

ILO Pamphlet on Conventions and Recommendations Applicable to Migrant Workers

Which Complement Conventions No.97 and No.143



FINANCED BY

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ILO pamphlet on conventions and recommendations applicable to migrant workers which complement conventions no.97 and no.143

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►► Migrants make significant and essential contributions to the economic, social and cultural development of their host countries and their communities back home. But too often these contributions go unrecognized.

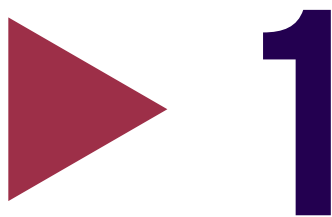
► **Guy Ryder**, ILO Director-General

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INTRODUCTION

Migration is one of the characteristics of globalization that is reshaping the world of work in profound ways. Millions of people continue to cross borders as a result of demographic shifts, conflict, food insecurity, inequalities, and climate change. The changing political, economic, and social context over the last few decades provide ongoing and new challenges for workers migrating internationally in search of employment. In the context of the COVID-19 crisis, a wide range of ILO labour standards encourage a human-centred approach to the crisis and its recovery and address the specific situation of certain categories of workers including migrant workers, who are among the particularly vulnerable.¹

Fair labour migration and effective migration governance not only provides benefits for workers, employers, and governments but is also a relevant factor for economic and social development. International migrant workers contribute to growth and development in their countries of employment and their countries of origin benefit from their remittances and the skills acquired during their migration experience.

Migration is an important global issue addressed by the UN 2030 Agenda for Sustainable Development. As a factor affecting the protection of labour rights, reducing inequality and developing and maintaining partnerships, international migration is linked with achieving the 2030 Agenda in three main areas:

1. SDG 8 Good Jobs and Economic Growth
2. SDG 10 Reduced Inequalities
3. SDG 17 Partnerships for the Goals²

► 1.1 Challenges facing migrant workers

Despite many positive experiences, migrant workers still too frequently face unacceptable labour abuses that countries must act on. A comprehensive policy framework guided by international labour standards (ILS) and knowledge and implementation of the fundamental principles and rights at work is urgently needed to ensure decent work for migrant workers and protection of their rights. This pamphlet summarises and outlines ILO Conventions and Recommendations applicable to migrant workers which complement Conventions Nos.97 and 143 to aid stakeholders in this process.

► 1.2 Areas of concern

Irregular migration

Migrants deprived of legal protection — leaving them vulnerable to exploitation and the extreme abuses associated with human trafficking, forced labour and debt bondage.

Exploitative recruitment practices

Migrant workers exploited through exorbitant recruitment fees and other costs charged to them.

¹ ILO Standards and COVID-19, FAQ, 13 April 2021.

² <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

Discrimination and deprivation of resources

Migrants often face discrimination and xenophobia, lack of access to decent work, health, accommodation, social services and social protection.

Gender-based discrimination

Women face specific obstacles as migrant workers, such as gender discrimination in employment and occupation, difficulties reconciling work and family life in a foreign country, and gender-based violence and harassment.

Violence and harassment

Migrant workers can be particularly vulnerable to violence and harassment throughout the migration cycle.

COVID-19 social and economic insecurities

Migrant workers face rising levels of discrimination and xenophobia worsened by the COVID-19 pandemic alongside food insecurity, layoffs, worsening working conditions including the reduction or non-payment of wages, cramped or inadequate living conditions, and increased restrictions on movements or forced returns (where they may be stigmatized as carriers of the virus).³

International labour standards, consisting of Conventions (or Protocols) and Recommendations, assist ILO Member States to comply with their duties and obligations to protect the rights of migrant workers. The application of these standards is reviewed through the ILO supervisory mechanism.⁴ Workers' and employers' organisations, as key social partners to governments, play an essential role in these reviews. Ratifying and implementing

► WHAT ARE CONVENTIONS AND RECOMMENDATIONS ?

International labour standards are made legal by instruments drawn that set out the basic principles and rights at work at the international level.

► Conventions

Sometimes referred to as Protocols, Conventions are legally binding international treaties that may be ratified by member States, which are then obliged to implement them in national laws and policies. In many cases, they lay down the basic principles to be implemented by ratifying countries.

► The Process

- **Drawn up** by representatives of governments, employers and workers
- **Adoption** by member States at the annual International Labour Conference
- **Submission** to the consideration of their Parliament within twelve months⁵
- **Ratification** by member States' competent authority
- **Takes Effect** for that country one year after the date of ratification

When a Convention is ratified by a State, that state country undertakes to apply the Convention in national law and practice and to regularly report on its application. Countries then agree to abide by the Convention and complaint procedures or representation can be initiated against them for violations of the undertaking.

► Recommendations

Non-binding guidelines with more detail on how the Conventions could be applied. Recommendations usually supplement Conventions but they can also be autonomous, i.e. not linked to a Convention.

³ ILO Policy Brief: Protecting migrant workers during the COVID-19 pandemic Recommendations for Policymakers and Constituents, April 2020.

⁴ See "Guide on established practices across the supervisory system" (August 2021) https://www.ilo.org/global/standards/WCMS_817895/lang-en/index.htm

⁵ required under article 19(6) of the ILO Constitution.

international labour standards is an important way to make them part of national laws and hence provide protection to all workers.

Principles and mandate of the ILO

The implementation of international labour standards

The ILO's Constitution is based on the principle that "labour is not a commodity".⁶ The Declaration of Philadelphia (1944), which is part of the Constitution, reaffirms the obligation of the ILO to further programmes, among the nations of the world, that will "provi[de] for the transfer of labour, including migration for employment and settlement".⁷

Achieving the migration-related targets, including:

- ▶ 2030 Agenda for Sustainable Development⁸
- ▶ United Nations Global Compact on Safe, Orderly and Regular Migration⁹
- ▶ ILO Decent Work Agenda and Fair Migration Agenda¹⁰

Promoting regular pathways for migration

Upholding the objectives of the **Global Compact for Safe, Orderly and Regular Migration** (GCM¹¹) to promote regular pathways for migration and actions, including human rights-based and inclusive agreements with relevant stakeholders and ensuring fair and ethical recruitment and safeguard conditions that ensure decent work amongst others.

ILO Decent Work Agenda

Based on four pillars (employment promotion, social protection, fundamental rights at work and social dialogue), the ILO seeks to implement the principle that everyone should be able to obtain decent work through the promotion of social dialogue, social protection and employment creation, as well as respect for international labour standards.

All migrant workers should be entitled to:

- ▶ fundamental human rights at work, including the right to be protected against discrimination based on sex, race, colour, sex, religion, political opinion, national extraction, and social origin
- ▶ productive work as the basis of a livelihood
- ▶ protection against accidents, injuries and diseases at work, and social security
- ▶ social inclusion and participation in social dialogue

ILO Fair Migration Agenda

Core principles as relevant to migrant workers:

- ▶ Promoting decent work in countries of origin, including the contribution of migrants
- ▶ Formulating orderly and fair migration schemes in regional integration processes
- ▶ Promoting bilateral agreements for well-regulated and fair migration between member States
- ▶ Instituting fair recruitment processes
- ▶ Countering unacceptable situations
- ▶ Realizing the rights-based approach
- ▶ Contributing to a strengthened multilateral rights-based agenda on migration
- ▶ Tripartism, knowledge and capacity-building as interconnected

ILO Declaration on Fundamental Principles and Rights at Work (1998)¹²

The fundamental principles and rights at work for countries that have not ratified one or more fundamental Conventions, and provides that migrant workers deserve special attention in this regard.

ILO Declaration on Social Justice for a Fair Globalization (2008)¹³

Core principles applicable to the world of work in the context of a global economy where supply chains predominate and that promotes the principles of decent work, social justice, and fair migration.

6 <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf>

7 Declaration of Philadelphia (1944)

8 Transforming Our World: The 2030 Agenda For Sustainable Development

9 https://refugeemigrants.un.org/sites/default/files/180711_final_draft_0.pdf

10 <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm> and https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_671743/lang-en/index.htm

11 A/RES/73/195

12 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf

13 https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf

ILO Centenary Declaration for the Future of Work (2019)

Adopted in 2019 at the 108th session of the International Labour Conference, the Centenary Declaration for the Future of Work [clause II.A xvi] specifically calls upon the Office to take a leadership role in decent work in labour migration and to deepen and scale up its work in response to constituents' needs.

► PROTECTION FOR MIGRANT WORKERS RIGHTS

Four key instruments contain provisions aimed at protecting the human rights and labour standards of migrant workers not only in destination countries, but also in origin countries, as well as during transit and return. They also contain provisions that define in much greater detail the actions to be taken by governments to ensure effective labour migration governance, including going beyond labour circumstances.

1. Migration for Employment Convention (Revised), 1949 (No. 97)
2. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
3. Recommendations No. 86 and No. 151
4. 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families¹⁴

ILO Global Call to Action for a Human-Centred Recovery (2021)

Acknowledging that the COVID-19 crisis has affected the most disadvantaged and vulnerable, including migrants, disproportionately and has exacerbated pre-existing decent work deficits, increased poverty widened inequalities and exposed digital gaps within and among countries, the ILO commits countries to ensure that their economic and social recovery from the crisis is "fully inclusive, sustainable and resilient."

All international labour standards apply to migrant workers irrespective of nationality and migration status unless they clearly state otherwise.

► 1.3 The aims of ILO Conventions Nos. 97 and 143, and their recommendations

This Pamphlet complements in the principles and rights a set out Conventions Nos. 97 and 143 and aims to assist member States in complying with their obligations under the ratified Conventions and to support workers' organisations and employers' organisations in supporting their implementation.

The information contained here will assist ILO member States and social partners to further ratification and implementation of the instruments that complement Conventions Nos 97 and 143 so that they may work toward the protection afforded to migrant workers.

The Conventions have the following aims:

Convention No. 97

- apply no less favourable treatment to **migrant workers and members of their family lawfully admitted in the country, than that applied to nationals**
- apply such treatment without discrimination based on nationality, race, sex or religion
- enhance cooperation between Member States
- guide general protection measures and on the conditions in which labour migration should take place
- guide recruitment, placing and conditions of labour of migrants for employment recruited under government-sponsored and other arrangements

Convention No. 143

- prevent **irregular migration** in abusive conditions and the unlawful employment of migrant workers
- ensure respect for the **basic human rights** of all migrant workers, irrespective of their migrant status
- guarantee **equality of opportunity and treatment** to migrant workers in a regular situation
- guarantee equality of treatment to migrant workers in an irregular situation in respect of rights arising out of past employment with regard to remuneration, social security and other benefits

14 <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

► PROTECTION FOR ALL MIGRANT WORKERS

► Who is a Migrant Worker?

A *Migrant Worker* is a person who is engaged, to be engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.¹⁵

An *International Migrant Worker* is a migrant of working age, who is part of the labour force of the country where they reside regardless of whether they are currently employed. The term “international migrants” refers to usual residents in a given country who are foreign-born (or foreign citizens when the place of birth information is not available).¹⁶

► Who is covered under the ILO instruments?

The ILO Convention Nos 97 and 143 (Part II) define “migrant for employment” and “migrant worker” in largely terms, namely:

“a person who migrates [or who has migrated] from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker” Article 11(1).

However, Part II of Convention No. 143 also includes migrant workers who are in an irregular situation or who are self-employed. The Conventions do not apply to frontier workers, seafarers, performing artists entering for the short-term, nor, with respect to Convention No. 143 (Part II) people entering the country for training or education, employees temporarily in a country on behalf of their employer.



15 https://treaties.un.org/doc/Treaties/1990/12/19901218%2008-12%20AM/Ch_IV_13p.pdf

16 ILO Global Estimates on International Migrant Workers – Results and Methodology – Third edition International Labour Office – Geneva: ILO, 2021.



THE TWO ILO MIGRANT WORKERS' RECOMMENDATIONS ACCOMPANYING CONVENTIONS Nos 97 AND 143

The Migration for Employment Recommendation (Revised), 1949 (No. 86) calls upon member States to encourage international migration for employment by providing tools and directions to combat abusive migrant recruitment practices, promote sound skills and job matching, and allow for the portability of social security entitlements.

The Migrant Worker's Recommendation, 1975 (No. 151) builds on the obligation that member States should develop a coherent policy on international migration for employment and provides guidance on the main components that this policy should incorporate.

► 2.1 Guidelines and resources for safe and inclusive international migration

The Migration for Employment Recommendation (Revised) No. 86 supports Member States to act on their commitment to policies **encouraging international migration** for employment. Recommendation No. 86 includes in its Annex:¹⁷

- Model Agreement on temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons

Key Points

- The Model Agreement contains:
 - provisions to promote fair migrant recruitment practices, promote sound skills and job matching and allow for portability of social security entitlements.
 - general guidelines to facilitate migration and prevent abuses against migrant workers and their families. For example, proposing that governments provide free advice to migrant workers on matters relating to working and living conditions and assist in their adaptation to the country.

Calls on governments to take other measures to assist and protect migrant workers including:

- **Provision of adequate accommodation** on arrival in the country of employment and access to schools.
- **Measures that allow for family reunification**, to be facilitated by both the country of emigration and country of immigration.
- The authority to reside in a country and for members of their families to be authorized to join them.
- **Protection from removal from the country** of a migrant worker who has been regularly admitted but no longer has the means to remain or is affected by the state of the labour market, except where an agreement to this effect has been concluded between the country of origin and destination.

17 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R086

- ▶ Emphasizes the important role of social partners, such as employers' and workers' organisations and other bodies concerned, in fostering understanding of and compliance with the principles of equal opportunity and equal treatment of migrant workers.
- ▶ **Promotes measures to enable migrant workers to take full advantage of their rights and opportunities** in employment and occupation. Including allowing members to make regulations concerning the recognition of occupational qualifications, certificates and diplomas acquired in another country.
- ▶ **Requires that measures be taken to inform them of their rights under national law and practice in their mother tongue** or in a language with which they are familiar, as regards access to employment opportunities, vocational training, placement, security of employment, conditions of work, remuneration for work of equal value, membership of trade unions, and conditions of life, including housing and the benefits of social services and educational and health facilities.
- ▶ Requires employers and workers and representatives of all concerned to be consulted on the **measures to be adopted to facilitate the reunification of families and of the co-operation necessary to give effect to this.**

▶ 2.2 Migrant Worker's Recommendation No. 151

Recommendation No. 151 builds on the obligation that member States should develop a **coherent policy on international migration for employment**. This policy should be based on specific economic and social needs of both countries of origin and destination and should take into account both short-term labour needs and long-term economic and social consequences for migrants as well as for the communities into which they migrate. The Recommendation provides guidance on the main components that this policy should incorporate. These are:

- ▶ Equality of opportunity and treatment of migrant workers and members of their families lawfully within the territory
- ▶ Adequate and responsive social policy
- ▶ Protection in respect of employment and residence

a. Equality of opportunity and treatment:

Equality of opportunity and treatment of migrant workers in a regular situation with nationals is a foundational principle of Recommendation No. 151. This principle applies to:

- ▶ access to vocational guidance and placement services
- ▶ access to vocational training and employment of choice
- ▶ advancement following character, experience, ability and diligence
- ▶ security of employment, the provision of alternative employment, relief work and retraining
- ▶ remuneration for work of equal value
- ▶ conditions of work, social security measures, welfare facilities and benefits provided in connection with employment
- ▶ membership of trade unions, the exercise of trade union rights and eligibility for office in trade unions
- ▶ rights of full membership in any form of co-operative
- ▶ conditions of life, including housing and the benefits of social services and educational and health facilities.

The Recommendation encourages Member States to ensure that equality of opportunity applies specifically to all activities under the control of a public authority and that it is promoted in the private sector.

The Recommendation promotes measures (with the collaboration of employers' and workers' organisations and other bodies concerned), to foster public understanding and acceptance of the **principle of equality of opportunity and treatment for migrant workers** and to provide procedures for the resolution of any complaints.

Member States should ensure that the principle of equality of opportunity and treatment cannot be the reason for the non-renewal of a residence permit or the expulsion of the migrant worker.

Member States have flexibility in making the free choice of employment contingent on completion of the worker of his/her first work contract, or the migrant worker residing at least two years lawfully in the territory for purposes of employment. They can make regulations concerning the recognition of occupational qualifications acquired outside the country and can restrict access to limited categories of employment or functions where this is necessary for the interests of the member State.

► BILATERAL LABOUR MIGRATION AGREEMENTS

Bilateral and multilateral agreements and other arrangements between countries are needed wherever there is a considerable flow of migrant workers. These agreements play an important role to ensure that migrant workers benefit from the protections contained in the labour standards while balancing the needs of workers, employers and governments.¹⁸

The content of these agreements and arrangements must be made available in understandable terms to those who benefit from them. Governments should also ensure that agreements include adequate monitoring of implementation, access to enforcement mechanisms and provision for social dialogue.

Best practices for Member States outlined in the Model Bilateral Agreement¹⁹

- **frame appropriate clauses for the organization of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons.**
- **utilise model clauses relating to**
 - exchange of information;
 - action against misleading propaganda
 - administrative formalities
 - validity of documents
 - conditions and criteria of migration
 - the organisation of recruitment, introduction and placing
 - selection testing
 - information and assistance of migrants
 - educational and vocational training and exchange of trainees
 - conditions of transport; travel and maintenance expenses
 - transfer of funds
 - adaptation and naturalization
 - supervision of living and working conditions
 - settlement of disputes
 - equality of treatment
 - access to trades and occupations and the right to acquire property
 - supply of food
 - housing conditions
 - social security
 - employment stability; contracts of employment and change of employment
 - provisions concerning compulsory return and return journey
 - double taxation
 - methods of co-operation

¹⁸ Tools have been developed at various levels in order to guide governments in the development of BLAs. At the Global level, the UN Migration Network has drafted Global Guidance on BLMAs, to be adopted. At the African continental level, the African Union (AU) Guidelines on Developing BLAs are to be endorsed by the African Union Specialised Technical Committee in early 2022. Finally, at the sub-regional level, The Intergovernmental Authority on Development (IGAD) has adopted Guidelines for a Common IGAD approach on BLAs.

¹⁹ See Annex to Recommendation No. 86 R086 - Migration for Employment Recommendation (Revised), 1949 (No. 86); add a few words about IGAD, AU and UN system-wide guidance on BLAs.

b. National equality policy:

The ILO Committee of Experts on the Application of Conventions and Recommendations (the “CEACR”), which monitors compliance by Member States with their obligations under ratified instruments has made it clear that the overall intention of the migration instruments is that governments should pursue an **active national policy to ensure equality of opportunity and treatment** for all migrant workers.²⁰ Recommendation No.151 provides for flexibility in the **method and measures** that may be used to reach that objective. It states, for example, that member States should formulate and apply, as part of the national equality policy, 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, of such special needs as they may have until they are adapted to the society of the country of employment. However, they can formulate and implement this policy “appropriate to national conditions and practice” (paragraph 9).

Further, the Recommendation provides that the social policy should:

- ▶ Be based “on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants”, to make the policy as responsive as possible to the real needs of migrant workers and their families (paragraph 10).
- ▶ Consider “the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants” (paragraph 11).
- ▶ Be periodically reviewed and evaluated, and where necessary revised (paragraph 12).
- ▶ In its formulation and implementation take into account the views of representative workers’ and employers’ organizations.

The Recommendation provides that national social policy should be **responsive to the needs of migrant workers and their families**. To this end, it provides that the social policy should cover **reunification of families, protection of the health of migrant workers, and social services**.

How does it address this?

- ▶ Firstly, it promotes measures by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include:
 - ▶ national laws or regulations
 - ▶ bilateral and multilateral arrangements.
- ▶ Secondly, all appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.
- ▶ Thirdly, migrant workers and their families should benefit from the activities of social services and have access to social services under the same conditions as nationals of the country of destination. This includes:
 - ▶ family housing
 - ▶ appropriate reception services as measures that take full account of the needs of migrant workers and their families.

c. Protection in respect of employment and residence:

Recommendation No. 151 provides further guidance on the rights of **migrant workers in a regular situation who have lost their employment**.²¹

The Recommendation provides consideration that:

- ▶ The loss of employment should not in itself imply the withdrawal of their authorization of residence, and the migrant workers should be allowed to remain within the country for sufficient time to find alternative employment and during which they may be entitled to unemployment benefits.
- ▶ However, the practice of returning migrant workers at the end of a time-bound contract does not, in itself, constitute a violation of Convention No. 143 or the recommendation.
- ▶ These provisions refer exclusively to **migrant workers who lose their employment**, as opposed to those whose employment comes to an end as foreseen in the employment contract. This protection also extends to a migrant worker who loses his or her employment because of lack of means or the state of the employment market.²²

²⁰ ILO General Survey 2016, paragraph 166.

²¹ Article 8 provides that 1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit. 2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

²² as provided for in Recommendation No. 86 (paragraph 18).

- Returning migrant workers at the end of a time-bound contract shall not be regarded as in an irregular situation by the mere fact of the loss of his employment and should not result in the withdrawal of his authorization of residence or, as the case may be, work permit.²³
- A migrant worker who has appealed against the termination of his or her employment should be allowed sufficient time to obtain a final decision on the appeal. The migrant worker should be entitled to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination or to access to a new job with a right to indemnification on the same terms as national workers if it is established that the termination of employment was not justified.
- the cost of the expulsion of the worker or his or her family, should not be borne by them (paragraph 8(5))
- a migrant worker whose **position has not been or could not be regularised** should enjoy equality of treatment in respect of **rights arising out of present and past employment** as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights
- A migrant worker who leaves the country of employment should be entitled, **irrespective of the legality of his or her stay** therein to
 - any outstanding remuneration for work performed, including severance payments normally due
 - benefits which may be due in respect of any employment injury suffered
 - by national practice, compensation in place of any holiday entitlement acquired but not used
 - to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements (paragraph 34(1))

Recommendation No. 151 also aims to protect the **rights of migrant workers in an irregular situation.**

- a migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations
- this appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order
- the migrant worker should further enjoy equal treatment with national workers as regards legal assistance in such or other claims before a competent body, including the right to be assisted by an interpreter (paragraph 33)
- **Where social security contributions do not permit entitlement to benefits, member States should conclude bilateral or multilateral agreements to protect the rights of migrants**
- Where any of the above claims are in dispute, the migrant worker should have the possibility of presenting his or her case to a competent body, either himself or through a representative, should be able to have his or her interests represented before the competent body and should enjoy equal treatment with national workers as regards legal assistance (paragraphs 8(4) and 34(2))

► The migrant worker should further enjoy equal treatment with national workers as regards legal assistance in such or other claims before a competent body, including the right to be assisted by an interpreter (paragraph 33).

Recommendation No. 151 calls upon member States that the **decision on whether or not the worker's situation should be regularized should be taken in a timely fashion** (paragraph 8(1)). **Convention No. 143** provides the opportunity to member States to regularize men and women migrant workers in an irregular situation (Article 9(4)).

A migrant worker whose position has been regularized should benefit from all rights which are provided for migrant workers lawfully in the Member State (paragraph 8(2)).

23 ILO General Survey 2016, paragraph 424.

► ROLE OF SOCIAL PARTNERS

Social partners, such as employers' and workers' organisations, have a key role to play in promoting the implementation of the provisions of Recommendation No. 151.

The Recommendation ((Paragraph 4(a)) provides that Member States should collaborate with employers' and workers' organisations and other bodies to institute measures to foster the public understanding and acceptance of the principles related to equality of opportunity and treatment of migrant workers lawfully within the country alongside national workers.

In terms of paragraph 6(b) a Member State may, after appropriate consultation with the representative organisations of employers and workers, make regulations concerning the recognition of occupational qualifications acquired outside its territory, including certificates and diplomas.

Recommendation No. 151 promotes consultation with the representative organisations of employers and workers to put measures in place to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation.

Including:

Paragraph 7

- to inform them in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice regarding equality of opportunity and treatment;
- to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;
- to promote their adaptation to the society of the country of employment; and
- to assist and 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.

Paragraph 9

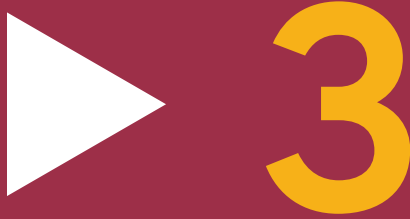
- **to formulate and apply a social policy** appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by national workers in the destination country, while taking into account their special needs until they are adapted to the society in the destination country.

Paragraph 14

- provides for "representatives of all concerned, and in particular of employers and workers", to be consulted on the measures to be adopted to facilitate the reunification of families and for their co-operation in giving effect thereto.

Paragraph 25 (2)

- provides for social services to be at the disposal of migrant workers and their families, and that "full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations".



PROTECTION OF MIGRANT WORKERS: FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

This section presents the eight ILO fundamental Conventions, which encompass four categories and principles of rights at work.

1. Freedom of association and the recognition of the right to collective bargaining
2. Elimination of all forms of forced or compulsory labour
3. Effective abolition of child labour
4. Elimination of discrimination in respect of employment and occupation

These principles function as both rights and enabling conditions for the enjoyment of other rights, which means that they are key to fulfilling the objectives of the migration instruments, especially Conventions Nos. 97 and 143.

All ILO Member States should respect, promote and realize, in good faith and per the ILO Constitution, these four categories of principles and rights at work, even if they have not ratified the Conventions to which they refer. The Declaration provides that “the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers” (Preamble, recital 4).

The fundamental principles and rights at work are universal, thus **apply to all migrant workers without distinction**, whether they are temporary or permanent migrant workers, or whether they are regular migrants or migrants in an irregular situation.

The fundamental principles and rights at work are the essence of the eight “core” ILO Conventions. They cover migrant workers along with all other workers and are binding on a large majority of ILO Member States.

► 3.1 Worst Forms of Child Labour Convention, 1999 (No. 182)

Each ILO member State is required to take effective measures to eliminate the worst forms of child labour. The term “worst forms of child labour” comprises, but are not exclusive to:

- Slavery or similar practices, such as the sale or trade of children or the use of children in debt bondage or serfdom
- Forced labour, including the compulsory recruitment of children for use in armed conflicts
- Child prostitution and pornography
- The use of children in the production or trafficking of drugs
- Work likely to harm the health, safety or morals of children (“hazardous work”)

A list of hazardous forms of work must be determined by every member State at the national level in consultation with employers’ and workers’ organisations. The ILO supervisory bodies monitor the application of international labour standards by member States.

► 3.2 Minimum Age Convention, 1973 (No. 138)

Member states must pursue a national policy to ensure the effective abolition of child labour and to progressively raise the minimum age of employment.

Countries are free to:

- Specify a minimum age
 - minimum of 15 years, although a declaration of 14 years is also possible under specified circumstances.
 - age must not be lower than the age of completion of compulsory schooling
- Laws may also permit light work for children aged 13 to 15, provided their health is not harmed or schoolwork disrupted
- For hazardous work, the minimum age is 18 years

► 3.3 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Convention applies to **all workers and sectors** in all aspects of employment and occupation, without distinction to legal or immigration status.

- Article 1(1)(a): Discrimination is “any distinction, exclusion or preference based on a series of legally protected characteristics, which includes at minimum 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”
- Article 1(1)(b): Member states can extend the list of prohibited grounds of discrimination after consultation with representative employers’ and workers’ organisations, and with other appropriate bodies
- Articles 2 and 3(1): Member states, in cooperation with employers’ and workers’ organizations, must declare and pursue a national policy designed to

promote equality of opportunity and treatment, to eliminate all forms of discrimination in respect of employment and occupation

- Distinctions made based on national extraction — a person’s place of birth, ancestry or foreign origin — is formally prohibited; national extraction is different from nationality-based discrimination.²⁴

COMMITTEE OF EXPERTS FINDINGS

- Migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction, often intersecting with other grounds such as gender and religion.²⁵
- Xenophobia constitutes one of the main sources of contemporary racism.

Legislative protection against discrimination based on actual or perceived nationality is however fundamental and is addressed in Convention No. 143, which supplements Convention No. 111. Both Conventions require the adoption and implementation of a national equality policy with a view to eliminating discrimination.²⁶ That policy also requires measures to combat stereotypes and prejudices and to protect all migrant workers from racial discrimination and xenophobia. The meaning of discrimination in Convention No. 143 is based on the broad definition of discrimination set out in Convention No. 111.

Member state requirements (under Convention No. 111 and Recommendation No. 111)

- Take proactive measures to effectively respond to the complex realities and de facto inequalities of treatment against migrant workers
- Secure the societal acceptance and observance of the principle of non-discrimination.
- Assist migrant workers to make use of the equal opportunities offered to them
- In the absence of legislative provisions protecting non-nationals from discrimination in employment and occupation — that is, discrimination based on

24 General Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Discrimination (Employment and Occupation) Convention, 1958 (No. 111). https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3996050,,2018

25 “Giving globalization a human face”, ILO General Survey on the fundamental conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, International Labour Office, Geneva, 2012, paragraphs 776 – 781.

26 Convention No. 111, Articles 2 and 3 and Convention No. 143, Article 10 and 12.

nationality — concrete measures must be taken by governments to protect these workers in practice against all forms of discrimination on the grounds enumerated in the Convention²⁷

- Promotion and enforcement of such legislation are crucial to ensure that migrant workers are not subject to discrimination and abuse.²⁸
- Pursue a **national equality policy** that covers all workers, including migrant workers, to eliminate discrimination against them on all the grounds listed in Convention No. 111
- There are particular difficulties in the application of Convention No. 111 for certain laws and regulations governing the employment of foreign workers — including certain employment permit and sponsorship systems that severely restrict the possibility of workers changing workplaces, employers or sponsors. Based on the grounds of the Convention, a system of employment of migrant workers which places workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them could result in discrimination.²⁹

Consulting with social partners and interested groups on the design, monitoring, implementation, evaluation of the measures and plans adopted to address discrimination — and collective agreements in applying the national equality policy and advancing equality of opportunity and treatment for all workers, irrespective of race, colour or national extraction — is crucial to ending worker discrimination.³⁰

See Pamphlet on Convention 143 and Convention 97 for further details.

RAISING PUBLIC AWARENESS

Migrant workers are particularly vulnerable to various forms of discrimination and prejudices in the labour market.

Member states:

- Must repeal or modify discriminatory legislative measures, administrative instructions or practices
- Undertake public awareness-raising programmes aimed at combating stereotypes and prejudice against immigrants resulting in rising tensions, racial and ethnic discrimination, xenophobia and

intolerance. Programmes should not only cover non-discrimination policies but also raise awareness of the advantages of social policies respecting migrants' national and cultural identity and ensure that the national population accepts migrant workers and their families into society.³¹

► 3.4 Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

Recommendation No. 111 builds on Convention No.111, as well as Convention No. 97 as well as Recommendation No. 86.

- For immigrant workers of foreign nationalities and members of their families, regard for the provisions of Convention No. 97 relating to equality of opportunity and treatment and the provisions of Recommendation No. 86 relating to the lifting of restrictions on access to employment (paragraph 8).
- Continued co-operation between governments, authorities, representatives of employers and workers and appropriate bodies, to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect (paragraph 9).

► Based on the grounds of the Convention, a system of employment of migrant workers which places workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them could result in discrimination.

27 Giving globalization a human face", ILO General Survey on the fundamental conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, International Labour Office, Geneva, 2012, paragraph 776

28 Ibid, paragraph 777.

29 "Ibid., paragraph 779.

30 General Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3996050,,,2018

31 ILO General Survey 2016, paragraph 627.

► **EQUALITY AND INTEGRATION POLICIES: GOOD PRACTICE EXAMPLES³²**

Cabo Verde:

- The General Immigration Department conducted conferences on migration to sensitize the local population and migrants to the importance of migration and mutual respect.
- Organized training plans for both public care services and the national police to ensure that migrants receive equal access to public services and improved access to the enforcement of their rights.
- Conducted a Government diagnostic study on the identification of the needs of immigrants in the process of social integration in the country concluding that racial discrimination and xenophobia seriously hindered the integration process of immigrants, especially those originating from ECOWAS countries, who represent 80 per cent of the victims of discrimination.³³

Mexico:

- Coordinated actions between the various entities of the Federal Public Administration to combat xenophobia together with The Special Programme for Migration (PEM) and the National Programme for Equality and Non-Discrimination (PRONAIID)
- Undertook initiatives to acknowledge and value the presence and the cultural, social and economic contributions of migrants and refugees.
- Promoted the non-discrimination of migrants in the code of conduct of public and private institutions with awareness-raising initiatives.

Morocco:

- Enacted a new migration policy providing equal treatment for migrant workers focusing on the situation of refugees and asylum seekers, migrants in an irregular situation, the fight against trafficking in persons and the improvement of conditions for migrants in a regular situation.

Portugal:

- Adopted integration measures by creating the National and the Local Immigrant Support Centres (CNAI and CLAI, respectively). The CNAI is a free, one-stop-shop, where immigrants can have access to different governmental services relevant for their integration.
- Launched a national telephone information service, and the Translation Phone Service and developed information guides, brochures, internet portals and television programmes for migrants, to sensitize the public to migrants' rights.

► **3.5 Equal Remuneration Convention, 1951 (No. 100)**

A key Convention on gender equality standards, Convention 100 articulates that Member states must:

- Promote and ensure the application of the principle of equal remuneration for men and women for work of equal value. (Article 2(1))
- Take measures to promote objective job evaluation based on the work performed (article 3(1))

- Use of objective job evaluation methods and criteria free from gender bias, such as qualifications and skills, effort, responsibilities, and conditions of work

Key points:

- Article 1(a): Remuneration includes “the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or kind, by the employer to the worker and arising out of the worker's employment”
- Article 2(2): The principle of equal remuneration can be applied through various means such as legislation,

³² ILO General Survey 2016, paragraph 344.

³³ Estudo Diagnóstico. Identificação das necessidades dos imigrantes no processo de integração social em Cabo Verde, Unidade de Coordenação de Imigração (UCI) and Office français de l'immigration et de l'intégration (OFII), 2014).

systems of wage determination and/or collective agreements between social partners, such as workers and employers

► 3.6 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Convention No. 98 complements Convention No. 87 on freedom of association, with an explicit reference to collective bargaining. It has three main goals:

1. Protection of workers against acts of anti-union discrimination at all stages of the employment relationship, including termination of employment
2. Protection against acts of interference in the internal affairs of workers' and employers' organizations
3. Promotion of collective bargaining

It applies to **all workers, including migrant workers**, while recognising categories of workers who can be subjected to special conditions.

► 3.7 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The objective is to protect the autonomy and independence of workers' and employers' organizations.

Convention No. 87:

- Establishes the right of all workers and employers, without distinction whatsoever, to establish and to join organizations of their choosing without previous authorisation.
- The right to organize should be guaranteed to all workers, without distinction or discrimination of any kind, including nationality
- Anyone working in the country, whether or not they have a residence permit, should benefit from the trade union rights provided in Convention No. 87.³⁴

Provisions on nationality also risk depriving some workers of the right to elect their representatives in full freedom. The CEACR and the Committee on Freedom of Association recommends that that national legislation should also allow foreign workers to take up trade union office, at least after a reasonable period of residence in the country of employment.

► 3.8 Abolition of Forced Labour Convention, 1957 (No. 105)

Convention No. 105 prohibits the use of any form of forced or compulsory labour equally to migrant workers irrespective of their legal status in the country of employment:

- as a means of political coercion or education
- as punishment for the expression of political or ideological views
- as labour discipline
- as punishment for participation in strikes
- for racial, social, national or religious discrimination
- for purposes of economic development (like infrastructure projects)

► 3.9 Forced Labour Convention, 1930 (No. 29)

Convention No. 29 prohibits the use of any form of forced or compulsory labour.

- Article 2(1): Forced labour is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"
- It contains no provisions limiting the scope of its application. **All categories of workers, including migrant workers, are covered**

Migrant workers are often vulnerable to abusive practices by employers which may cause their employment to be transformed into situations tantamount to forced labour. Thus, the Committee of Experts advises Member States

34 ILO General Survey 2016, paragraph 287.

to adopt tailored measures to protect migrant workers, regardless of their legal status, from the exaction of forced labour.³⁵

Trafficking in persons is a severe form of migration in abusive conditions.

- ▶ Conventions No. 29 and No. 105 complements the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Palermo Protocol”),³⁶ supplementing the United Nations Convention against Transnational Organized Crime (2000).
- ▶ In addition to the specific protection provided in Convention No. 29 and No.105 above, Protocol 29 and Recommendation No. 203, set out below, also apply to migrant workers.

3.9.1 The 2014 Protocol to the Forced Labour Convention, 1930

The ILO Protocol No. 29 of 2014 recognizes an increased number of workers who are in forced or compulsory labour in the private economy, and that certain sectors of the economy are particularly vulnerable. It specifically notes that certain groups of workers, especially migrants, have a higher risk of becoming victims of forced or compulsory labour.

Member states ratifying Protocol 29 must:

- ▶ Develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour
- ▶ This must be done in consultation with employers’ and workers’ organizations and must provide for concerted action
- ▶ Ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation
- ▶ Ensure that victims of forced or compulsory labour are not prosecuted for their involvement in unlawful activities which they have been forced to commit as a result of being trafficked
- ▶ Ensure all victims have access to justice and other appropriate and effective remedies

Protocol 29:

- ▶ Uses the same definition of forced or compulsory labour contained in Convention No. 29
- ▶ Includes specific action against trafficking in persons for forced or compulsory labour. Article 2(d) specifically states these measures include particularly protecting migrant workers from possible abusive and fraudulent practices during the recruitment and placement process
- ▶ Puts victims of forced labour at the centre of national policy and promotes awareness, advocacy and prevention efforts
- ▶ Promotes international cooperation between and among member States and with relevant international and regional organizations

Protective measures for children

Children subjected to forced or compulsory labour is a common problem for migrant workers and their families in vulnerable situations in destination countries. In addition to the protections provided for in the Worst Forms of Child Labour Convention, 1999 (No. 182), measures should take into account the special needs and best interests of the child.

These include:

- a. access to education for girls and boys
- b. the appointment of a guardian or other representative, where appropriate
- c. when the person’s age is uncertain but there are reasons to believe they are below 18 years of age, a presumption of minor status, pending age verification
- d. efforts to reunite children with their families, or, when it is in the best interests of the child, to provide family-based care

3.9.2 Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

Member states must:

- ▶ Establish or strengthen national policies and plans of action to achieve the effective and sustained suppression of forced or compulsory labour in all its forms

³⁵ ILO General Survey on the Fundamental Conventions, 2012, paragraph 295.

³⁶ <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

- National plans of action should include prevention, protection, and access to remedies, such as compensation of victims, and the sanctioning of perpetrators
- Basic social security guarantees to reduce vulnerability to forced or compulsory labour
- Plans must be developed in consultation with employers' and workers' organizations, as well as other groups concerned
- Programmes conducted to address the root causes of vulnerability to forced labour
- Undertake awareness-raising campaigns, as well as safeguarding children against child labour through education and other initiatives
- Coordinate efforts with other Member States to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion

For migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, Member States, should:

- Provide a period of reflection and recovery so that the person concerned can make an informed decision relating to protective measures and participation in legal proceedings.
- During that time the person shall be authorized to remain in the territory of the Member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour
- Provide temporary or permanent residence permits and access to the labour market
- Facilitate safe and preferably voluntary repatriation

Specific prevention measures must include respect for the promotion and realization of fundamental principles and rights at work as well as ensuring freedom of association and collective bargaining.

Other recommendations:

- orientation and information for migrants, before departure and upon arrival, for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations
- coherent policies, such as employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation, and address circumstances that could result in forced labour situations

- promotion of coordinated efforts by relevant government agencies of the different member States to facilitate regular and safe migration and to prevent trafficking in persons

► RATIFICATION OF ILO CONVENTIONS OR PROTOCOLS

Ratification is:

- A formal procedure whereby a member State accepts a Convention or Protocol as a legally binding instrument.
- A voluntary act of that Member State, which is then legally bound to apply the provisions of that Convention or Protocol in law and practice.

While some Conventions contain various provisions ensuring flexibility, including some specifically enabling ratifying States to limit or qualify the obligations assumed on ratification, reservations are not permitted.

Ratifications are registered by the Director-General of ILO, notified to other ILO member States and communicated for registration to the Secretary-General of the United Nations. The ratified Convention or Protocol generally comes into force for that State one year after the date of ratification.

After ratifying a Convention or Protocol, the Member state is:

- subject to the ILO regular supervisory system comprised of independent legal experts, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and tripartite bodies
- required to regularly report to the ILO on progress made in applying the Convention or Protocol

The role of ILO's tripartite structure is key to ensuring that the social partners, workers and employers and their representative organisations are consulted by government in the process of considering ratifications. These social partners also play a key role in reviewing compliance by the Member States with their duties and obligations under ratified Conventions.



PROTECTION OF MIGRANT WORKERS: RECRUITMENT

This section covers the specific labour instruments that complement Conventions No. 97 and 143 concerning the recruitment of migrant workers. Regulation of recruitment is an important component of fair migration and effective labour migration governance and is based on a multi-stakeholder approach rooted in social dialogue. In particular, effective governance of recruitment practices (through laws, regulations and their effective enforcement), prevents migrant workers from experiencing abusive and fraudulent conditions, including trafficking of persons for exploitation and forced or compulsory labour.

Recruitment covers not only direct engagement by employers or their representatives but also operations conducted by intermediaries, including public and private recruitment bodies.

Introduction and **Placement** cover operations to ensure or facilitate the arrival or admission of a person who has been recruited, and operations to ensure or facilitate the employment of the migrant worker who has been introduced.³⁷

Article 7 and Annexes I and II of Convention No. 97 and paragraphs 1(b), 1(c), 1(d), 13, 14 and 15 of Recommendation No. 86

- ▶ Deal with the recruitment, introduction and placing of migrants for employment
- ▶ The main purpose of these provisions is to: protect migrant workers; facilitate the control of recruitment, and suppress clandestine employment.³⁸

- ▶ The Annexes deal with organized migration for employment and contain similar substantive provisions but differ in terms of coverage:
- ▶ Annex I concerns the recruitment, placing and working conditions of migrant workers recruited **otherwise than** under government-sponsored arrangements for group transfers
- ▶ Annex II regulates the same issues for migrant workers recruited **under** government-sponsored arrangements for group transfers

Article 3(2) and (3) of Annexes I and II

- ▶ Specify that private recruitment agencies can engage in the operations of recruitment, introduction and placement of migrant workers
- ▶ Provide for the activities of private recruitment agencies to be supervised by the competent authority
- ▶ Provide that contracts of employment are to be supervised by Member States

The CEACR noted the growing importance of private recruiters in the context of international labour migration alongside an increasing role played by public employment agencies in response to significant challenges with the governance of labour migration.³⁹

Member states should:

- ▶ Ensure migrant workers receive copies of their contracts and information concerning conditions of work and life in the country of destination
- ▶ Effectively regulate recruiters, including public and private recruitment mechanisms

³⁷ ILO General Survey 2016, paragraph 197.

³⁸ ILO General Survey 2016, paragraph 195.

³⁹ ILO General Survey 2016, para 198 -202.

The CEACR also notes the initiative taken in several Member States to adopt **model employment contracts** for migrant workers, including migrant domestic workers.⁴⁰

► **GENERAL PRINCIPLES AND OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT AND DEFINITION OF RECRUITMENT FEES AND RELATED COSTS:**

The principles and guidelines aim 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 definition of recruitment fees and related costs recognizes the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment. This comprehensive definition is guided by international labour standards and should be read together with the principles and guidelines. Together this guidance forms a comprehensive approach to realizing fair recruitment through development, implementation and enforcement of laws and policies aiming to regulate the recruitment industry and protect workers' rights.

Cooperation between Member States

As with many other aspects of the migration process, cooperation between the countries of origin and destination may prove one of the most effective ways to ensure migrant workers are recruited under non-abusive and non-exploitative conditions.⁴¹

Convention No. 181 governs the operation of private employment agencies as well as the protection of the workers using their services.

► 4.1 Private Employment Agencies Convention, 1997 (No. 181)

Convention No. 181 governs the operation of private employment agencies as well as the protection of the workers using their services. It is of particular relevance for migrant workers, given that many are recruited through such agencies.

Convention No. 181:

- Provides that private employment agencies cannot charge, directly or indirectly, any recruitment fees or costs to workers (Article 7(1))
- Applies to all categories of workers including migrant workers, and all branches of economic activity
- Binds private employment agencies to basic principles such as non-discrimination based on any characteristic protected by law, and equality of treatment and opportunity in access to employment (Article 5)
- Requires countries of destination to adopt all necessary and appropriate measures to prevent abuses of migrant workers recruited or placed in their territory by private employment agencies, including through prohibiting agencies that engage in fraudulent practices and abuses (Article 8(1)).
- In adopting such measures it requires that the most representative organizations of employers and workers be consulted, and encourages collaboration with other members, Article 8(2) emphasizes the importance of concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment
- Articles 11 and 12 require Member States to ensure adequate protection for the workers employed by private employment agencies concerning matters such as minimum wages, working time and conditions, as well as social security benefits

This Convention must also be read with **Domestic Workers Convention, 2011 (No. 189)** which recognizes the need for measures aimed at effectively protecting migrant domestic workers against abusive practices by private intermediaries, including through States concluding bilateral, regional or multilateral agreements.

⁴⁰ ILO General Survey 2016, paragraph 219. For example, in the context of its supervision of Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the CEACR has noted measures taken by the Government of Lebanon leading to the adoption in 2009 of a unified contract for migrant domestic workers, which specifically sets out the rights of domestic workers concerning the payment of their monthly salary (in cash) and benefits-in-kind, medical care, working time arrangements, annual leave and sick leave, and which contains provisions on termination in serious cases of abuse, harassment, and maltreatment, and provisions on the submission of complaints with the Ministry of Labour and the courts. It also recalled the information provided by the Government of Mauritius under its supervision of Convention No. 97, according to which employers are required to submit to immigrant workers a model contract of employment duly vetted by the Special Migrant Workers' Unit (SMWU).

⁴¹ Committee of Experts, General Survey 2016, para 226.

► 4.2 Private Employment Agencies Recommendation, 1997 (No. 188) (Convention No. 88)

Recommendation No. 188 further elaborates Convention No. 181's provisions for the protection of workers and public-private cooperation.

- It provides for the adoption of preventive measures to avoid exploitation of workers and to eliminate unethical practices by private employment agencies.

These include:

- requiring a written contract of employment specifying essential terms and conditions, which should be in the language of the migrant worker or a language with which they are familiar
- combating unfair and misleading advertisements
- Paragraph 8: Private employment agencies should not knowingly "recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind"
- Encourages cooperation between the public employment service and private employment agencies concerning the implementation of a national policy on organizing the labour market.

► 4.3 Employment Service Convention, 1948 (No. 88) (Convention No. 88)

Convention No. 88 elaborates the role of the public employment service, which is organised to ensure effective recruitment and placement, while "taking into account the **needs of particular categories of applicants** for employment, such as disabled persons" (article 7).

- Assists both workers and employers to find employment or labour respectively
- Takes appropriate measures to facilitate occupational and geographical mobility as required, including:
 - facilitating temporary transfers of workers from one area to another
 - "any movement of workers from one country to another which may have been approved by the governments concerned" (article 6(b)(iv))

The public employment service:

- is mandated to cooperate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed
- collects and analyses the fullest available information about the labour market and its probable evolution
- makes the information available to all relevant actors and the public





PROTECTION OF MIGRANT WORKERS: WAGES

► 5.1 Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Convention No. 94 deals with three main areas:

1. Types of public-related contracts that should contain labour clauses
2. The content of labour clauses and the means for determining such content at the national level
3. Methods for enforcing the terms of labour clauses

Member States are required to be no less favourable than those established by collective agreement, arbitration award, or national laws, for work of the same character in the trade or industry concerned in the same district where the work is performed, or the nearest appropriate district. This Convention further requires the establishment of an adequate monitoring system, as well as appropriate remedies and sanctions.

► 5.2 Protection of Wages Convention, 1949 (No. 95)

This Convention applies to all persons to whom wages are paid or payable while authorising certain exceptions. Convention No. 95:

- applies to all migrant workers including those in an irregular situation
- embodies a core principle: ensuring prompt and regular payment of wages directly to the worker
- many of its provisions are directed at the employer as the party owing and directly responsible for payment of wages
- requires workers be allowed full freedom to dispose of their wages
- requires the swift payment of any outstanding wages due, upon termination of the employment contract

Convention No. 95 establishes a coherent system that hinges on five main elements

1. Form and method of wage payment

The Convention sets out a number of principles as to where, when, and how remuneration is to be paid and other practical modalities of payment. For instance, the Convention:

- stipulates that wages must be paid regularly and directly to the worker to avoid any risk of abuse
- further articulates the prohibition of payments in the form of promissory notes, vouchers or coupons
- while the partial payment of wages in the form of allowances in kind may be authorized by national laws or regulations, collective agreements or arbitration awards, the Convention prescribes that:
 - appropriate measures are taken to ensure that such allowances are appropriate for the personal use and benefit of the workers and their families
 - that they are fairly and reasonably valued.

2. Freedom of workers to dispose of their wages

This is explicitly envisaged and the Convention forbids any constraint by the employer on how the worker's wage is used or spent. It recognizes the right of workers to make use of a company store or service only if they wish to do so.

3. Duty of Information

The Convention attaches particular importance to the need to keep workers informed, in an appropriate and easily understandable manner, of the:

- wage conditions to which they are subject before they enter employment
- wage details concerning the calculation of their earnings in respect of each pay period.

4. Wage Guarantees

The Convention envisages a system which:

- ▶ ensures the total payment of the wages due
- ▶ protects workers from arbitrary, unfair, or unforeseen decreases in their remuneration, in particular through excessive deductions or attachment orders.
- ▶ in the event of the bankruptcy or judicial liquidation of an undertaking, workers employed therein shall be treated as privileged creditors and that national laws or regulations shall determine that wages constitute a privileged debt.⁴²

5. Enforcement

Convention No. 95 emphasizes the need that laws or regulations giving effect to the provisions of this Convention provide effective sanctions or other adequate remedies and for the maintenance of adequate records in an approved form and manner.

▶ 5.3 Minimum Wage Fixing Convention, 1970 (No. 131)

Although no ILO minimum wage convention provides for a minimum wage definition, minimum wages could be defined as the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period.⁴³

To protect workers against unduly low pay, (as set out in its preamble), Convention No. 131:

- ▶ calls for the establishment of a system of minimum wages that covers “all groups of wage earners whose terms of employment are such that coverage would be appropriate” (Article 1)
- ▶ prescribes that minimum wages shall have the force of law and shall not be subject to abatement⁴⁴
- ▶ is premised on both the principle of full consultation with social partners and the requirement of taking into consideration workers’ and their families needs and economic factors while determining the level of minimum wages.



⁴² Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) further develops the issue.

⁴³ See ILO Wage Policy Guide available at: https://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439072/lang-en/index.htm

⁴⁴ It should be noted that while Convention No. 131 covers industry, commerce and offices and agriculture, Minimum Wage Fixing Machinery Convention, 1928 (No. 26) and Minimum Wage Fixing Machinery (Agriculture) 1951 (No. 99) (which are not revised by C131) cover only industry and agriculture.



PROTECTION OF MIGRANT WORKERS: SOCIAL SECURITY⁴⁵

The social protection of all workers is at the heart of the ILO mandate, as set out in the Declaration of Philadelphia, which forms part of the ILO Constitution. It seeks to do so by:

- ▶ guaranteeing access to essential health care
- ▶ guaranteeing minimum income security
- ▶ progressively ensuring higher levels of protection guided by the Social Security (Minimum Standards) Convention, 1952 (No. 102) and other ILO standards

Social security refers to the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity, family responsibilities or loss of a breadwinner.

Barriers faced by migrant workers:

Increased international migration creates challenges for migrant workers regarding their social security coverage as they do not always enjoy equality of treatment with national workers.

The geographical nature of social security and the different systems and conditions for benefits also create problems for international migrant workers.

Maintaining the social security rights they had acquired before arriving in their country of immigration, those they will acquire during their stay, and potentially also those that they will be able to carry back with them if they return to their country of origin are a concern. The portability of social security rights is necessary to promote the free movement of labour and integrated labour markets.

With the well-being of millions of migrant workers and their families at stake, the social security coordination between countries through the ratification and

implementation of international labour standards and bilateral and multilateral agreements is particularly important.

Conventions No. 97 and No. 143 provide that equality of treatment must also cover social security for migrant workers.⁴⁶

Convention No. 97

- ▶ Article 6(1)(b): provides that the equal treatment principle with respect to social security applies to all migrant workers lawfully in the country, whether they have permanent or temporary residence status. Under this provision, social security comprises “legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme”, subject to limitations
- ▶ Article 6(l)(b)(i): provides that arrangements can be made for the maintenance of acquired rights and rights in the course of acquisition
- ▶ Article 6(l)(b)(ii): provides for benefits payable solely from public funds, or those paid to persons who do not satisfy conditions for a normal pension under non-contributory schemes

The imposition of minimum requirements as regards the duration of residency or employment would not necessarily be contrary to the Convention if those conditions also applied to nationals. The CEACR has reminded Member States that such arrangements do not permit the automatic exclusion of certain categories of migrant workers from qualifying for social security benefits. **The main purpose of the exceptions permitted under the Convention is to prevent abuses and to safeguard the financial balance of non-contributory schemes.**

⁴⁵ There are also ILO Conventions and accompanying Recommendations that contain specific provisions for the social protection of certain categories of workers who move across borders: the Maritime Labour Convention, 2006 (Art. IV, Regulations 4.1, 4.2 and 4.5), the Work in the Fishing Convention, 2007 (No. 188) (Art. 34-38) and Work in Fishing Recommendation, 2007 (No. 199) (para. 50-52), the Domestic Workers Convention, 2011 (No. 189) (Art. 14) and the Domestic Workers Recommendation, 2011 (No. 201) (para. 20 and 26(2)).

⁴⁶ See ILO General Survey 2016, paragraphs 389-407.

Convention No. 143

- ▶ By including social security among the fields to be covered by the national equality policy, Convention No. 143 built upon Convention No. 97:
 - ▶ the (Minimum Standards) Convention, 1952 (No. 102)
 - ▶ the Equality of Treatment (Social Security) Convention, 1962 (No. 118).
 - ▶ By requiring equality of treatment for migrant workers in an irregular situation in respect of rights arising out of past employment with regard to social security (Article 9(1)).

Social security of migrant workers and their family members

This section presents the general ILO social security standards and focuses on two key ILO Conventions which provide specific social security protection for migrant workers:

- ▶ the Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- ▶ the Maintenance of Social Security Rights Convention, 1982 (No. 157)

Together with the Maintenance of Social Security Rights Recommendation, 1983 (No. 167), these three ILO Social security coordination standards first and foremost deal with the rights of migrant workers and their families.

In addition, the ILO has developed the following social security standards which also contain certain provisions on the equality of treatment of non-nationals:

- ▶ Social Security (Minimum Standards) Convention, 1952 (No. 102)
- ▶ Social Protection Floors Recommendation, 2012 (No. 202)
- ▶ Employment Injury Benefits Convention, 1964 (No. 121)
- ▶ Medical Care and Sickness Benefits Convention, 1969 (No. 130)

The ILO social security standards establish **five basic principles** that form the backbone of all bilateral and multilateral agreements on social security.⁴⁷

1. **Equality of treatment** — a migrant worker should have the same rights and obligations as the nationals of the destination country

2. **Determination of the applicable legislation** — ensuring the social security of a migrant worker is governed at any one time by the legislation of one country only
3. **Maintenance of acquired rights and provision of benefits abroad** — any acquired right should be guaranteed to the migrant worker in one territory, even if it has been acquired in another. There should also be no restriction on payment in one country of benefits which the worker has qualified for in another country
4. **Maintenance of rights in course of acquisition** — where a right is conditional upon the completion of a qualifying period, account should be taken of periods served by the migrant worker in each country
5. **Reciprocity** is an underlying principle of all these Conventions — each country that is a party to an agreement undertakes to apply the same mechanisms as the other party to make its social security benefits more accessible to migrant workers. This ensures a degree of compatibility in the obligations that each government assumes. Therefore, a country that refuses equal treatment to workers from another country cannot expect that the other country will grant equal treatment to its own workers in return. This feature of reciprocity is unique to social security in the context of international labour migration.

▶ 6.1 Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Convention No. 118 is the central ILO standard for social security coordination establishing the principle of equality of treatment between migrant workers and national workers. It covers nine branches of social security:

1. Medical care
2. Sickness benefit
3. Maternity benefit
4. Invalidity benefit
5. Old-age benefit
6. Survivor's benefit
7. Employment injury benefit
8. Unemployment benefit
9. Family benefit.

⁴⁷ See for further information: Social security for migrant workers: a rights-based approach / Kenichi Hirose, Milos Nikac, Edward Tamagno; International Labour Organization, Decent Work Technical Support Team and Country Office for Central and Eastern Europe. - Budapest: ILO, 2011. Available at: "Social security for migrant workers: a rights-based approach".

When they ratify this Convention, member States can limit their ratification and do not have to accept all nine branches of social security. However, for all branches that they accept, they must ensure equality of treatment between migrant and national workers. This means that national legislation cannot make the entitlement to benefits subject to a residence requirement on non-nationals, as this would violate the principle of equality of treatment.

Convention No. 118:

- recognises the principle of reciprocity — this means that all member States that ratify Convention No. 118 undertake to grant, within their country, equality of treatment to the nationals of any other State which has also ratified the Convention and accepted the same obligations under it for any branch
 - Article 10: The condition of reciprocity does not apply in the case of refugees and stateless persons – this means the provisions of the Convention are applicable to them and they are entitled to equality of treatment with nationals without the State they originate from having ratified or accepted obligations in respect of any specific branch
- Article 7: provides that ratifying States must endeavour to participate in schemes for the maintenance of acquired rights and rights in the course of acquisition for migrant workers under the legislation of other Member States for which the Convention is also in force. They may agree on provisions for the totalization of periods of insurance, employment, or residence that may be necessary as well as for sharing the cost of the benefits paid
- Article 11: requires corresponding ratifying States to afford each other administrative assistance free of charge in order to facilitate the implementation of its provisions and of their respective legislation

► 6.2 Maintenance of Social Security Rights Convention, 1982 (No. 157)

Convention No. 157 builds on Convention No. 118 and establishes a framework for the maintenance of **migrant workers' social security rights that they have already acquired as well as rights in the course of acquisition**. The Convention applies to **all general and**

special social security schemes, both contributory and non-contributory. It does not apply to schemes for civil servants, among others.

Convention No. 157:

- promotes **coordination between national social security schemes** by way of bilateral or multilateral agreements giving effect to the obligations, assumed under it
 - Article 4 (3): Those agreements can indicate the branches of social security to which they apply, the categories of persons to which they apply, the arrangements for reimbursement of the benefits provided, as well as the rules to avoid undue plurality of contributions
 - The maintenance of acquired rights is intended to remedy the disadvantages relating to the principle of the territorial application of rights in the provision of benefits. It consists of securing the right to benefits for claimants who are not resident or are no longer resident in the country where they worked and which legislation was applicable when they acquired the rights
- Each ratifying State must guarantee to the persons protected the provision of old-age, invalidity, survivors' benefits, employment injury and death grants to which a right is acquired under its legislation, irrespective of their place of residence. This is an obligation that is directly applicable due to the mere fact of ratification.
- Urges ratifying States to assist migrant workers in their dealings with different government authorities, institutions and jurisdictions about the award and receipt of benefits to which they are entitled

► 6.3 Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Recommendation No. 167 supplements Convention No. 157. It:

- proposes two **model agreements**⁴⁸ for the conclusion of bilateral or multilateral social security agreements among Member States

⁴⁸ Model Agreement for the co-ordination of bilateral or multi-lateral social security arrangements and Model Provisions for the Conclusion of Bilateral or Multi-lateral Social Security Arrangements.

- ▶ proposes rules on maintaining social security rights and payment of benefits abroad
- ▶ encourages Member States bound by bilateral or multilateral agreements to extend benefits to the nationals of other Member States, as well as to refugees and stateless persons of another member State
- ▶ calls for the conclusion of appropriate administrative or financial arrangements to both remove possible obstacles to the provision of relevant benefits, pensions or grants, to which a right is acquired under their legislation, to nationals of a Member State or refugees or stateless persons resident abroad
- ▶ **requires compensation** for the loss of benefits when someone migrates from a Member State which has laws providing for unemployment or family benefits to a Member State which has no such legislation

▶ 6.4 Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Convention No. 19:

- ▶ enshrines the **equality of treatment principle in relation to industrial accidents**
- ▶ foresees special agreements between member States in order to provide compensation for work accidents happening to foreign workers whilst temporarily or intermittently employed in one country on behalf of an undertaking situated in another country

Each ratifying member State undertakes to grant equal treatment in respect of worker's compensation to nationals of any other ratifying State who suffer personal injury due to industrial accidents happening in its territory, and without any condition as to residence.

▶ 6.5 Social Security (Minimum Standards) Convention, 1952 (No. 102)

Convention No. 102 provides the core set of principles and minimum benchmarks for building and maintaining progressively comprehensive social security systems at national level. It is the only international instrument that sets global minimum standards for all nine branches of social security.

Convention No. 102

This Convention is grounded in a set of core financing, governance and administration principles that include:

- ▶ Responsibility of the State for the due provision of the benefits and the proper administration of the institutions
- ▶ Rights and benefits defined by law
- ▶ Minimum levels of coverage and benefits in respect of both contributory and non-contributory schemes
- ▶ Collective financing of the benefits by way of sustainable insurance contributions, taxation or a combination thereof
- ▶ Participation of employers and workers in the administration of the schemes
- ▶ Transparency and compliance mechanisms
- ▶ allows for ratification upon acceptance of at least three of the nine social security branches
- ▶ permits member States a great degree of flexibility and step-by-step extension of their commitments
- ▶ in order to establish a level playing field among ratifying States, it requires the acceptance upon ratification of at least one of the following benefits:
 - ▶ old-age
 - ▶ employment injury
 - ▶ invalidity or survivors' benefit

ILO social security Conventions generally contain provisions on **equality of treatment**.

- ▶ Part XI of Convention No. 102: establishes the principle of equality of treatment of **non-national residents**.
- ▶ Article 68, which applies to all branches of social security covered by the Convention, sets forth the principle that all non-national residents must have the same rights as national residents.
- ▶ However, this principle may not be applied in respect of benefits payable wholly or mainly out of public funds and in respect of transitional schemes with a view to prevent possible abuses and safeguard the equilibrium of non-contributory schemes. For example, as regards non-contributory old-age, invalidity and survivors' benefit, requiring non-national residents to complete a period of residence that would not be required for nationals could thus be imposed

► 6.6 Employment Injury Benefits Convention, 1964 (No. 121)

Convention No. 121 requires ratifying States to ensure that their national legislation concerning employment injury benefits protects all employees, including migrant workers. Each ratifying State must:

- assure equality of treatment between non-nationals and its own nationals in employment injury benefits
- secure, subject to prescribed conditions, the provision of medical care and/or cash benefits to the worker protected

Most importantly, eligibility for benefits **may not be** made subject to the length of employment or to the duration of insurance or to the payment of contributions (provided that a period of exposure may be prescribed for occupational diseases).

► 6.7 Medical Care and Sickness Benefits Convention, 1969 (No. 130)

This Convention provides for ratifying member States to set rules for access of employees to medical care and sickness benefits. Each member State shall, within its territory, assure to “non-nationals who normally reside or work there” equality of treatment with its own nationals as regards their right to such benefits.

► 6.8 Social Protection Floors Recommendation, 2012 (No. 202)

The Recommendation establishes the ILO vision on how to build and maintain universal, comprehensive and sustainable social protection systems providing adequate levels of benefits at least for all national and non-national residents and all children. The Recommendation:

- prioritizes the establishment of national floors of social protection
 - National social protection floors should be comprised of basic social security guarantees ensuring at a minimum that, over and throughout the life cycle, all in need have access to essential health care and to basic income security

- aims at progressively ensuring higher levels of social security to as many people as possible, guided by Convention No. 102 and the more advanced ILO social security standards

The Recommendation establishes a set of key principles placed under the overall and primary responsibility of the State for building and maintaining universal, comprehensive, adequate and sustainable social protection systems. These comprise of:

- universality of protection, based on social solidarity
- progressive realization
- entitlement to benefits prescribed by law
- adequacy and predictability of benefits
- diversity of methods and approaches
- adequacy and predictability of benefits
- non-discrimination, gender equality and responsiveness to special needs
- social inclusion, including of persons in the informal economy
- coherence with social, economic and employment policies
- protection of rights and dignity of beneficiaries
- financial, fiscal and economic sustainability with due regard to social justice and equity
- solidarity in financing
- transparent, accountable and sound financial management and administration; tripartite participation and consultation with representatives of employers and workers.⁴⁹

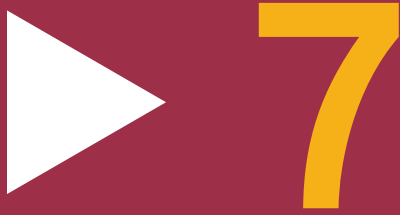
The Committee of Experts expressed hope that member States would make efforts to provide non-nationals, **even those in an irregular status**, including workers in an irregular situation, with access to basic benefits, and to any medical care that is urgently required.⁵⁰

► SOCIAL PROTECTION FLOORS

Social protection floors are nationally defined sets of basic social security guarantees that should ensure that all in need have access to essential health care and to basic income security as a minimum over their life cycle, which together, secure effective access to goods and services defined as necessary at the national level.

⁴⁹ These can be found in Paragraph 3 of the Recommendation No. 202.

⁵⁰ ILO General Survey 2019, para 143.



PROTECTION OF MIGRANT WORKERS: DECENT WORK AND THE INFORMAL ECONOMY

This section deals with two recommendations that regulate decent work and the transition from the informal to the formal economy:

1. Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)
2. Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

Both are of significance for **migrant workers** given their vulnerability in the labour markets of the destination country. These international standards emphasise the importance of national policies that address the fundamental rights of migrant workers, including:

- ▶ their rights to secure decent work
- ▶ the importance of addressing migration in the context of crises (which would apply for instance in the COVID-19 crisis)
- ▶ addressing the protection of migrant workers and other vulnerable workers in the context of transition to a formal economy, and
- ▶ outlining the significance of this protection for economic development.

▶ 7.1 Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)

Within the context of crisis situations arising from conflicts and disasters, **Recommendation 205 highlights that special attention should be devoted to migrant workers, as well as refugees and returnees**, due to their particularly vulnerable condition.

It provides a national migratory framework and labour policy based on the equality of opportunity and treatment for all migrant workers, as well as

refugees, with regard to the fundamental principles and rights at work for Member States in their shaping of labour policies and programmes dealing with responses to conflicts and disasters.

It recommends that national labour laws should cover, but are not limited to:

- ▶ education of migrants and refugees about their labour rights and protections
- ▶ participation of migrants and refugees in representative organizations of employers and workers
- ▶ campaigns and other measures to combat discrimination and xenophobia in the workplace
- ▶ consultation and engagement of employers and workers' organisations with respect to employment of migrants and refugees.

Recommendation No. 205 further stresses that member States should give **due consideration to migrant workers and their families** and take measures in relation to the following areas:

- ▶ elimination of forced or compulsory labour, including trafficking in persons
- ▶ promotion of, as appropriate, the inclusion of migrants in host societies, through access to labour markets, including entrepreneurship and income-generation opportunities, and through decent work
- ▶ protection of migrant workers through seeking to ensure labour rights and a safe environment in all sectors, including:
 - ▶ those in precarious employment
 - ▶ women migrant workers
 - ▶ youth migrant workers
 - ▶ migrant workers with disabilities
- ▶ giving due consideration to migrant workers and their families in shaping labour policies and programmes dealing with responses to conflicts and disasters, as appropriate

- facilitating the voluntary return of migrants and their families in conditions of safety and dignity

The Recommendation draws special attention to refugees' and returnees' protection while being context-sensitive and taking into account member States' challenges and constraints in terms of their resources and capacity to respond effectively. It urges Member States to:

- ensure the protection of refugees within the labour market, including with regard to access to decent work and livelihood opportunities
- foster self-reliance by expanding opportunities for refugees to access livelihood opportunities and labour markets, without discriminating among refugees and in a manner that also supports host communities

For that purpose, Recommendation No. 205 refers to facilitating actions that can be taken by Member States in respect to employment, training, and labour market access, including:

- promoting access to vocational training and to formal job opportunities or entrepreneurship schemes
- facilitating the recognition and certification of skills and qualifications through appropriate mechanisms
- enhancing the capacity of public employment services and facilitating the portability of work-related and social security benefit entitlements.

Additionally, the Recommendation specifically refers to certain groups with characteristics that may increase their vulnerability and encourages Member States to make specific efforts to support the inclusion in labour markets of refugee women, young persons and others who are in a situation of vulnerability.

► 7.2 Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

While recognizing the high incidence of the informal economy and its impact on the rights of workers, Recommendation No. 204 provides guidance to facilitate the transition of workers and economic units from the informal to the formal economy, and applies to all categories of workers and economic units, which includes workers in unrecognized or unregulated employment relationships.

It aims to promote the:

- preservation and sustainability of enterprises and decent jobs in the formal economy

- coherence of employment, social protection and other social policies

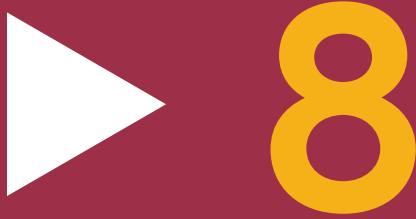
Among others things, Recommendation No. 204:

- outlines a rights-based and comprehensive legal and policy framework to facilitate the transition, enumerating elements that could form part of it, such as the effective access to justice and the extension of social security coverage, while ensuring appropriate coverage and protection of all categories of workers and economic units
- highlights the importance of adopting comprehensive employment policies which include labour migration policies that take into account labour market needs and promote decent work and the rights of migrant workers
- outlines the measures that should be taken to guarantee rights and social protection for informal economy workers
- provides guidance on the incentives for informal workers, as well as on compliance and enforcement mechanisms that should be put in place
- recognizes that freedom of association, social dialogue and workers' and employers' organizations play a key role in the transition from informality to formality
- emphasizes the importance of data collection and monitoring

The Recommendation follows a rights-based approach to formalization and suggests that member States should **pay special attention to those who are especially vulnerable** to the most serious decent work deficits in the informal economy, including but not limited to:

- women
- young people
- **migrants**
- older people
- indigenous and tribal peoples
- persons living with HIV or affected by HIV or AIDS
- persons with disabilities
- domestic workers
- subsistence farmers

► ► Member States should pay special attention to those who are especially vulnerable to the most serious decent work deficits in the informal economy.



PROTECTION OF MIGRANT WORKERS: MINIMUM STANDARDS IN SPECIFIC SECTORS

This section deals with the protection of rights of migrant workers in specific sectors, including:

- ▶ domestic work
- ▶ agriculture
- ▶ construction
- ▶ mining
- ▶ nursing.

It is important to note that domestic workers and workers in agriculture, including workers on family farms and other small agricultural undertakings, and casual or temporary workers, are often excluded from the scope of labour legislation.

In countries where migrant workers constitute a significant proportion of seasonal agricultural workers or domestic workers, the exclusion of these categories may have an important impact on the extent to which their rights are protected under the law, and could result in unequal treatment.⁵¹ Laws or bilateral agreements should ensure that **migrant workers** in these sectors have at least the same level of protection as exists in the general labour law.

▶ 8.1 Plantations Convention, 1958 (No. 110)

This Convention outlines a series of principles for improving employment conditions of plantation workers, particularly in the following areas:

- ▶ Engagement and recruitment of migrant workers
Convention No. 110 recognises the need for provisions aimed at preventing abuse and exploitation. This refers to:
 - ▶ an obligatory prior medical examination

- ▶ provides that recruited workers shall be brought before a public officer, who has to be satisfied that
 - ▶ the law and regulations concerning recruiting have been observed
 - ▶ and, in particular, that the workers have not been subjected to illegal pressure or recruited by misrepresentation or mistake.
- ▶ In the context of international labour migration, Convention No. 110 indicates that the recruiter or employer should bear the cost for the
 - ▶ transport to the place of employment for recruited workers
 - ▶ and also the expenses incurred for the journey, including all expenses incurred for their protection during the journey.
- ▶ Member States are also required to take all appropriate steps against misleading propaganda relating to emigration and immigration, for which international cooperation is encouraged.
- ▶ **Wages**
The fixing of minimum wages by collective agreements and prohibiting employers from limiting in any manner the freedom of the worker to dispose of their wages.
- ▶ **Annual holidays with pay and weekly rest**
- ▶ **Maternity protection and benefits**
Should be sufficient for the full and healthy maintenance of the worker herself and her child with a suitable standard of living.
- ▶ **Compensation**
Refers to personal injury caused by accidents arising out of or in the course of employment. The Convention encourages special agreements between ratifying States.

51 ILO General Survey 2016, para 328-330.

- to provide that compensation for industrial accidents happening to workers whilst temporarily or intermittently employed in the territory of one State on behalf of an undertaking situated in the territory of another State which shall be governed by the laws and regulations of the latter State.
- **Right to organise and collective bargaining, and freedom of association**
- **Adequate labour inspection**
- **Adequate housing according to minimum standards**
- **Medical care**
 - Should be adequate and of a standard prescribed by the public authorities

► 8.2 Nursing Personnel Convention, 1977 (No. 149)

This Convention takes account of the vital role played by nursing personnel and other health workers for the wellbeing of populations. It sets minimum labour standards specifically designed to address the special conditions in which nursing work is carried out. These include:

- adequate education and training to exercise nursing functions
- attractive working conditions, including career prospects, remuneration and social security
- adaptation of occupational safety and health regulations to nursing work
- participation in the planning of nursing services
- consultations regarding employment and working conditions
- dispute settlement mechanisms.

► 8.3 Nursing Personnel Recommendation, 1977 (No. 157)

This Recommendation guides member States concerning **migrant nurses and trainees**. Recommendation No. 157:

- requires the recruitment of foreign nurses to be undertaken in conformity with the relevant provisions of Convention No.97 and Recommendation No. 86.
- provides that nurses employed or in training abroad should be given all necessary facilities when they wish to be repatriated

- requires that Member States ensure foreign nurses training or working in the country equality of treatment with national nurses
- encourages Member States to develop bilateral or multilateral arrangements to ensure the maintenance of the acquired rights or rights in course of acquisition of migrant nurses as well as the provision of benefits abroad

► 8.4 Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)

This Convention sets minimum standards for work in hotels, restaurants, and similar establishments. Ratifying Member States are required to adopt and apply policies designed to improve the working conditions of these workers.

Convention No. 172:

- Article 2 is applicable to all workers “irrespective of the nature and duration of their employment relationship”
- applies to employment conditions of all workers, **including migrant workers**, in hotels and restaurants and specifies:
 - their hours of work have to be reasonable
 - they must have minimum daily and weekly rest periods
 - they must be compensated in time or remunerated for work on holidays
 - they should receive remuneration in regular intervals, regardless of tips

The Convention requires consultation with representatives of employers and workers about applicable measures.

► Member States are also required to take all appropriate steps against misleading propaganda relating to emigration and immigration, for which international cooperation is encouraged.



PROTECTION OF MIGRANT WORKERS: OCCUPATIONAL HEALTH AND SAFETY

Migrant workers are particularly vulnerable to industrial accidents and seasonal migrant workers are often placed in high-risk, hazardous, unhealthy, and low-paid jobs with poor supervision.

Safety and health mechanisms in occupations in which migrants are primarily employed should be maintained by Member States who should make every effort to ensure that migrant workers receive training and instruction in occupational safety in connection with their practical training or other work preparation in a language they understand.

This is particularly relevant for those employed in hazardous occupations such as:

- ▶ agriculture
- ▶ construction
- ▶ mining and fishing
- ▶ manufacturing and
- ▶ domestic work

▶ 9.1 Occupational Safety and Health Convention, 1981 (No. 155)

Advocating for the formulation, implementation and periodical review of a coherent national occupational safety and health policy, **Convention No. 155 applies to all workers in all branches of economic activity** except for authorised exceptions.

The policy aims to prevent accidents and injury to health from hazardous working environments. It calls for action to be taken by governments and within enterprises to **promote occupational safety and health and to improve working conditions**.

Requirements of Member States ratifying Convention No. 155

- ▶ Adoption of a national policy to promote occupational safety that includes obligations for employers and workers:

- ▶ establishing an inspection system ensuring that workplaces, machinery, equipment and processes under the employers' control are safe
- ▶ requiring cooperation in fulfilling these obligations.

This Convention must be read with Recommendation No. 151 which makes specific provisions for the protection of the health of migrant workers.

Recommendation No. 151:

- ▶ states that all appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed (Paragraph 20).
- ▶ provides that the employer should make efforts to ensure that migrant workers receive training and instruction in occupational health and safety (Paragraph 21).
- ▶ provides that employers should ensure migrant workers receive sufficient information in their mother tongue or a language they understand, about laws, regulations and collective agreements concerning occupational health and safety. Including making sure that they fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

▶ 9.2 Occupational Health Services Convention, 1985 (No. 161)

Convention No. 161 calls for the progressive development of occupational health services for all workers (article 3) and guides ratifying member States on formulating a coherent **national policy on occupational health services designed for all workers in all branches of the economy**.

“Occupational health services” is defined as services entrusted with essentially preventive functions and is responsible for advising the employer, the workers and their representatives on the requirements for establishing and maintaining a safe and healthy working environment.

Convention No. 161 envisages occupational health services as multidisciplinary, comprehensive and, although essentially preventive, also allows for carrying out curative activities. Functions of occupational health services include:

- surveillance of factors in the working environment and working practices relevant to workers' health and conditions for the operation of the business, and
- cooperation between occupational health services with other services in the business, and with the employer, as well as workers and their representatives.

► 9.3 Safety and Health in Construction Convention, 1988 (No. 167)

This Convention assigns responsibilities to both competent authorities and employers to ensure the **safety and health of workers employed in construction projects**. The aim is to protect persons at, or in the vicinity of, a construction site from risks that may arise.

- Convention No. 167 requires:
 - provision for appropriate penalties and corrective measures
 - Member States to adopt laws or regulations based on the assessment of the safety and health hazards involved.
 - laws or regulations should require employers and self-employed persons to comply with the prescribed safety and health measures at the workplace
 - laws should refer to duties to workers, including cooperating with the employer in the application of the prescribed safety and health measures.

The Convention also requires preventive and protective measures aimed at employers, to ensure that all workplaces are safe and without risk of injury and include the obligation of employers to provide adequate information to workers about occupational safety.

► 9.4 Safety and Health in Mines Convention, 1995 (No. 176)

Convention No. 176 provides for the **protection of all workers** in the **mining sector** through appropriate national laws and regulations, irrespective of gender, whether they are employed in surface or underground mines.

It refers to three main areas:

- responsibilities of employers and how to minimize hazards and what to do in the event of hazards
- rights and duties of workers and their representatives, and
- cooperation between employers and workers.

Convention No. 176 states that items national laws and regulations shall provide for at minimum:

- The supervision of safety and health in mines
- The inspection of mines by inspectors
- The procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, each as defined by national laws or regulations
- The compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences
- The power of the competent authority to suspend or restrict mining activities on safety and health grounds, until the condition giving rise to the suspension or restriction has been corrected, and
- The establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace.

► 9.5 Safety and Health in Agriculture Convention, 2001 (No. 184)

Convention No. 184 guides strategies to address the safety and health risks encountered by Migrant Workers in agriculture to prevent accidents and diseases for all those engaged in this sector.

The Convention requires Member States to formulate, carry out and periodically review a coherent national policy on safety and health in agriculture and outlines the roles of the competent authorities, employers, workers and their organizations in promoting safety and health within this sector. **It provides that the minimum age for working in agriculture should be 18 years.**

The Convention requires employers to:

- ▶ carry out appropriate risk assessments concerning the safety and health of workers and adopt preventive and protective measures
- ▶ ensure that adequate and appropriate training and clear instructions on safety and health and any necessary guidance or supervision are provided to workers in agriculture, and

- ▶ take immediate steps to stop any operation where there is an imminent and serious danger to safety and health and to evacuate workers as appropriate.

The Convention provides that workers in agriculture:

- ▶ have the right to be informed and consulted on safety and health matters
- ▶ to participate in the application and review of safety and health measures, and
- ▶ to remove themselves from danger resulting from their work activity when they have reasonable justification to believe there is an imminent and serious risk to their safety and health and so inform their supervisor immediately.
- ▶ workers should not be placed at any disadvantage as a result of these actions.





PROTECTION OF MIGRANT WORKERS: GENDER EQUALITY

Women migrant workers, particularly those in an irregular situation, are prone to gender-based violence and precarious working conditions.⁵² **Women migrant workers** also face discrimination in the labour market on multiple grounds including migrant status, sex, religion and ethnicity. Given the growing numbers of women migrants, and mindful of the requirement in article 6(1) of Convention No. 97 that equality of treatment must be pursued “without discrimination in respect of nationality, race, religion or sex”.

Governments must report on measures taken to ensure that women and men migrant workers are treated on an equal footing. To this end, the ILO has developed several instruments that relate to equality between men and women workers. These Conventions apply to all workers, including migrant workers.

The protection of the rights of women migrant workers, through the application of gender equality instruments, ensures not only respect for their fundamental human principles and rights at work, but also facilitates fair migration and access to decent work.

This section summarizes the key provisions of the 6 key ILO gender equality conventions. They are:

- ▶ **Equal Remuneration Convention, 1951 (No.100)**
- ▶ **Discrimination (Employment and Occupation) Convention, 1958 (No.111)**
- ▶ **Workers with Family Responsibilities Convention, 1981 (No. 156)**
- ▶ **Maternity Protection Convention, 2000 (No. 183)**
- ▶ **Domestic Workers Convention, 2011 (No. 189)**
- ▶ **Violence and Harassment Convention, 2019 (No. 190)**

As indicated above, two of the gender equality Conventions - Conventions No.100 and No.111- form part of the eight Fundamental Conventions containing fundamental rights

and principles that all States, irrespective of whether they have formally ratified them or not, have an obligation to respect, promote and realize. Conventions No. 100 and No. 111 are dealt with in Part 3 above.

▶ 10.1 Workers with Family Responsibilities Convention, 1981 (No. 156)

The Convention **applies to all branches of economic activity and all categories of men and women workers, including migrant workers**, with responsibilities concerning their dependent children, and other members of their immediate families who need their care or support.

It requires specific measures to ensure that such family responsibilities do not restrict their participation in economic activity, in particular that ratifying member States develop a **national policy to ensure**

- ▶ **effective equality of opportunity and treatment for men and women workers**, so that they can exercise their right to employment without being subjected to discrimination.
- ▶ Measures should be taken account for the needs of workers with family responsibilities such as child-care and family services and facilities.
- ▶ Taking into account their need in **conditions of employment and social security policies**.

The Convention also requires education to encourage broader public understanding of the principle of equality of opportunity and treatment of men and women workers with family responsibilities. It specifies that:

- ▶ **family responsibilities** cannot be a ground for termination of employment and

52 ILO General Survey, 2016, para 296.

- ▶ provides that measures should be taken in the field of vocational guidance and training, to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

▶ 10.2 Maternity Protection Convention, 2000 (No. 183)

Convention No. 183 provides for the adoption of national legislation to promote the health and safety of the mother and child, and to protect women workers against discrimination based on maternity. It protects the following key rights:

- ▶ **Health protection.** Convention No. 183 requires ratifying member States to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child.
- ▶ The right to a **maternity leave** period. The Convention ensures a woman worker has the right to daily breaks or a daily reduction of hours of work to breastfeed her child.
- ▶ **Maternity benefits.** The Convention provides that women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living.
- ▶ **Return to work.** The Convention protects the **right to return to the same position** and **non-discrimination**. It also prohibits termination of the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work. Women returning to work must be returned to the same position or an equivalent position paid at the same rate.

▶ 10.3 Decent work for Domestic Workers Convention, 2011 (No. 189)

Convention No. 189 affirms the fundamental rights of domestic workers and sets minimum labour standards for them. **All domestic workers** are covered by this Convention, although ratifying States may decide to exclude some categories, under very strict conditions. The rights of **migrant workers, particularly women and girls in domestic work**, is explicitly recognized in the preamble to the Convention.

The Convention establishes particular **safeguards to prevent abuse of migrants**, the establishment of **formalities in the recruitment phase** before national borders, including:

- ▶ a **written contract** that is enforceable in the country of employment, or a written job offer, which should address the terms and conditions of employment. This requirement does not apply to migrant domestic workers who are already within the territory of the country of employment
- ▶ clear conditions under which domestic workers are entitled **to repatriation** at the end of their employment, allowing for flexibility as to conditions for repatriation and how they are specified
- ▶ **cooperation** between member States to ensure the effective application of the provisions of the Convention.

The Convention provides for a framework to ensure **protection of migrant domestic workers from abusive practices by private employment agencies**, including:

- (a) the determination of conditions governing the operation of private employment agencies recruiting or placing domestic workers
- (b) the establishment of an adequate machinery for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies concerning domestic workers
- (c) the adoption of all necessary measures to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies
- (d) the promotion of bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

The provisions of the Convention concerning live-in domestic workers are also of particular relevance for **migrant domestic workers**, given that many of them often live in the household where they are employed. Cognizant of the particular risks arising from these types of situations, the Convention contains several provisions addressing live-in situations. Member States are required to take measures to ensure that live-in domestic workers:

- ▶ Are free to reach agreement with their employers on whether or not to reside in the household;
- ▶ Are not obliged to remain in the household during periods of daily and weekly rest or leave;
- ▶ Are entitled to keep their identity and travel documents in their possession; and
- ▶ Enjoy decent living conditions that respect the workers' privacy.

More generally, Convention No. 189 sets the baseline of standards for domestic workers, including basic rights, which covers:

- respect and protection of fundamental principles and rights at work, as well as effective protection against all forms of abuses
- fair terms of employment and decent living conditions
- information on terms and conditions of employment
- provisions related to hours of work and due remuneration
- measures referring to occupational safety and health, and social security. It also provides for specific standards concerning child domestic workers and dispute settlement.

The provisions of the Convention are to be implemented in consultation with the most representative organizations of employers and workers.

► 10.4 Domestic Workers Recommendation, 2011 (No. 201)

Recommendation No. 201 builds on the provisions of Convention No. 189 and offers practical guidance for the strengthening of national law and policies on domestic work. It refers to several matters not addressed by Convention 189, such as policies and programmes for the professional development of domestic workers, work-life balance, further international co-operation, and provisions regarding statistical data.

Recommendation No. 201 establishes additional measures to ensure the effective **protection of migrant domestic workers** referred to the following key areas:

- assistance services and facilities, for instance through networks of emergency housing and national hotlines
- provision of information to employers and domestic workers
- access to complaint mechanisms and legal remedies
- repatriation services
- international cooperation through the conclusion of bilateral, regional or multilateral agreements to provide equality of treatment of migrant workers in respect of social security, as well as access to and preservation or portability of social security entitlement, and in the monitoring of private employment agencies.

In the context of diplomatic immunity, Recommendation No. 201 encourages member States to adopt policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights, and to cooperate at bilateral, regional, and multilateral level to better address these abuses.

Recommendation No. 201 further calls on the member States which are countries of origin to assist in the effective protection of the rights of migrant domestic workers by informing them of their rights before departure, establishing legal assistance funds, and providing for social services and specialized consular services.

► 10.5 Violence and Harassment Convention, 2019 (No. 190)

Convention No. 190 recognizes the right of **all individuals in the world of work** not to be subjected to violence and harassment.

It defines "violence and harassment" as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment" (article 1(1)(a)). **This covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other forms of violence.**

This instrument protects workers and other persons in the world of work, including:

- employees as defined by national law and practice
- persons working irrespective of their contractual status
- persons in training, including interns and apprentices
- workers whose employment has been terminated, volunteers, jobseekers and job applicants, and
- individuals exercising the authority, duties or responsibilities of an employer.

It requires ratifying States to respect, promote and realize the right of everyone to a world of work free from violence and harassment, in consultation with representative employers' and workers' organizations. Ratifying member States duties include:

- Adopting laws and regulations to define and prohibit violence and harassment.
- Requiring employers to take appropriate steps to prevent violence and harassment.

- ▶ Monitoring and enforcing national laws and regulations regarding violence and harassment and providing easy access to appropriate and effective remedies.
- ▶ Providing adequate and relevant guidance, training, and awareness-raising.

▶ 10.6. Violence and Harassment Recommendation, 2019 (No. 206)

The Recommendation provides that member States should take legislative or other measures to protect **migrant workers**, particularly **women migrant workers, regardless of migrant status**, in origin, transit and destination countries as appropriate, from violence and harassment in the world of work (paragraph 10).

Raising Awareness

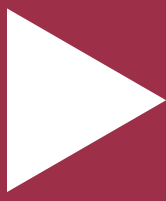
It also requires member States to fund, develop, implement and disseminate public awareness-raising campaigns in the various languages of the country, including those of the migrant workers residing in the country.

These campaigns should convey:

- ▶ the unacceptability of violence and harassment, in particular gender-based violence and harassment
- ▶ address discriminatory attitudes and prevent stigmatization of victims, complainants, witnesses and whistle-blowers.

Labour inspectors and officials should be encouraged to undergo gender-responsive training to identify and address violence and harassment in the world of work, including psychosocial hazards and risks, gender-based violence and harassment, and discrimination against particular groups of workers.





11

PROTECTION OF MIGRANT WORKERS: DISCRIMINATION BASED ON HIV STATUS

► 11.1 HIV and AIDS Recommendation, 2010 (No. 200)

Recommendation No. 200 provides that migrant workers, or those seeking to migrate for employment, should not be excluded from migration by countries of origin, of transit or of destination based on their real or perceived HIV status.

Recommendation No. 200 states that workers

- should not be required to undergo HIV testing or other forms of screening for HIV
- this protection also extends to the requirement to **disclose HIV-related information** about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the ILO Code of Practice on the Protection of Workers Personal Data, 1997, and other relevant international data protection standards.

Domestic Workers

Paragraph 3(c) of Domestic Workers Recommendation, 2011 (No. 201) provides that:

- Member States should ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status

- training, safety instructions and any necessary guidance in the workplace related to HIV and AIDS should be provided to workers in a clear and accessible form with specific reference to **migrant workers** as a category of workers who should benefit from such training and guidance
- international cooperation measures to ensure access to HIV prevention, treatment, care and support services for **migrant workers should be taken by countries of origin, of transit and of destination**, and agreements should be concluded among the countries concerned, whenever appropriate.

How this relates to provisions of Convention No. 97

Convention No. 97 highlights that the security of residence for permanent migrants and members of their families in case of ill health or injury constitutes one of its most important provisions. Where this is not effectively applied, permanently residing migrants may find themselves living under constant threat of repatriation.

Repatriating migrant workers on the grounds of ill health or injury is a practice that the migration instruments explicitly prohibit, unless it falls in the exception of Article 8(2) of the Convention.

▶ 12

PROTECTION OF MIGRANT WORKERS: GOVERNANCE CONVENTIONS

This section describes the four governance conventions underlined by the **ILO Declaration on Social Justice for a Fair Globalization and its Follow-Up**.

Labour inspection is the primary mechanism to secure the enforcement of legislation concerning conditions of work and the protection of workers but is sometimes also used to assist with verifying the immigration status of migrant workers. The main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than the enforcement of immigration law.⁵³

▶ 12.1 Labour Inspection Convention, 1947 (No. 81)

This Convention requires ratifying States to **maintain a system of labour inspection for workplaces in industry and commerce**, with some authorised exceptions with concerning mining and transport.

Primary duties of labour inspection include:

- ▶ securing the enforcement of the legal provisions relating to conditions of work and the protection of workers
- ▶ supplying technical information and advice to employers and workers and
- ▶ bringing to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

Convention No. 81 further sets out a series of principles regarding the functions and organizations of the system of inspection:

- ▶ the duty of professional secrecy and an incompatibilities regime
- ▶ recruitment criteria, such as necessary qualification

- ▶ the determination of the fields of legislation covered by labour inspection
- ▶ the status and terms and conditions of service of labour inspectors and their powers and obligations, which must be necessary to effectively discharge their duties.

Further key points required by Convention No. 81:

- ▶ the mandatory notification of labour inspectorates regarding work-related accidents and occupational diseases
- ▶ the liability for prompt legal proceedings without previous warning and for application of adequate penalties to any person who violates or neglects to observe relevant legal provisions
- ▶ periodically reporting to the ILO concerning the labour inspection activities performed
- ▶ co-operate and collaborate with other government services as well as employers' and workers' organizations.

▶ 12.2 Employment Policy Convention, 1964 (No. 122)

Convention No. 122 requires ratifying States to declare and pursue an active policy designed to promote full employment with a view to:

- ▶ stimulating economic growth and development
- ▶ raising levels of living
- ▶ meeting staffing requirements and
- ▶ overcoming unemployment and underemployment.

Convention No. 122 requires that the active pursuit of three goals:

53 ILO General Survey 2016, para 477.

- Full employment - Work for all who are available for and seeking work;
- Productive employment - Work to be as productive as possible;
- Freely chosen employment - Freedom of choice of employment and full opportunities to obtain and use skills irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

Employment policy is to be pursued by methods that are appropriate to national conditions and practices, taking into account the level of economic development and the mutual relationship between employment objectives and other economic and social objectives. Additionally, consultation with representatives of persons affected by the measures to be taken, particularly employers and workers is required.

This Convention is supplemented by the **Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)**

Part X (paragraphs 39–44) on International Migration and Employment of this Recommendation emphasizes the importance of:

- adopting policies designed to create more employment opportunities and better conditions of work in countries of emigration to ensure that international migration takes place under conditions designed to promote full, productive, and freely chosen employment and to reduce the need to migrate for employment.
- cooperation between countries of destination and countries of origin to establish an **effective alternative to migration** for employment.
- taking measures **to prevent malpractices** at the recruitment or departure stages that may result in irregular entry, or stay, or employment, in another country.
- providing the necessary incentives to facilitate the **voluntary return of nationals** of developing emigration countries who possess scarce skills, and enlisting the cooperation of the countries employing their nationals.
- taking measures by both countries of origin and destination to **prevent abuse in the recruitment for employment** abroad, prevent the exploitation of migrant workers, and ensure the full exercise of the rights to freedom of association and to organize and bargain collectively.
- concluding **bilateral and multilateral agreements** taking full account of existing international labour standards applicable to migrant workers.

► 12.3 Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Similar in content to Convention No. 81, Convention No. 129 requires ratifying member States to establish and maintain a system of labour inspection in agriculture. This Convention also contains obligations and duties relating to the structure and functioning of the system of labour inspection that should be implemented by ILO member States.

Among other groups, labour inspection coverage can be extended to:

- sharecroppers, and similar categories of agricultural workers
- persons participating in a collective economic enterprise, such as members of a co-operative;
- members of the family of the operator of the agricultural undertaking.

► 12.4 Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Convention No. 144 and its accompanying Recommendation No. 152, offer guidance on how ratifying member States may undertake to organize **effective tripartite consultations** between representatives of the government, of employers and of workers on an equal footing.

While this Convention offers flexibility for countries to establish procedures per their national circumstances, it establishes a minimum threshold of annual tripartite consultations on international labour standards and ILO-related activities through written communications with the constituents involved.

► Additionally, consultation with representatives of persons affected by the measures to be taken, particularly employers and workers is required.



CONCLUSION

Providing a framework for international cooperation promoting a rights-based approach to labour migration.

Since its inception, the ILO has been concerned with the protection of the rights of migrant workers, including taking steps to prevent migration in irregular conditions, and has been conscious about the complex balance of social, economic, and political considerations that this involves.

The labour migration instruments call for international cooperation to promote a rights-based approach to labour migration. They are constructed to

- ▶ ensure fair migration and decent work
- ▶ benefit all countries of origin, transit and destination and
- ▶ protect migrant workers

The migration instruments respond to many of the current migration challenges experienced by Member States and are constructed to provide flexibility of application for Member States that choose to ratify them.⁵⁴

Seeking assistance from the ILO office

If you are a workers' or employers' organization the ILO Office may be able to assist in better understanding or promoting Migrant Workers rights.

The ILO Office also provides assistance to Member States seeking to ratify instruments, develop national equality policies incorporating the provisions of the instruments or develop measures aimed at integrating returned migrant workers.

The information provided in this pamphlet supplements the ILO brochure **Why is it Important to Ratify and Effectively Implement ILO Conventions Nos. 97 & 143 on Migrant Workers?** and is intended to be used by workers and employers organisations to support increased ratification of the migration instruments.

Keys to good governance of labour migration

The international labour standards summarised in this pamphlet as supplementary to the dedicated Conventions Nos 97 and 143 on migration are retain their relevancerelevant to for all migrant workers irrespective of their origin, skills and status.

Migrant workers continue to require specific protection to ensure that

- ▶ their rights are respected
- ▶ the need to address irregular migration is increasing in importance and
- ▶ the potential for international cooperation between countries of origin, transit and destination as well as social partners.

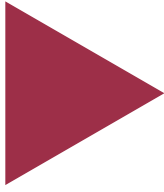
The migrant workers instruments have the potential to contribute to effective governance of the considerable current migration challenges faced by the ILO's tripartite constituents.⁵⁵

This document is part of the ILO effort to improve widespread knowledge of the migration instruments and to assist a wider acknowledgement, ratification, and implementation of the instruments, particularly amongst the Member States in Africa.

The document is also meant to assist social partners in "raising their voices" on the importance of the international labour standards in protecting the rights of migrant workers in countries of origin, transit and destination.

⁵⁴ ILO General Survey 2016, paragraph 657.

⁵⁵ ILO General Survey 2016, paragraph 654.



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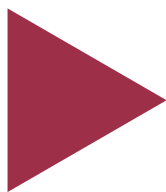
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LIST OF ACRONYMS

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CGM	Global Compact for Safe, Orderly and Regular Migration
ILO	International Labour Organization
ILS	International Labour Standards
SDG	Sustainable Development Goals

