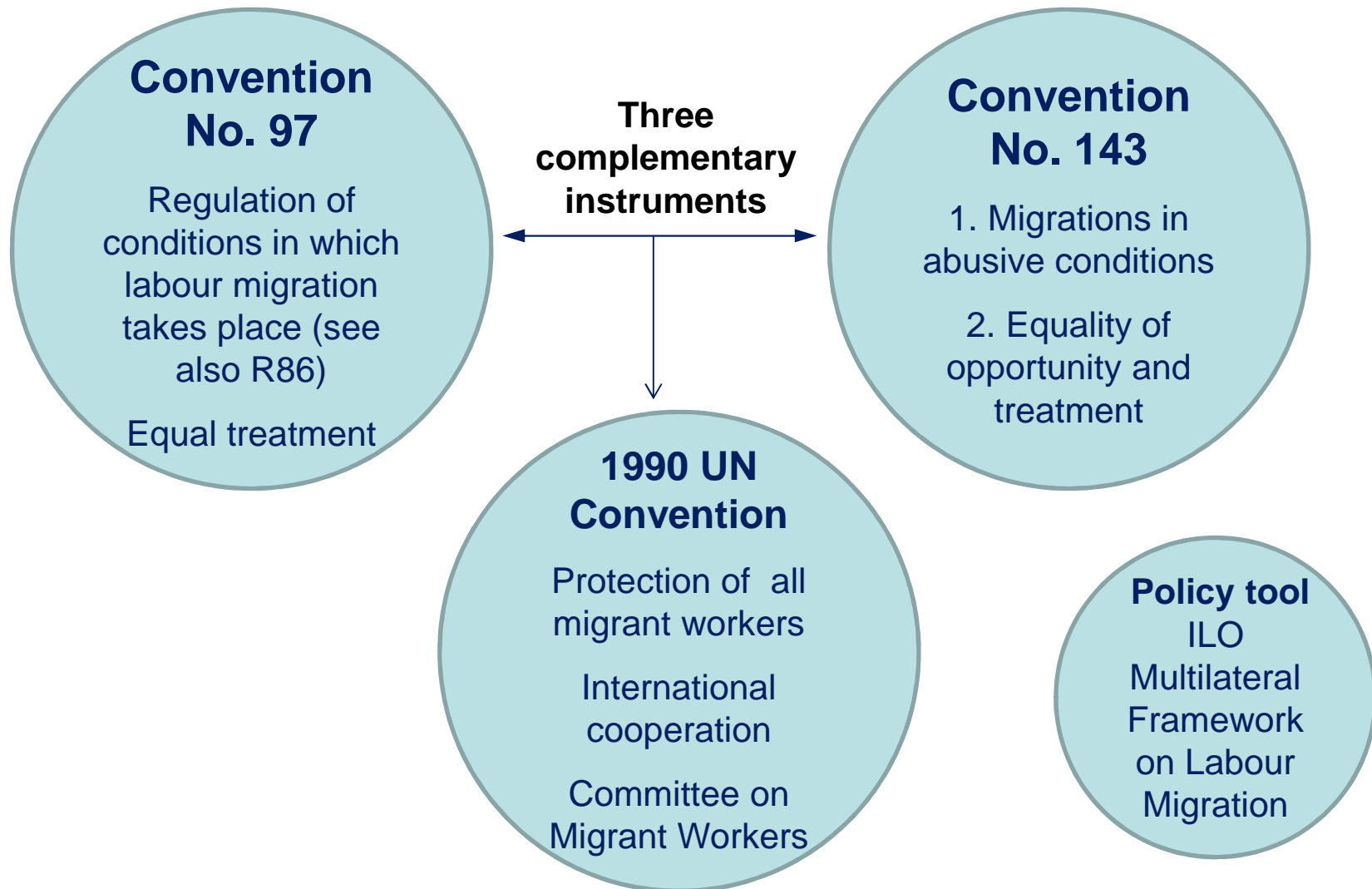
C143 Migrant Workers (Supplementary Provisions) Convention, 1975

R86 Migration for Employment Recommendation (Revised), 1949

R151 Migrant Workers Recommendation, 1975



Specific framework for protecting migrant workers and governance of labour migration





Ratifications

ILO migrant workers' instruments

Convention No. 97 (1949)

➤ 49 ratifications

Africa: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Tanzania (Zanzibar), Zambia

Americas and Caribbean: Belize, Bahamas, Barbados, Brazil, Cuba, Dominica, Ecuador, Grenada, Guatemala, Guyana, Jamaica, Saint Lucia, Trinidad and Tobago, Uruguay, Venezuela

Asia and Pacific: Hong Kong (China SAR), Kyrgyzstan, Malaysia (Sabah), New Zealand, Philippines, Tajikistan

Europe: Albania, Armenia, Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Israel, Italy, The former Yugoslav Republic of Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovenia, Spain, United Kingdom

Convention No. 143 (1975)

➤ 23 ratifications

Africa: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Togo, Uganda

Americas and Caribbean: Venezuela

Asia and Pacific: Philippines, Tajikistan

Europe: Albania, Armenia, Bosnia and Herzegovina, Cyprus, Italy, The former Yugoslav Republic of Macedonia, Montenegro, Norway, Portugal, San Marino, Serbia, Slovenia, Sweden



UN Convention on Migrant Workers, 1990

Ratifications

Ratifications

➤ 46 States parties

Africa: Algeria, Burkina Faso, Cape Verde, Egypt, Ghana, Guinea, Lesotho, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, Uganda

Americas and Caribbean: Argentina, Belize, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, St. Vincent and the Grenadines, Uruguay

Asia and Pacific: Bangladesh, Kyrgyzstan, Indonesia, Philippines, Sri Lanka, Tajikistan, Timor-Leste

Europe: Albania, Azerbaijan, Bosnia and Herzegovina, Turkey

Middle East: Syria

Signatories

➤ 18 States

Africa: Benin, Cameroon, Chad, Comoros, Congo, Gabon, Guinea-Bissau, Liberia, Mozambique, Sao Tome and Principe, Sierra Leone, Togo

Americas and Caribbean: Venezuela

Asia and Pacific: Cambodia, Indonesia, Palau

Europe: Montenegro, Serbia



Issues and protection challenges

- Temporary labour migration
- Responsibilities of origin and destination countries
- Migrants in an irregular situation
- Bilateral arrangements to regular labour migration
- Participation of relevant stakeholders



Temporary labour migration

- As a general rule, normative framework does not distinguish between migrants on the basis of a temporary and more secure residence status (C97, Art. 6; C143, Part II; ICRMW, Parts IV, V)
- Protection challenges / implementation gaps
 - Ensuring equality of treatment between migrant workers and national workers
 - Trade union rights
 - Access to social security and portability of benefits
 - Access to vocational training/ upgrading skills





Responsibilities of origin and destination countries

- Normative framework applies to all countries involved in the migration process
- Countries of origin have important obligations at the pre-employment/ pre-departure phases
 - Provision of free migration services and information
 - Regulation of recruitment
 - Finding appropriate balance between promotion of employment of their nationals abroad and adequate protection
- Destination countries have important obligations to ensure that migrants can enjoy their human and labour rights, and access redress mechanisms
- Both sets of countries have obligations to cooperate to ensure that migration takes place in “sound, equitable, humane and lawful conditions” (ICRMW, Part VI)



Migrants in an irregular situation

- Basic human rights of all migrant workers are to be protected (C143, Part I; ICRMW, Part IV)
- Equal treatment in respect of rights arising out of past employment if status cannot be regularized
 - E.g. remuneration, social security
- Equal access to legal proceedings
- No costs on expulsion
- States to consider possibility of regularization





Bilateral arrangements to regulate labour migration

- Normative framework encourages bilateral agreements
 - C97 - whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large
 - R86 (Annex): model bilateral labour migration agreement
 - More favourable rights in BLAs – ICMRW, Art. 81(1)(b)
- Challenges
 - Ensuring conformity with minimum standards in human rights and labour instruments
 - Involvement of more stakeholders
 - Effective implementation



Participation of all relevant stakeholders

- Participation of social partners
 - Consultation on all general questions concerning migration for employment (R86, para. 4(2))
 - Consultation on laws and regulations and other measures designed to prevent and eliminate migration abuses (C143, Art. 7)

- Tripartite consultation on labour migration policy
 - Global – ILO Multilateral Framework on Labour Migration, 2006
 - Regional – ASEAN Forum on Migrant Labour
 - National – Sri Lankan policy on labour migration



Thank you for your attention!

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