

Migrant Workers' Rights

A Handbook

Trade union action is based on:

- *The solidarity of all workers – migration for work is a labour issue, therefore trade unions have a direct responsibility to organize and assist all workers, national or migrant, documented or undocumented;*
- *The recognition that “all workers – immigrant, native-born, documented or undocumented – should have the full protection of our system of workplace rights and freedoms”;*
- *The recognition that abuse of the rights of migrant workers will also erode the rights of native workers;*
- *The social role of trade unions – for the promotion of gender equality, the elimination of violence against women, the fight against racism and xenophobia, etc.*



International Labour Organization

May 2007

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First published 2006
Second Edition, 2007

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International Labour Organization
Migrant Workers' Rights - A Handbook

ISBN 978-92-2-119992-2 (print)
978-92-2-119993-9 (web pdf)

Also available in Bahasa Indonesia: *Hak-hak Pekerja Migran - Buku Pedoman*
ISBN No. 978-92-2-819992-5 (print), 978-92-2-819993-2 (web pdf)
Jakarta, International Labour Office, 2007

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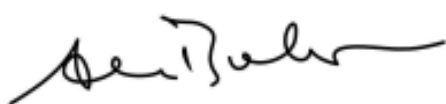
Foreword

Economic and demographic differences, both within a country, and between countries/regions, contribute to the movement of people across national borders. Each year, over 400,000 Indonesians migrate for work abroad, motivated by a desire for higher wages and better opportunities – for themselves and their families.¹

Overall, migration for work is a great opportunity for many Indonesians, but for some, it can turn into a nightmare. They can suffer poor working, and living, conditions in comparison to other workers in the host countries. Although there are international standards to protect them, their rights as workers are often undermined. In the most precarious situation are irregular migrant workers – their irregular status leaves them vulnerable to abuse and exploitation by rogue elements.

It is in the context of international labour migration, and the promotion and protection of migrant workers' rights, that this Handbook has been prepared to provide guidance and reference. The Handbook discusses the issue of labour migration in two ways: (1) through an introduction to labour migration – dynamics, causes, and consequences; and (2) through an outline of the international instruments and mechanisms that can be used to better promote and protect migrant workers' rights.

The Handbook is aimed at assisting trade unions to better understand the labour migration debate, and the international instruments that provide minimum benchmarks that governments can refer to when formulating appropriate policies for the protection of migrant workers, and the prevention of exploitation and abuse. Non-government organisations and government departments may also find the Handbook useful as a reference in the course of their work.



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1 Sita Aripurnami, *Report on the Mapping of Migrant Labour Issues*, ILO Jakarta, 2004, p.4

Introduction

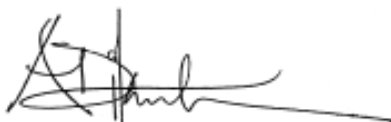
This Handbook has been developed to contribute to a better understanding of migrant workers' rights under international human rights instruments. It provides a *basic* introduction to the labour migration debate, and international human rights of migrant workers and their family members. It draws on the vast number of publications that have been written on various aspects of labour migration. More particularly, it has been written to assist trade unions familiarise themselves with:

- ❖ the concept of human rights in relation to migrant workers;
- ❖ the obligations of the United Nations System and UN Member States to promote and protect these rights;
- ❖ how the International Labour Organisation and the United Nations discharges this obligation;
- ❖ other international mechanisms developed by non-government international organisations; and
- ❖ how national organisations, including trade unions and civil society organisations, can access the international mechanisms to ensure effective implementation of international instruments that Member States have ratified.

Although the Handbook only focuses on international human rights in relation to migrant workers – to guide users through the broad human rights framework that most governments around the world have agreed to abide by – it should be noted that human rights instruments pertaining to migrant workers also exist at regional and national level

As the Handbook is only a source of reference and guide on migrant workers' rights, it does not attempt to cover the subjects' exhaustively. Topics covered in the Handbook can be examined in detail in other publications, listed at the end of the Handbook.

Lastly, the views and opinions expressed in the Handbook are strictly those of the author.



Asenaca D. Colawai
Jakarta
December 2006

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List of Abbreviations

BWI	Building and Wood Workers International
CAT	Committee against Torture
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFOA	Committee on Freedom of Association
CRC	Committee on the Rights of the Child
CRMW	Committee on the Rights of Migrant Workers
EI	Education International
GATS	General Agreement on Trade in Services
GB	Governing Body
GUFs	Global Union Federations
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Union
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICPD	International Conference on Population and Development
ICTOC	International Convention against Transnational Organized Crime
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IFAs	International Framework Agreements
IFJ	International Federation of Journalists
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Metal Workers' Federation
IOM	International Organization for Migration
ITF	International Transport Federation
ITGLWF	International Textile, Garment and Leather Workers' Federation
ITUC	International Trade Union Confederations
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations
MNCs	Multinational Companies
MNEs	Multinational Enterprises
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PSI	Public Services International
TUAC	Trade Union Advisory Committee
UN	United Nations
UN CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN CEDAW	Convention on the Elimination of Discrimination Against Women
UN CRC	Convention on the Rights of the Child
UNI	Union Network International

Introduction

What is Migration?

To **"migrate"** means "to move from one place to another." This movement of people can take place within a country – this is called **"internal migration"**. It can also take place when people move out of their home country and into another – called **"external migration"** or **"emigration"**.

Why do People Migrate?

People migrate for a variety of reasons. Some people migrate for personal and/or professional development, and a desire to travel and see the world.

Some migrate because of events happening around them that are beyond their control, e.g. refugees of civil strife, and natural disasters such as famines, droughts, earthquakes, floods.

Still others migrate for want of a better standard of living for themselves and their families, including gainful employment, decent work, human security, and protection of fundamental rights and freedoms.

What is "Labour Migration"?

"Labour migration" is the term used to describe the movement / migration of people, from one place to another, for purposes of employment or finding work. Such persons are generally called **"migrant workers"**. Labour migration includes various types of migrant workers, ranging from the less skilled contract labourers to the semi-skilled and highly skilled migrants.

In the context of labour migration, generally, the countries where migrants come from are called **"sending countries"** and the countries where people head towards are called **"destination countries"** or **"host countries"**.

Who is a "Migrant Worker"?

The migrant worker is not a product of the twentieth century. Women and men have been leaving their homelands in search of work elsewhere ever since payment in return for labour was introduced. The difference today is that there are far more migrant workers than in any period of human history. There is no continent, nor region of the world, which does not have its contingent of migrant workers.

The International Labour Organisation (ILO) defines a **"migrant worker"** as a person who migrates, or has migrated, from one country to another, *with a view to being employed by someone other than him/herself*, including any person regularly admitted, as a migrant, for employment.²

2 ILO, *Migration for Employment Convention (Revised)*, 1949 [No. 97], Article 11 (1).

The ILO Convention was written in 1949 and excluded some categories of workers from the definition of migrant worker, reflecting the migratory trends then. Categories of workers excluded are:³

- frontier workers;
- artists and members of liberal professions who have entered the country for only a short time;
- sea-farers;
- self-employed persons;
- persons coming specifically for purposes of training or education;
- persons on a specific business or assignment, for their organisation, in another country, for a limited or defined period of time, and who are required to leave the country upon completion of their duties or assignment; and
- workers who stay in a country illegally.

Most of these categories have now been included in the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2000, reflecting the up-to-date understanding of migratory trends from the perspectives of both the sending, and destination, countries.⁴ Categories of workers included are:⁴

- frontier workers, who reside in a neighbouring State, to which they return daily or at least once a week;
- seasonal workers;
- seafarers employed on vessels registered in a State other than their own;
- workers on offshore installations that are under the jurisdiction of a State other than their own;
- itinerant workers;
- migrants employed for a specific project; and
- self-employed workers.

Trends in Labour Migration

Over the last 45 years, the number of persons living outside their country of birth has more than doubled, from an estimated 75 million in 1960 to nearly 191 million in 2005.⁵ Worldwide, one in every 35 persons is a migrant. This trend of increasing international migration and migrants in absolute terms can be expected to continue in the coming decades. Nevertheless, it should be borne in mind that, during the same period, the world's population also grew twofold and the proportion of migrants in the total population remains about 3 per cent.⁶

Estimates put the number of migrant workers at over 86 million,⁷ and, although there has been an increase, migrant workers represented no more than 4.2 per cent of the industrialized countries' total workforce in 1998.⁸ While the majority of international migrants originate from developing countries, it is not only a "South- North" or "East-West" phenomenon. Nearly half of all reported migrants move from one developing country to another,⁹ with intra-regional flows also showing significant increases, e.g. labour migration within the EU bloc, or within the Asian region, or within the Pacific region, or along the fringes of the Pacific Rim countries. Appendix 1 provides some facts and figures of the international migration situation

3 ILO, above n 2, Article 11 (2).

4 UN, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 2000, Article 2 (2).

5 UN, *Trends in Total Migrant Stock: The 2005 Revision*, CD-ROM Documentation, UN Doc. POP/DB/MIG/rev.2005/Doc (February 2006), Department of Economic and Social Affairs, Population Division, New York/Geneva.

6 IOM, "Compendium of Labour Migration Policies and Practices in Major Asian Labour Sending Countries", in *Labour Migration in Asia – Trends, Challenges and Policy Responses in Countries of Origin*, IOM, Geneva, 2003.

7 ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI, International Labour Conference, 92nd Session, ILO, Geneva, <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>, 2003.

8 ILO, above n 7.

9 ILO, above n 7, p. 15.

as of the end of 2005, with the same data highlighted by the United Nations Secretary-General, Mr Kofi Annan, in his report to the United Nations General Assembly in June 2006.¹⁰

Driving Forces

The driving forces of international labour migration are fuelled by three general but key determining factors:¹¹

- the “pull” of changing demographics and labour market needs in high income countries;
- the “push” of wage differentials and crisis pressures in less developed countries; and/or
- established inter-country networks based on family, culture and history.

From the migrant’s point of view, migration is often a livelihood strategy, since most migration is for economic purposes. It is an outcome of decisions made by individuals and families that are seeking the best solution, given the opportunities and constraints they face.

Type of Migratory Flows

A large proportion of labour migration is unauthorised. This is a negative feature of the phenomenon, and measures for preventing or reducing irregular labour migration are not discussed in detail in this Handbook.¹²

The labour market needs both skilled and lower skilled workers. While destination countries are now competing for highly skilled workers, many host societies are becoming more hesitant about admitting lower skilled workers.

Nevertheless, there are frequently acute shortages of labour in lower skilled sectors in some countries, given that these are jobs that nationals are reluctant to take and that, consequently, governments are designing temporary worker programmes to meet labour needs in these sectors, e.g. the work permit scheme; temporary forms of labour migration – such as seasonal labour migration schemes, temporary schemes for specific employment sectors, trainee workers schemes, domestic work, contract workers, and care givers.¹³

Feminisation of Labour Migration

As indicated in Table 1, below, almost half of the 191 million migrants in the world today are women.¹⁴ While women have always migrated as spouses and family members, they are increasingly migrating independently.

Women migrants take up both skilled and less skilled employment in destination countries, although in both cases, these tend to be gender-specific jobs or jobs in sectors where women predominate. As skilled migrants, women frequently work in the welfare and social professions – as teachers, social workers and nurses. As less-skilled migrants, they are mainly employed as domestic or care workers, as “entertainers”, in the garment manufacturing industry and, to a lesser extent, in agriculture.¹⁵

10 UN, *Globalisation and Inter-dependence: International Migration and Development*, Report of the UN Secretary-General, Sixtieth Session of the UN General Assembly, Agenda Item No. 54 (c), June 2006.

11 OSCE, IOM, and ILO, *Handbook on Migration*, Geneva, 2006. pdf., p.18

12 Refer to the Bibliography section at the end of the Handbook for further references.

13 OSCE, IOM, ILO, above n 11, pp. 113 – 131.

14 UN, above n 5, p. 3

15 Piper, N., Satterthwaite, M., 2006 “Migrant Women” in R. Perruchoud and R. Cholewinski (eds.), *International Migration Law: Developing Paradigms and Key Challenges*, Asser Press, forthcoming, quoted in the OSCE, IOM, ILO *Handbook on Migration*, pdf, Geneva, 2006.

Table 1: International Female Labour Migration Flows
Percentage of Female Migrants among the Total Number of International Migrants, by Major Area, 1960 – 2000

Major Area	1960	1970	1980	1990	2000
World	46.6	47.2	47.4	47.9	48.8
More Developed Regions	47.9	48.2	49.4	50.8	50.9
Less Developed Regions	45.7	46.3	45.5	44.7	45.7
Europe	48.5	48.0	48.5	51.7	52.4
North America	49.8	51.1	52.6	51.0	51.0
Oceania	44.4	46.5	47.9	49.1	50.5
North Africa	49.5	47.7	45.8	44.9	42.8
Sub-Saharan Africa	40.6	42.1	43.8	46.0	47.2
South Asia	46.3	46.9	45.9	44.4	44.4
East & South East Asia	46.1	47.6	47.0	48.5	50.1
Western Asia	45.2	46.6	47.2	47.9	48.3
Caribbean	45.3	46.1	46.5	47.7	48.9
Latin America	44.7	46.9	48.4	50.2	50.5

Source: OSCE, IOM, ILO, *Handbook on Migration*, Geneva, 2006, p. 19.

A case in point are Indonesian migrant workers. In Indonesia, it is estimated that at least 72% of Indonesian migrant workers are women, with 92% of the 72% employed as domestic workers in countries like Malaysia, Singapore, Brunei Darussalam, Hong Kong, Taiwan, South Korea, Jordan, Saudi Arabia, Kuwait, Arab Emirates, and Qatar.

Table 2: Sex Disaggregated Data on Indonesian Migrant Workers

Period	Female	Male	Total
1969 - 1974	--	--	5,624
1974 – 1979	3,817	12,235	16,052
1979 – 1984	55,000	41,410	96,410
1984 – 1989	198,735	93,527	292,262
1989 – 1994	442,310	209,962	652,272
1994 – 1997*	503,980	310,372	814,352
1999 – 2002	972,198	383,496	1,355,694

*The 1998 data is not available

Source: "Bilateral and Regional Agreement on the Placement and Protection of Indonesian Migrant Workers", p.1, 2003, in S. Aripurnami, *Report on the Mapping of Migrant Labour Issues*, ILO Jakarta, 2004, p.4.

Of the countries listed, only Hong Kong provides a legal framework for the protection of domestic workers rights, such as working hours, standardised wages, leave, and other conditions of employment.¹⁶ However, the two main destinations for Indonesian migrant workers are Malaysia (40%) and Saudi Arabia (37%), where they work as housemaids, but legal protection, access to justice, and the promotion of migrant workers' rights are minimal, if not at all.

A much less sizeable portion of the migrants are male, working in construction, plantation and forestry industries in the Middle East, Malaysia, Singapore, and East Asia. Their conditions of work are not any better than those of migrant domestic workers.

In a number of European countries (particularly in France, Italy and Spain), the Gulf States, and in some countries in the Middle East (e.g. Jordan and Lebanon), the domestic service sector remains the most important employment category for migrant women.¹⁷

¹⁶ Sita Aripurnami, above n 1, p.4

¹⁷ OSCE, IOM, ILO, above n 11, pp. 113 – 131.

As more women enter the labour market, the demand for domestic services and care work has also increased, particularly in developed countries. In addition, the ageing populations in developed countries have led to a higher dependency rate, giving rise to the demand for nursing and care services. Women are deemed the most suitable for such work given the predominant practice of division of labour according to gender roles. The vast majority of them work as housemaids, entertainers, nurses, and factory workers, as native workers do not want to take such jobs. This has contributed to the growing feminisation of international labour migration.¹⁸

At the same time, because of the gender-segregated sectors in which many migrant women tend to work (such as domestic services) and due to the fact that they are much more prone to suffer discrimination on account of their gender than their male counterparts, women migrants fall victims of trafficking and other exploitative practices. In this respect, they often suffer 'double' discrimination – as women and as migrants. Migrant domestic workers are especially vulnerable because they work in private homes where government authorities cannot conduct adequate inspection. The problems they encounter include sexual harassment, rape, non-payment or underpayment of wages, verbal/physical abuse, and so on.¹⁹

While these abuses and exploitation are certainly widespread, the migration of women can also bring numerous benefits to themselves and their families, and also to the development of their countries of origin. Women migrants are, thus, increasingly becoming important actors in the economic transformation taking place in their home societies. Consequently, it is important that participants in policy development, and policy-makers, become more aware of the significant role that women play in labour migration and the specific issues their migration raises – they require special attention because the kind of jobs they typically occupy (domestic work, low-paid manufacturing, nursing, etc.) are also those where exploitation frequently occurs. They should also ensure that gender aspects of labour migration are mainstreamed into the relevant policies developed both in countries of origin and destination.²⁰

Impact of Labour Migration

As Table 3 below shows, labour migration can have different effects for sending and destination countries, depending on the volume, composition and characteristics of the migratory flows, as well as the skills, age and sex of the migrants, and the prevailing employment situation in the destination country.

Labour migration can benefit countries at both ends of the migration path. Many developed countries face skills shortages in a range of professions, e.g. in the IT and health sectors. It would be possible for developing countries to fill these needs through targeted education and skills training. Migration of semi- and unskilled migrants are also able to fill the gap in agriculture and other services sectors in developed countries. The decision to recruit migrant workers is usually in response to an insufficiency or lack of the necessary skills, or the impossibility to mobilize them rapidly enough to meet urgent labour demand.

Immigration has also been portrayed as being able to reduce the pressure of ageing populations and to contribute to maintaining the labour force at adequate levels in advanced countries, and to reducing the high unemployment pressure in many developing countries.

More importantly, labour migration is seen as a contribution to development support, especially through remittances sent home by migrant workers, the transfer of know-how, and the creation of businesses and trade networks. Many migrants acquire new skills in the host country, either through higher education and training not readily available at home, or useful work experience. Such skills may be relevant to the development needs of their countries of origin.

18 ILO, above n 7, p. 10

19 OSCE, IOM, ILO, above n 17

20 OSCE, IOM, ILO, above n 17

Table 3: Potential Advantages & Disadvantages of Emigration & Immigration

THOSE AFFECTED	EMIGRATION (in sending countries)		IMMIGRATION (in destination countries)	
	Potential Advantages	Potential Disadvantages	Potential Advantages	Potential Disadvantages
For Migrants or Individuals	Employment Greater income Training and/or Education New cultural experiences Meeting new people	Discontinuity; Loss of seniority Bad working or living conditions Lower work status; Loss of skills Racism and/or discrimination Separation from family; Adverse impact on children	Services are available, freeing women to enter the labour force Cheaper goods and services Richer cultural life Learning about other countries	Competition for jobs; Marginalization of the less skilled Lower local wages Crowded schools Strange languages and customs
For companies	Skills of returning migrants Lucrative business for the recruitment industry Extra business for communications and travel companies	Losing skilled workforce Labour shortages that drive up wages	Cheaper, and more flexible, labour Workforce diversity Larger markets and economies of scale	Less stable workforce Dependence on foreign labour for certain jobs
For the country as a whole	Reduced population pressure Lower unemployment Foreign currency remittances Knowledge and skills of returnees Building transnational communities	Losing younger people Coping with returnees Loss of potential output, and tax, revenues Brain drain and loss of better workers Social disruption and a culture of emigration Increasing inequality	Rejuvenating the population Larger workforce; Lower inflation Higher GDP; Capital brought by migrant investors Brain gain More diverse and energetic population Tax income from younger workers	Social friction Delay in the upgrading of technology Increased income inequality Costs of integration programmes More social stratification; Immigrant ghettos Cost of social services and welfare benefits increases

Source: ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI, International Labour Conference, 92nd Session, 2004, p. 18

Irregular Labour Migration

Irregularities in migration can occur at various points in the migration cycle – recruitment, departure, transit, entry and return. They can be committed *against the migrant*, e.g. trafficking. Alternatively, they can be committed *by the migrant*, e.g. smuggling, or over-staying a visa.

Irregular migration is not confined to developed countries. Many parts of Asia, Africa, and Latin America have long and porous borders – people commonly cross without going through immigration posts, e.g. between the borders of Indonesia and Malaysia, and between the borders of Myanmar and Thailand. Most of such migratory flows might be considered informal, as the authorities are aware of, but tolerate, them – either because they do not have the capacity to police borders adequately, or because they recognise that immigrants serve a useful purpose for certain interest groups and communities.²¹

According to an ILO Survey, Asia is thought to have several million irregular migrants, with the largest numbers likely to be Nepalese and Bangladeshis in India, Afghans in Pakistan and the Islamic Republic of Iran, Indonesians and Filipinos in Malaysia, and Burmese in Thailand.²²

Irregular migration flows are indicative of the fact that demand for regular migrant workers is not being matched by the supply, resulting in migrants serving as buffers between political demands and economic realities. Irregular migrants often pay for the service of smugglers if they have to travel long distances – smugglers might conceal them in trucks or ship containers, supply them with false documents, or bribe immigration officials.²³

The dangers and risks for intending migrants, particularly in the recruitment and pre-departure stages of migration, especially for those who do not have access to reliable and timely information, include:²⁴

- Illegal recruitment;
- Overcharging of fees;
- Forced labour;
- Debt bondage;
- Bonded labour;
- Falsification of documents;
- Deception with regard to the nature and conditions of employment, including contract substitution and the mail-order bride trade;
- Exploitation and abuse while waiting for the job to materialise or to be sent abroad;
- Lack of preparation for employment abroad, including lack of pre-departure training;
- Forced/coerced recruitment, including being kidnapped or sold to illegal recruiters or traffickers;
- Hazardous journey to the country of destination.

Where most problems begin for unknowing victims is in the recruitment stage. **Recruitment** is the engagement of a person in one territory on behalf of an employer in another country – a process of hiring for a definite job, or a promise by a recruiter to find a job, for a potential migrant worker. It covers direct engagement by an employer, or his or her representative, as well as operations conducted by intermediaries, including public and private recruitment bodies. Modes and channels of recruitment include:²⁵

- Through government-regulated / managed arrangements;
- Through private recruitment agents / agencies;
- Through informal networks / kin / family;
- Directly by the employer.

21 OSCE, IOM, ILO, above n 17.

22 OSCE, IOM, ILO, above n 17.

23 Taran, P., and Moreno-Fontes G. C., 2002, *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organised Crime*, Geneva, ILO, International Migration Programme, Paper 1E, in ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI, International Labour Conference, 92nd Session, 2004, p. 12.

24 ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 3 – Recruitment & Journey for Employment Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 17.

25 ILO, above n 24, p.9 – 14.

Illegal recruitment, however, happens. **Illegal recruitment** refers to any form of canvassing, procuring, promising, contracting or transporting of workers for employment abroad by an unlicensed agency/agent or directly by an employer that is not in conformity with national laws and regulations.

Illegally recruited migrants are especially vulnerable to the risks and dangers of exploitation or victimization by clandestine organizations, agencies, recruiters and/or by unscrupulous employers. Illegal recruitment is linked to various forms of *unauthorized entry, stay or employment in the destination country*.

Unauthorised Entry

The **trafficking** and **smuggling** of people across national borders are examples of methods of “unauthorized/illegal entry”, as they have entered without any, or appropriate, visas of entry, be it a tourist visa, work visa, student visa, business visa, etc.

What is **trafficking**? It is a form of illegal recruitment, as it is the recruitment, transportation, transfer, harbouring or receipt of persons by means of:²⁶

- A threat or use of force or other forms of coercion;
- An abduction, fraud, or deception;
- An abuse of power;
- An abuse of someone’s position of vulnerability; or
- The giving, or receipt, of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

When trafficked, people are essentially treated as commodities. Often, the same people or gangs are involved in trafficking and smuggling. In most countries, trafficking and smuggling of persons are crimes. Trafficked migrants are the victims, and should not be liable to prosecution.²⁷ Trafficking in human beings is a *violation of the individual*, where the trafficked persons themselves are the victims of the crime.

The “smuggling” of migrants, on the other hand, is the procurement of the illegal entry of a person into a State of which a person is not a national or permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit. Smugglers provide services to willing customers, acting as extra-legal travel agents.²⁸

Being smuggled is not the same as being trafficked. **Smuggling** may involve no coercion whatsoever. The smuggled person, desiring to reach a destination country where legal channels of migration have been blocked off, may enter into an entirely *consensual contract* in order to achieve clandestine and illegal migration. In principle, the smuggling of persons constitutes an illegal border crossing and is therefore a *violation of the rights of the State*.

Unauthorised Stay

Where there is “unauthorized stay” is where an individual has entered illegally and does not have the relevant entry visa, or where an individual has entered legally but stays in the country beyond the legal duration (i.e. overstays), e.g. entering a country legally on a 3-months tourist visa and then staying beyond the 3 months.

Unauthorised Employment

“Unauthorized employment” can be found where an individual has entered legally or illegally, does not have a work visa/permit but is earning an income because they have found a job somewhere in the destination country.

²⁶ UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000, Article 3.

²⁷ ILO, above n 11, p. 12.

²⁷ ILO, above n 11, p. 12.

²⁸ ILO, above n 27.

Situations of unauthorized entry, stay, or employment are always irregular (illegal and undocumented), leading to incidences of **forced labour** or **bondage** (i.e. bonded labour, or debt bondage).

What is **forced labour**? It refers to all work or service which is exacted from any person under the *menace [threat] of any penalty*, and for which *the said person has not offered himself [or herself] voluntarily*.²⁹ The “menace of penalty” can take multiple forms. The most extreme involves physical violence or restraint, or even death threats to the victim or relatives, with the subtler forms sometimes of a psychological nature. Some examples of forced labour are:³⁰

- threats of denunciation to the police or immigration authorities when a victim’s employment status is irregular , i.e. undocumented;
- denunciation to village elders, in the case of girls forced into commercial sex trade in the cities;
- economic penalties linked to debts in order to exact bonded labour;
- non-payment of wages or the threat of loss of wages, accompanied by threats of dismissal if a worker refuses to do overtime beyond the scope of their contract or national law; or
- threat of confiscation of identity papers in order to exact forced labour.

Forced labour, thus, represents a severe violation of human rights and restriction of human freedom – it cannot be equated simply with low wages or poor working conditions; nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives.

Bondage, on the other hand, is generally understood to be a system of forced labour, in which individuals or families are made to forfeit basic rights for the purpose of honouring a status of financial obligation.³¹ Known incidences include debt **bondage** and **bonded labour**.

“**Debt bondage**” is the status or condition arising from a pledge by a debtor of his personal services, or of those of a person under his/her control, as security for a debt if the value for those services, as reasonably assessed, is not applied towards the liquidation of the debt, or the length and nature of those services are not respectively limited and defined.³²

A “**bonded labourer**” is a worker who renders service under conditions of bondage arising from economic considerations, notably indebtedness through a loan or advance. Where debt is the root cause of the bondage, the implication is that the worker (or dependents or heirs) are tied to a particular creditor for a specified or unspecified period, until the loan is repaid.³³ To illustrate, a grandfather may incur a debt from an employer. The employer puts him to work at a rice mill or brick kiln to pay off the debt. The son continues working to pay off the debt as soon as he’s old enough, and the grandson ends up in the same situation. Should anyone leave the mill, they are tracked down and beaten.³⁴ This has been the experience of some migrant workers.

Not all “debt bondage” is forced labour. It should also be distinguished that “debt bondage” may be of a relatively short duration in obligation, while “bonded labour” is a derivative of traditional practices and forms of, for example, agricultural serfdom.³⁵

29 ILO, *Forced Labour Convention, 1930 (No. 29)*, Article 2 (1). Forced labour can never be used for the purpose of economic development, or as a means of political education discrimination, labour discipline, or punishment for having participated in strikes, as per the prescription of the ILO Abolition of Forced Labour Convention, 1957 (No. 105), Article 1.

30 ILO, *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, 2005, p. 5.

31 ILO, above n 30.

32 UN, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 1965, Article 1 (a).

33 OECD, *Bilateral Labour Agreements: Evaluation and Prospects* - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003, p.5.

34 P. Parameswaran, *RI Woman’s Mutilation Highlights Asia’s Human Trafficking Woes*, in the Jakarta Post, Wednesday 7 July 2006.

35 ILO, above n 30, p. 5.

Why do People continue to Seek and Use Irregular Migration Channels given the Dangers and Risks?

Some of the reasons cited for the continued use of irregular migration channels are as follows:³⁶

- Intending migrants have limited access to accurate and reliable information;
- They lack the time to search for legal channels;
- Very restrictive, complicated, time-consuming or very costly procedures involved in legal migration;
- Restrictive migration policies, resulting in potential and intending migrant workers seeking illegal recruitment channels, making them more vulnerable to entrapment by traffickers;
- They lack financial resources to pay the legal recruitment fees;
- The nature of the work sometimes forces intending migrants to rely on fraudulent and dubious recruiters and agents; and
- Illegal, unscrupulous recruiters may also actively seek out women as being more gullible than men.

Vulnerabilities of Migrant Workers in Destination Countries

The experience of working and living in a foreign country can be a liberating and empowering one, and many migrant workers – and their families and societies – benefit overall from the experience. However, employment in a foreign country can also be fraught with risks and dangers. In the destination country, migrant workers are vulnerable for as long as they are outside the jurisdiction and protection of the laws of their own country, and are not entitled to the full range of protection and benefits of the destination country.³⁷

Rising unemployment, economic difficulties and terrorist threats has given rise to xenophobia and racism, at times resulting in a hardening of attitudes towards migrants in general. Women migrant workers tend to be at greater risk to discrimination, exploitation, abuse, and forced labour than men migrant workers – because the labour market in the destination country reproduces the gender division of labour and inequalities of their home country.³⁸

In the countries of destination, migrant workers are often in situations of double, triple, or even fourfold discrimination, disadvantage, marginalisation, or vulnerability – because they are foreigners relative to nationals, women relative to men (for the women migrant workers), having characteristics such as language, culture, ethnicity, or religion that is different from those of nationals and, importantly, because of the kinds of jobs that most migrant workers go into. Table 4, below, identifies why migrant workers' vulnerabilities arise in destination countries.

Table 4: Migrant Workers' Vulnerabilities in Destination Countries

Specific Reasons for Migrant Workers' Vulnerabilities in Destination Countries
• The persistence of gender stereotypes and occupational segregation in the international labour market; • The lack of labour and social protection; • Discriminatory immigration policies; • Legal illiteracy and fear of the authorities; • Dependent employment relationship; • Sometimes individualized and isolated work environments; • Lack of organization and representation; and • Xenophobia and stigmatisation.

Source: ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 4 – Working & Living Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 10.

³⁶ ILO, above n 24, p. 18

³⁷ ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 1 – Decision Making and Preparing for Employment Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 15 – 23.

³⁸ ILO, above n 37.

As a result of these vulnerabilities, the discrimination, exploitation, and abuse of migrant workers manifests itself through employment-related violations, examples of which are noted in Table 5, below.

Table 5: Types of Discrimination Faced by Migrant Workers in Destination Countries

Types of Discrimination, Exploitation and Abuse that Migrant Workers may Face in Destination Countries	
Violation	Manifestation of the Violation
Violation of employment contract, or no contracts	– Contract substitution – Non-issuance of employment contract – Hiring for non-existent jobs – Arbitrary termination of contracts
Poor working and living conditions	– Very low wages, often below the country's minimum wage levels – Unequal pay for work of equal value – between women and men; between nationals and migrants; and between migrant workers from different countries of origin. EXAMPLE: In Singapore the wage structure for foreign domestic workers is tiered, with Filipinos receiving higher wages than Indonesians or Indians. In Hong Kong too, Indonesians receive lower wages than Filipinos or Thais. In Malaysia, Filipino domestic workers earn a minimum of RM\$450 per month while Indonesian domestic workers earn an average of RM\$350 on the grounds that the former generally possess a higher level of education and are able to converse in English.³⁹ – With-holding of wages. – Very long hours of work or work over-load, i.e. working for more than 12 hours. – Doing multiple jobs. – No holidays or rest days. – Inadequate food.
Limited freedom of movement	– In destination countries all over the world, it is very common (mal)practice for employers to with-hold the passports or travel documents of the migrant worker(s). Without their official papers, the migrant worker is effectively tied to the employer. – For women migrant workers in domestic work or the entertainment industry, many employers restrict and keep a tight control of their movements. EXAMPLE: In Malaysia and Singapore, the governments charge a levy for hiring a migrant worker and in addition impose a security bond on the employers to "serve as a deterrent so that the migrant workers do not abscond on their employment contracts". In Singapore, the bond is Singapore \$5,000; in Malaysia RM\$500. Using the pretext of safeguarding and protecting the migrant worker from being lured into running away, the employers subject her to confinement to the home, restrict her freedom of movement and mobility, and give her no rest days to minimize her opportunity of communication with others.⁴⁰

39 ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 4 – Decision Making and Preparing for Employment Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 21.

40 ILO, above n 39, p. 26 and 27. Also see I. Josiah, S.F. Lee and J. Kee, "Protecting foreign domestic workers in Malaysia: Laws, Policies, Implications and Intervention," Paper prepared by the Women's Aid Organisation for the Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, Hong Kong SAR, February 16-19 2003, p. 11.

Types of Discrimination, Exploitation and Abuse that Migrant Workers may Face in Destination Countries

Violation	Manifestation of the Violation
Harassment and violence	– Cases of ill treatment and violence which can often be life threatening against migrant women have been systematically reported – countless reports of beatings and other forms of physical violence and torture inflicted by employers on their migrant workers – some of which are so serious that they make headlines in the local news and the destination country authorities are pressured into taking legal action.⁴¹ – Migrant workers, irrespective of the nature of employment, are highly vulnerable to harassment, abuse and violence not only in the workplace but also in the street and public places and by the local authorities while in detention – as a result of their migrant status, gender, class, race. The various forms of harassment, abuse and violence include: • Verbal abuse; • Psychological abuse; • Physical abuse and violence; • Sexual harassment and • Sexual violence and rape.
Health and safety risks and lack of social protection	– The physical health of migrant workers often suffers due to the conditions of the worksite and the informal, unprotected nature of their work. Many also suffer emotional and psychological stress related to the separation from home and family and the isolation in a strange land. – Women migrant workers are in the high-risk group for sexually transmitted infections (STIs), unwanted pregnancies, and HIV/AIDS – because they lack information, have limited or restricted access to counselling and health care services, and are vulnerable to sexual violence and rape. – Workers in the entertainment industry, including prostitution, are especially vulnerable, particularly as they are not able to negotiate condom use. Yet, all too often, the irony is that women migrant workers are blamed as either causes or contributors of communicable diseases, STDs and HIV/AIDS, unwanted babies and abortions, in addition to social ills, including alcoholism. – Compounding the poor health status of the migrant workers is the lack of social protection; they do not have access to affordable and easily available health care in the destination country. EXAMPLE: In Malaysia, migrant workers pay two times as much for medical treatment in public hospitals and normally do not receive the quality of treatment accorded to nationals.⁴²

⁴¹ ILO, above n 39, p. 27.

⁴² ILO, above n 39, p. 28 and 29, Also see S. Verghis and I. Fernandez (eds.) *Regional Summit on Pre-Departure, Post Arrival and Reintegration Programs for Migrant Workers*, September 11-13 2000, Genting Highlands, Malaysia (Kuala Lumpur, CARAM Asia), p.105.

Types of Discrimination, Exploitation and Abuse that Migrant Workers may Face in Destination Countries	
Violation	Manifestation of the Violation
Forced labour and debt bondage	Many migrant workers, in particular those who were trafficked and those with irregular migration status, are to some degree subject to forced labour. EXAMPLE: The working and living conditions of women migrant workers in domestic service and in prostitution reflect, in many cases, forced labour situations. This “modern form of slavery” is extremely widespread. In East and Southeast Asia and the Middle East, the numbers of women migrant workers who “run away” from their employers and seek refuge or lodge complaints at their embassies or at social support organizations are alarmingly high - so high that in countries like Malaysia and Singapore, the government has imposed security bonds on employers. As expressed by a human rights lawyer in Lebanon, “running away evokes the era of slavery, you leave your job, but you run away only when enslaved.”⁴³

Source: ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 4 – Working & Living Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 19 - 30.

The Need for Accurate Information

To reduce migrant workers’ vulnerabilities in destination countries, and to prevent irregular migration, exploitation and abuse of migrant workers in sending and destination countries, accurate, adequate, correct and easily accessible information is a critical preventive measure in the first instance. Intending migrant workers should be given correct and timely information on various aspects of living and working abroad. This includes, at a very minimum and amongst other things, the prevailing work conditions, the labour, immigration, criminal and contract laws in the intended destination countries, and where to go to in case of problems and/or emergencies.

Women, as well as men, use whatever information is available to them in order to decide on the appropriateness, costs and benefits of migration for themselves or their family members. Information is also critical to prevent trafficking – since trafficking involves misinformation, deception and ignorance. Appendix 2 summarises what can transpire in circumstances of regular, and irregular, migration.

Information needs vary, depending on the stage of the migration process. Some kinds of information are more critical at the decision-making stage before the commitment to migrate has actually been made. Other kinds of information are more relevant to migrant workers who have already made their decision. Table 6, below, provides a summary of the types of information that intending migrant workers need to know when deciding to become a migrant worker and/or when they are leaving their home country.

Table 6: Types of Information Needed by Prospective Migrants

Information	Examples
Information on job opportunities at home and abroad, including the qualifications, skills and training needed;	- Information about employment opportunities at home, and abroad, can be obtained from the Ministry/Department of Manpower Offices. - Women and their families should be made aware that most jobs available to them are “feminine” jobs related to their traditional roles – in domestic work, entertainment, labour-intensive factories, such as in garments and textiles, services such as nursing and care work and sometimes in agriculture – categories of jobs that are low-paid, and of low-status, where exploitation and abuse is more common.

43 Ibid., p. 29 and 30.

Information	Examples
Information on the migratory process, including information on recruitment, and employment abroad, as well as the documented or undocumented nature of the movement;	– Information can be obtained from the Ministry or Department of Manpower Offices, Unions, and NGOs listed at the end of the Handbook. – This information should include an explanation of the: • advantages and disadvantages of regular (or documented) and irregular (undocumented) labour migration. • irregularities that can occur in the migration process, because irregular channels for migration makes them more vulnerable to traffickers and puts them at greater risk of being abused and exploited. • the fact that illegal recruitment is very much linked to the various forms of unauthorized entry, stay or employment in the receiving country.
Information on the costs and benefits of migration;	– There are many hidden costs related to labour migration. For example, the conditions of work, the vulnerabilities and risks they are exposed to while working and living in another country, and the impact of migration on the family left behind.
Information on the major dangers of the migration process, including the specific vulnerabilities of women migrants;	– Too many migrant workers embark on their foreign employment adventure without adequate information about what can go wrong. – It is absolutely essential that they are confronted with a more realistic picture of what working and living in a foreign country could actually entail.
Information on the rights and obligations of migrant workers;	– Migrant workers need correct information on: • legal provisions and regulatory measures for immigration (entry, residence) and employment in the destination country, as well as basic criminal laws. Ignorance of the law leaves migrant workers exposed to exploitation and abuse. • how to exercise their rights, to articulate violations of these rights, and to claim redress through the appropriate complaints procedures. • concluded bilateral or multilateral labour agreements regulating the criteria for entry and admission, the terms and conditions of employment, as well as rights and duties of migrant workers and their employers. This information can be obtained from the Ministry/Department for Manpower Offices, and the Department for Foreign Affairs.
Information on required procedures / clearances;	– The nature of the procedures and clearances migrant workers have to go through differ from country to country. Migrant workers need correct information on the requirements and procedures that need to be followed in order for migrant workers to be allowed to enter, stay and work in any destination country. e.g. • Regulations governing recruitment agents/agencies; • Passports and travel documents; • Visa requirements and work permits; • Medical clearances; • Mandatory pre-departure training, including skills training; • Contract of employment.

Information	Examples
Information on working and living conditions in potential countries of destination.	– Accurate and realistic information on the country of destination should be provided to prospective migrant workers. – The employment contracts should be written in the migrant's language, as specific and complete as possible, and should be very clearly explained to them, especially for women migrant workers.
Information on the basic labour laws, and criminal laws in potential countries of destination.	– Information on the labour laws in destination countries in relation to the right to freedom of association, workmen's compensation, working hours, leave, etc. – Information on activities perceived as "criminal" in destination countries, including their corresponding sanctions.

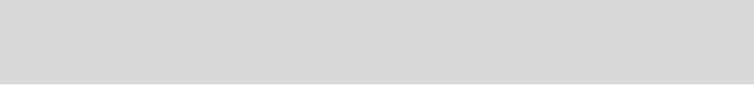
Source: Adapted from ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 2 – Decision Making and Preparing for Employment Abroad*, ILO Gender Promotion Programme, Geneva, 2003, p. 17. Also see Unlad Kabayan, Migrant Services Foundation Inc. 2001, *Planning Your Re-entry, Filipino Migrant Workers Orientation Course*. (MS-AI), p.14

Trade unions, recruitment agencies, NGOs, communities, and the sending government play an important role in *providing correct information and assistance to intending migrants*. Many problems can be avoided when there is proper pre-departure preparation and/or orientation training, as potential or intending migrant workers should be informed about what to expect in a foreign country, and work place, and the terms and conditions of the work contract, at the very minimum. Simple and accurate information on living and working abroad should be provided in a timely manner, and made accessible to all persons, particularly those who are seeking employment abroad.

Additionally, it is important for migrant workers to be aware of, and understand, their rights under the national laws of their country, and the country they are migrating to or intend to work in. It is important that they know, and understand, the rights and freedoms that destination country governments have obligated themselves to afford to persons within their jurisdiction, and this includes migrant workers.

It is in this latter context that the next chapter of the Handbook focuses on, i.e.:

- migrant workers' rights under international human rights instruments, and State obligations; and
- the salient features of the international supervisory and complaints mechanisms that migrant workers' rights advocates can access, to ensure the effective implementation of a State's obligations in relation to the promotion and protection of migrant workers rights and that of their family members.



Introduction

International and regional standards in relation to migrant workers do not make significant distinctions between temporary migrant workers and other labour migrants in terms of their access to important employment and social rights. Nor are such distinctions found in national legislation.⁴⁵ Frequently, the problem lies in the absence of explicit provisions in national law relating to the protection of migrant workers, and the exclusion of vulnerable categories from national labour legislation – such as domestic workers and agriculture workers.⁴⁶ This chapter, however, will only focus on international standards and can be generally applied to both temporary migrant workers and other labour migrants.

To understand what migrant workers' rights are, it is important to first understand what human rights are.

What are Human Rights?

Human rights refer to entitlements that an individual is afforded by virtue of being human, regardless of one's race, colour, sex, language, religious, political or other opinion, national or social origin, economic, birth, cultural or other status. These rights or entitlements are *formally* made available by the State through **human rights law**, protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Government is, therefore, responsible for protecting these rights. However, with these rights come responsibilities – one cannot demand one's rights while violating another person's rights. More importantly, some rights have exceptions.

How did Human Rights Develop?

As international relations amongst nation states evolved over the decades, it became clear that there were some fundamental virtues that all nations abided by within their territories. These included notions of justice, equality, fairness, and non-violation to the person. These were extended into the international relations setting and evolved as international customary practice or law – it was never written at the time. The atrocities experienced by groups of people during World War II resulted in the global resolution for the codification of these international customary practices, in order to make States accountable for their action(s) and/or inaction. These notions of justice, fairness, equality, and non-violation to the person became understood as fundamental precepts for the peaceful survival of the human race, regardless of any perceived differences, i.e. **human rights**. Once codified, these precepts became known as **human rights law**.

It must be remembered that codification of human rights is based on either a group (e.g. refugees; women; children; indigenous peoples; migrant workers; seafarers; etc.) or a subject (e.g. torture; migration; forced labour; child labour; trafficking; labour administration; labour inspection; smuggling; environment; corruption; etc.).

⁴⁵ OSCE, IOM, ILO, above n 11, p. 129.

⁴⁶ OSCE, IOM, ILO, above n 45.

Where can Human Rights Law be Found?

Since governments are responsible for formally protecting the rights of individuals and groups against its action or inaction, human rights law can be found domestically in the national Constitution, and legislation. It can also be found at regional and international levels in various human rights treaties, and in customary international law.

A **“treaty”** (often called a **“convention”** or **“covenant”**) is a formal agreement between states. Once ratified, it creates legally binding obligations and rights among the states that are a party to the treaty.

Sometimes, a treaty may create rights in favour of individuals, while creating obligations that the state must comply with. Human rights treaties fall within this category – the states agree to guarantee specific human rights for all individuals within their respective jurisdictions, and to comply with corresponding obligations.

States are supposed to adopt national legislation and policies to implement applicable human rights standards. States that fail to abide by the set standards are held accountable through an international supervisory mechanism (i.e. supervision/monitoring/reporting/representation/complaint). Some human rights treaties provide avenues for individuals, whose rights are violated, to seek redress; others, as yet, do not.

Human rights treaties/conventions/covenants serve to define concepts, and set standards, for government conduct, i.e. obliges States to act in a particular way, and prohibits States from engaging in specified activities. The ratification of a treaty means that a member state is legally bound to a dual obligation:

- Apply the provisions of the Treaty/Convention/Covenant; and
- Accept a measure of international supervision.

States can pick and choose which Treaties/Conventions/Covenants they ratify. For those they ratify, they are obligated to report regularly on their compliance.

What are Migrant Workers’ Rights?

Migrant workers’ rights are entitlements that a migrant worker is afforded by virtue of the fact that they are human. These rights or entitlements are made available by States that are sending and destination countries. It is, therefore, the responsibility of these governments to provide, and protect, these rights.

There are a number of important international human rights instruments pertaining to migrant workers and members of their family that have been promoted for adoption and implementation. For purposes of this Handbook, the following sections primarily focuses on relevant instruments of the International Labour Organization (ILO) and the United Nations (UN) that are already in force to protect migrant workers specifically – and in general – including their protection against discrimination, exploitation and abuse, and the protection of the rights of their family members.

The International Labour Organisation (ILO)

The ILO was established in 1919 in response to the problems faced by industrial countries. The idea of international labour legislation came about as a result of ethical and economic reflections on the human cost of the Industrial Revolution. The Preamble to the ILO’s 1919 Constitution opens with the affirmation that universal and lasting peace can be established only if it is based on social justice. This was further clarified in the Declaration of Philadelphia, 1944, which embodies the following principles:

- Labour is not a commodity.
- Freedom of expression, and of association, are essential to sustained progress.

- Poverty anywhere constitutes a danger to prosperity everywhere.
- All human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Truer than ever in today's globalised world, these principles still provide the ideological basis for the ILO.

The ILO's obligation to protect migrant workers has traditionally been effected through the elaboration and supervision of international labour standards. Unless specified otherwise for specific categories of workers, *all ILO Conventions and Recommendations are of general application, and apply to all workers, whether they are national or non-national*. This means that they apply to all migrant workers, whether they are temporary or permanent, and even if they are in an irregular situation.

The ILO Declaration and Fundamental Principles and Rights at Work

The core labour standards (sometimes called "fundamental ILO Conventions" or the "ILO human rights Conventions") highlighted in the Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, are the:

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

Overview of the ILO Human Rights Conventions⁴⁷

Forced Labour Convention, 1930 (No. 29)

- The Convention aims at the immediate suppression of all forms of forced or compulsory labour;
- It defines forced or compulsory labour as "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"; and
- It calls for adequate and strictly enforceable penal sanctions for the illegal exaction of forced or compulsory labour.

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

The Convention prohibits the use of any form of forced labour as a means of:

- political coercion or education, or the punishment of political or ideological views;
- workforce mobilization for purposes of economic development;
- labour discipline;
- punishment for participation in strikes; or
- racial, social, national, or religious discrimination.

Minimum Age Convention, 1973 (No. 138)

- The Convention calls for the abolition of child labour through the prohibition of employment or work of children under a nationally determined fixed minimum age.

⁴⁷ Appendix 4 is a tabulated summary of the ILO core or human rights Conventions.

- It sets a number of minimum ages depending on the type or employment of work:
 - the minimum age should not be less than age 15 or less than the age for completing compulsory schooling;
 - a higher minimum age of 18 years should be set for hazardous work; and
 - for light work, a minimum age of 13 is promoted.

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

- The Convention confirms that child trafficking is a practice similar to slavery and as such a worst form of child labour;
- It calls for immediate and effective measures to secure the prohibition and elimination of trafficking of girls and boys under 18 years of age;
- It targets trafficking of children that leads to exploitation of boys and girls, including in illicit activities such as drug trafficking and prostitution;
- It provides guidelines to effectively eliminate child trafficking and to protect children that have fallen victim to traffickers or are at risk of doing so;
- It requests Member States to establish mechanisms to monitor child trafficking and to draw up a programme of action to eliminate child trafficking as a matter of priority;
- It calls for effective and time-bound measures for prevention, to provide support for the removal of child victims of trafficking and their rehabilitation, to ensure access to basic education or vocational training for all children removed from trafficking situations; to identify children at special risk and to take account of the special situation of girls; and
- It calls for international cooperation and assistance among the ratifying States to combat child trafficking.

Equal Remuneration Convention, 1951 (No. 100)

- The Convention aims to ensure that men and women workers receive equal remuneration for work of equal value, establishing rates of remuneration without discrimination based on sex; and
- It aims to ensure equal remuneration in the public sector and promote equal remuneration in the private sector.

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

- The Convention defines discrimination as “any distinction, exclusion or preference made on the basis of 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;
- It requires the provision of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination; and
- The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

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

- The Convention guarantees employers and workers the right to establish and join organizations, and to exercise freely their right to organize; and
- It protects employers’ and workers’ organizations against interference or restrictions by public authorities.

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

- The Convention protects workers who are exercising the right to organize;
- It upholds the principle of non-interference between workers’ and employers’ organizations; and
- It promotes voluntary collective bargaining.

The ILO Migrant Workers' Conventions

The ILO has also developed a comprehensive body of international law dealing with the protection of migrant workers, including those trafficked into forced labour. The main standards that refer specifically to migrant workers, or that contain provisions protecting their rights, include the following:

- Migration for Employment Convention (Revised), 1949 (No. 97);
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- Equality of Treatment (Social Security) Convention, 1962 (No.118);
- Maintenance of Social Security Rights Convention, 1982 (No.157); and
- Private Employment Agencies Convention, 1997 (No.181).

Overview of the Specific ILO Conventions that Addresses the Situation of Migrant Workers'⁴⁸

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

- The Convention is aimed at: (1) regulating the conditions under which labour migration takes place; and (2) providing specific protection for a very vulnerable category of workers while employed in countries other than their own.
- There is no distinction between permanent or temporary migrants.
- However, certain provisions of Convention No.97 only relate to migrant workers and their families who have been admitted on a permanent basis, for example, the provisions that protect these workers against expulsion on the mere ground of incapacity to work.
- It covers those regularly admitted as migrants for employment.
- It includes measures to regulate the conditions in which migration for employment should occur, such as: (1) general protection measures relating to the maintenance of free services to assist migrants; (2) provision of information; (3) steps against misleading propaganda, the journey and arrival of migrants, transfer of their earnings; and (4) measures related to expulsion of permanent migrants.
- It provides for measures aiming to ensure equality of treatment between regular migrant workers and nationals with regard to social security, working and living conditions, employment taxes and access to justice.
- It calls for the implementation of a policy of *equality of treatment* between national and regular migrant workers.
- Categories of migrants excluded from the coverage of this Convention are: (1) seafarers, (2) frontier workers (3) short-term entry members of the liberal profession and artists; and (4) the self-employed – they are not covered by the Convention.

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

- The Convention is aimed at: (1) regulating the conditions under which labour migration takes place; and (2) providing specific protection for a very vulnerable category of workers while employed in countries other than their own.
- There is no distinction between permanent or temporary migrants.
- The Convention was the first attempt by the international community to deal with the problems arising out of irregular migration and illegal employment of migrants.
- The Convention includes provisions for minimum standards of protection for **both regular and irregular migrant workers**.
- Without challenging the right of States to regulate migratory flows, it lays down the general obligation to: (1) respect the basic human rights of all migrant workers;⁴⁹ (2) provide for certain protective measures for migrant workers who have lost their employment⁵⁰ and for those in an irregular situation.⁵¹

⁴⁸ Appendix 5 is a tabulated summary of the ILO Migrant Workers' Conventions.

⁴⁹ ILO, Migrant Workers (Supplementary Provisions) Convention, 1975 [No. 143], Article 1.

⁵⁰ ILO, above n 49, Article 8.

⁵¹ ILO, above n 49, Article 9.

- Without challenging the right of States, it affirms: (1) to regulate migratory flows; and (2) the right of migrant workers to be protected, whether or not they entered the country on a regular basis, with or without official documents.
- The Convention also stresses the importance of consulting representative organizations of employers and workers in regard to the laws, regulations and other measures provided for, and designed, to prevent and eliminate migration in abusive conditions.
- It calls for the provision of *equality of opportunity* with regard to migrants' access to employment, trade union rights, cultural rights and individual and collective freedoms.
- However, it permits limited restrictions on *equality of opportunity in access to employment*. The national policy required under this Convention must not only promote but also guarantee equality of opportunity and treatment in employment and occupation for migrant workers and members of their families *who are lawfully within the territory of the country of employment*.⁵²
- Categories of migrants **excluded** from the coverage of this Convention are: (1) seafarers, (2) frontier workers (3) short-term entry members of the liberal profession and artists; and (4) the self-employed.
- The Convention also excludes trainees and specific duty assignments. However, these exclusions only apply to Part II, which deals with *equality of opportunity of regular women and men migrants with nationals*. This means that all migrant workers, without distinction, have the right to some minimum protection with respect to their basic human rights and certain rights arising out of past employment.

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

- The Convention contains provisions relating to all 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; and (9) family benefit.
- However, a State which ratifies this Convention may limit its application to certain of these branches.
- For each of the branches (above) that it accepts, a State party undertakes to grant, within its territory, *to nationals of any other State which has ratified the Convention, equality of treatment in social security with its own nationals*.
- Equality of treatment must be granted to refugees and stateless persons.
- In addition, where, under the national legislation, entitlement to benefit is subject to a residence requirement, such a condition cannot, in principle, be imposed only on non-nationals.
- A State party to this Convention has to ensure the *provision of benefits abroad*, in a specific branch, for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for the same branch, irrespective of the place of residence of the beneficiary.⁵³ This principle shall apply, without any condition of reciprocity, to refugees and stateless person.

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

- The Convention contains provisions relating to all 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; and (9) family benefit.
- A State which ratifies this Convention (Convention No. 157) cannot limit its application to certain of these branches, like in Convention No.118.
- A State party to this Convention has to ensure the *provision of benefits abroad, in all branches of social security*, for its own nationals and the nationals of any other State which has accepted the obligations of the Convention, for any branch of social security in which the States concerned have laws in force, irrespective of the place of residence of the beneficiary.⁵⁴ This principle shall apply, without any condition of reciprocity, to refugees and stateless persons.

⁵² ILO, above n 49, Article 14.

⁵³ The *maintenance of acquired rights* permits migrant workers to receive benefits which are due to them from a State, even when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant workers, is intended to ensure their real equality of treatment and not just legal equality.

⁵⁴ Above n 53.

Private Employment Agencies Convention, 1997 (No. 181)

- Considering the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, this Convention offers guidance for designing a legal framework to *address illegal recruitment practices and trafficking of human beings, especially women and girls*.
- The purpose of this Convention is to allow the operation of private employment agencies – while protecting the workers – using their services against abuses, and ensuring that these workers are entitled to their basic rights provided for under the core labour standards, as well as the provisions relating to recruitment and placement in Conventions No. 97 and No.143.
- To promote equality of opportunity and treatment in access to employment and occupations, this Convention stipulates that member States shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice.⁵⁵
- With certain exceptions, private employment agencies shall not charge, directly or indirectly, in whole or in part, any fees or costs to workers.⁵⁶
- Ratifying States are required to adopt measures to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.⁵⁷
- Member States concerned shall consider bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.⁵⁸

The ILO Supervisory Mechanisms

The ILO has sought from the outset to establish methods of enforcement that would work and would be acceptable to its Member States. Thus, a system of *supervision by consent* has gradually evolved, known as the **Regular Supervision**.⁵⁹

Two complementary approaches have been followed:

1. Governments have to report to the ILO:
 - (a) On the measures taken to submit newly adopted standards to the competent authorities, i.e. the government institutions responsible for adopting laws and policies, e.g. Parliament, government ministries, etc.;⁶⁰
 - (b) On the position of their national law and practice with regard to unratified Conventions. This is sometimes known as the “Article 19 Procedure”;⁶¹ and
 - (c) On the measures taken to give effect to the ratified Conventions. This is sometimes known as the “Article 22 Procedure”.⁶²
2. These government reports have to be carefully examined and evaluated as to their effectiveness. Since 1927, this task has been carried out, firstly, by a Committee of Experts on the Application of Conventions and Recommendations (CEACR), and subsequently by a special tripartite Conference Committee at the annual sessions of the International Labour Conference (ILC), where they examine the report of the CEACR.

⁵⁵ ILO, Private Employment Agencies Convention, 1997 [No. 181], Article 5.

⁵⁶ ILO, above n 55, Article 7.

⁵⁷ ILO, above n 55, Article 8.1.

⁵⁸ ILO, above n 55, Article 8.2.

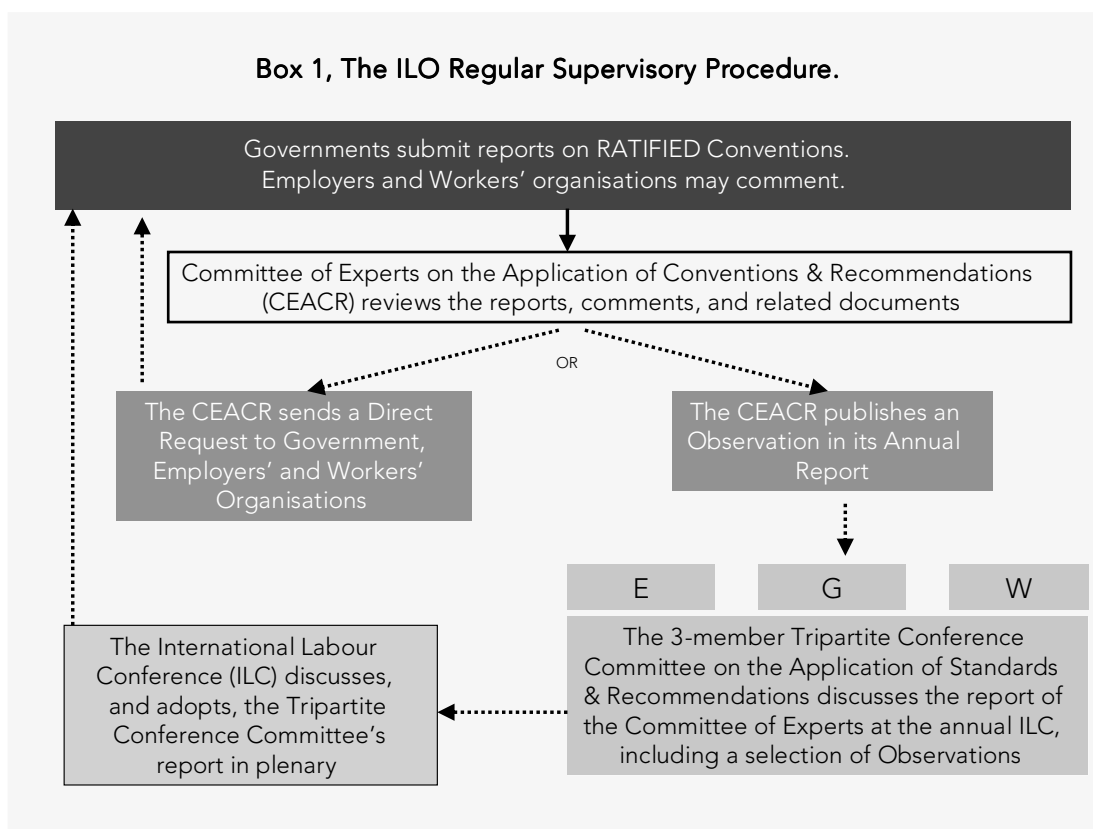
⁵⁹ Appendix 3 is a narrative summary of the ILO’s Regular Supervisory Procedure.

⁶⁰ ILO Constitution, Article 19.

⁶¹ ILO, above n 60.

⁶² Ibid., Article 22.

Box 1, below, summarises the ILO Regular Supervisory Procedure.



Source: ILO, "Committee of Experts on the Application of Conventions and Recommendations" in *Applying and Promoting ILS*, www.ilo.org/public/english/standards/norm/applying/committee.htm

In addition, there are another two procedures available for the examination of specific allegations of ineffective observance of ratified Conventions in a particular case. These two procedures are known as **Special Procedures**, i.e.

1. the **Representation Procedure**, and the **Complaints Procedures**; and
2. the Special Procedures on Freedom of Association
 - a. the **Fact Finding Conciliation Commission on Freedom of Association**; and
 - b. the **Governing Body Committee on Freedom of Association**.

Overview of the Representation Procedure

Who can Access the Procedure?

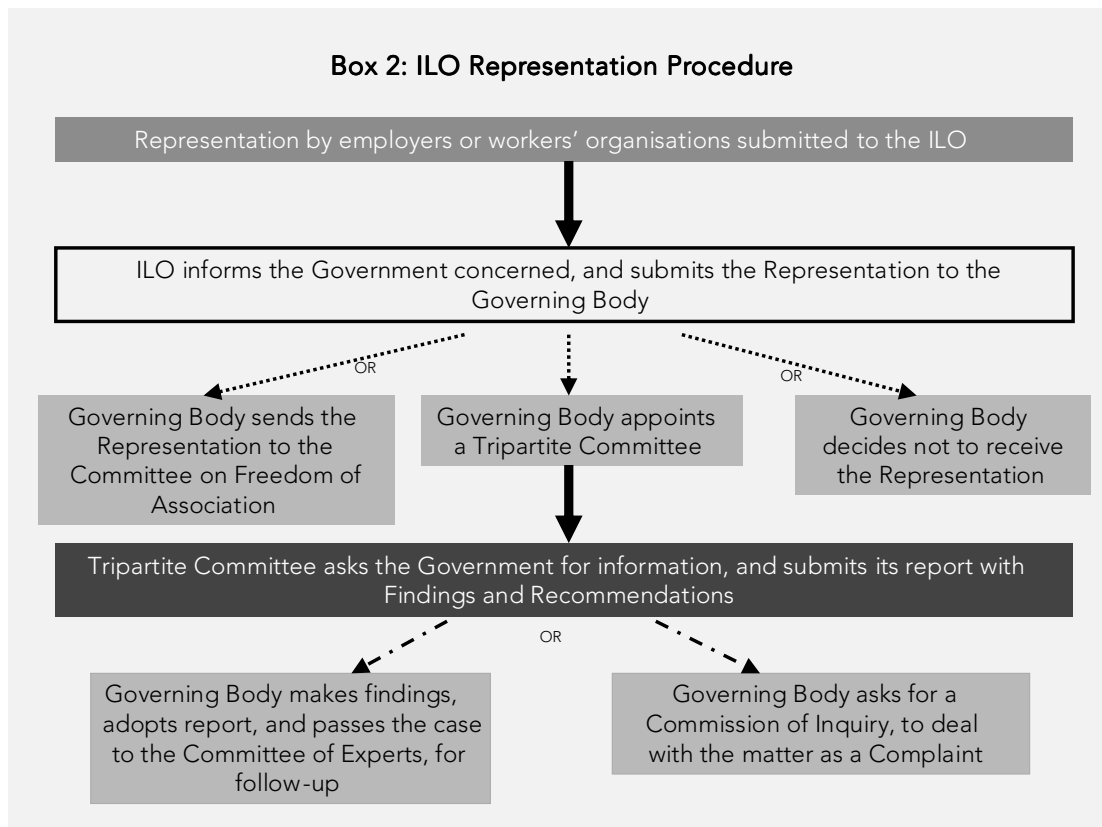
- Any national or international employers' or workers' organisation may submit a representation to the ILO

Receivability Requirements

The conditions of receivability of the representation are that the representation must:

- be communicated to the ILO;
- come from an organisation of workers' or employers';
- make specific reference to Article 24 of the ILO Constitution;
- concern an ILO Member that **has** ratified the Convention in question; and
- indicate to what extent this Member has not ensured the effective application of the Convention within its jurisdiction.

How the Representation Procedure Works



Source: ILO, "The Representations Procedure" in *Applying and Promoting ILS*, www.ilo.org/public/english/standards/norm/applying/representation.htm

Remedies

- The decision of the Governing body becomes a published finding of a government's compliance, or non-compliance with its obligations under Conventions that it has ratified.

Overview of the Complaints Procedure

Who can Access the Procedure?

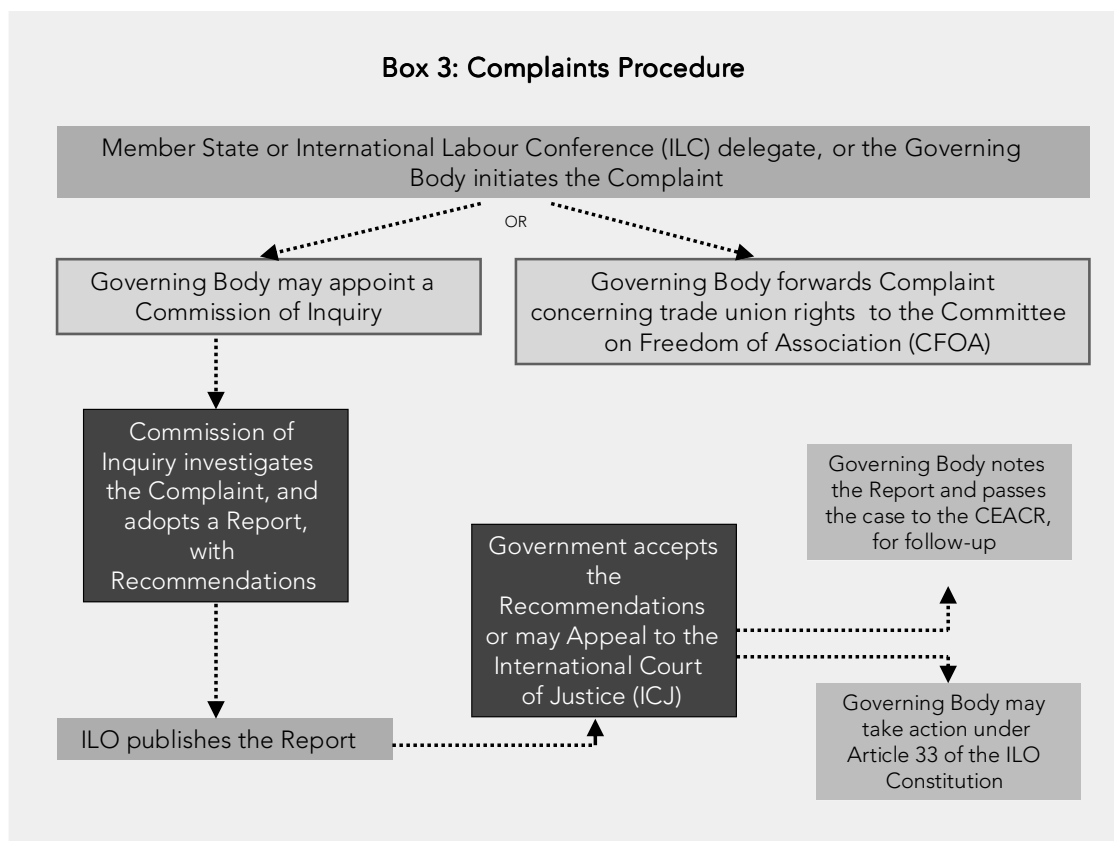
- Any Member State can file a complaint, with the ILO, against any other Member State who, in its opinion, is not satisfactorily securing the effective observance of a Convention. The Convention in question has to have been **ratified by both countries**.
- Alternatively, the Governing Body may adopt the same procedure, either on its own motion, or on receipt of a complaint from a delegate to the International Labour Conference (ILC) – government, employer, or worker.

Receivability Requirements

The conditions of receivability are that the complaint must:

- be communicated to the ILO (if complaint is from a Member State against another Member State, workers' or employers' organisation – see above on "Who can Access the Procedure") or to the ILC (if the motion was initiated by the Governing Body);
- come from an organisation of workers' or employers';
- make specific reference to Article 19 (5), (6), and (7) of the ILO Constitution;
- the Convention in question has to **have been ratified by both Member States**; and
- indicate to what extent this Member has not ensured the effective application of the Convention within its jurisdiction

How the Complaint Procedure Works



Source: ILO, "The Complaints Procedure" in *Applying and Promoting ILS*, www.ilo.org/public/english/standards/norm/applying/complaint.htm

Remedies

- The Governing Body decision states if a Member State is, or is not, in compliance with a Convention. Governing Body recommendations include suggestions about how to reach compliance.
- If the government does not implement the recommendations, "the Governing Body may recommend to the International Labour Conference such action as it may deem wise and expedient to secure compliance therewith."⁶³

Overview of the Fact-Finding Conciliation Commission on Freedom of Association

Who can Access the Procedure?

- Only complaints from a government, or a national/international workers' or employers' organisation are receivable.

Receivability Requirements

The conditions of receivability are that the complaint must

- be communicated to the ILO;
- come from an organisation of workers' or employers';
- make specific reference to Article 24 of the ILO Constitution;
- concern an ILO Member that has, **or has not, ratified the Convention** on Freedom of Association (No. 87); and
- indicate to what extent this Member has not ensured the effective application of the Convention within its jurisdiction.

⁶³ ILO Constitution, Article 33.

How the Procedure Works

- In principle, no case can be submitted to the Commission for investigation **unless the government concerned has agreed**.
- An exception to this rule can only be made if the government has ratified the ILO Freedom of Association and Protection of the Right to Organise Convention (No. 87).
- Should this be the case, the Commission can be designated as a **"Commission of Inquiry"**, as prescribed under Article 26 of the ILO Constitution.
- The United Nations Economic and Social Council (UN ECOSOC) and the ILO have an agreement concerning allegations received by the UN regarding violation of trade union rights.
- If complaints against ILO Member States are received by the UN, they are forwarded by the UN ECOSOC to the ILO, and the Governing Body then considers the question of their referral to the Fact-Finding and Conciliation Commission.
- If the UN or the ILO receives a complaint against a country that is a member of the UN but not a member of the ILO, it is for the UN ECOSOC to decide what action to take on the matter – either by seeking the consent of the government concerned for the matter to be referred to the ILO Fact-Finding and Conciliation Commission on Freedom of Association, or some other manner of action.

Role of Migrant Workers' Rights Advocates

- The Commission of Inquiry (above) has the discretion to ask for information from NGOs, workers' and employers' organisations, and government for purposes of complaint investigations. NGOs can collaborate with trade unions and employers' organisations in this regard.

Overview of the Governing Body Committee on Freedom of Association (CFOA)

Who can Access the Procedure?

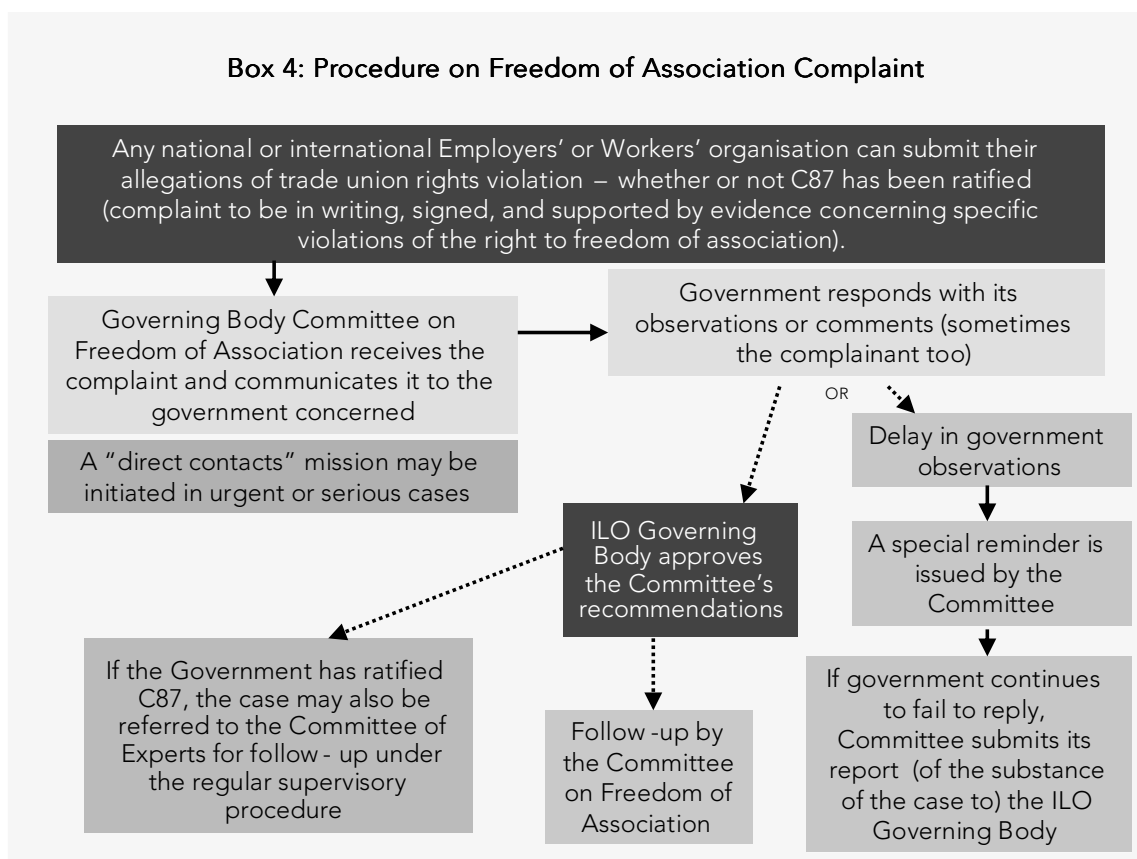
- Any national or international workers', or employers' organisation, or any Member government can submit their allegations of trade union rights violations with the ILO – **regardless of whether or not the government concerned has ratified the ILO Convention on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.

Receivability Requirements

The conditions of receivability are that the complaint must:

- exhaust all national avenues of redress;
- be communicated to the ILO;
- come from an organisation of workers' or employers';
- make specific reference to Article 24 of the ILO Constitution;
- concern an ILO Member that **has, or has not**, ratified the Convention; and
- indicate to what extent this Member has not ensured the effective application of the Convention within its jurisdiction.

How the Procedure Works



Source: ILO, "The Committee on Freedom of Association" in *Applying and Promoting ILS*, www.ilo.org/public/english/standards/norm/applying/freedom.htm

- This procedure supplements the Regular Supervisory Procedures and the Representation, and Complaint, Procedures. The complaint must be submitted in writing, signed, and supported by evidence concerning specific violations of the right to freedom of association.

Remedies

- If it is established that an infringement of trade union rights has been committed, the Governing Body may recommend that the government concerned remedy the situation and report back to the ILO within a specific time period.
- Where the government concerned has been obstructive, wide publicity can ensue – on the complaint, the decision of the Governing Body, and the obstructive attitude of the government.
- In particularly urgent or serious cases, the ILO Director-General, with the approval of the Committee, may request the government to allow a representative to carry out an on-the-spot inquiry – for purposes of drawing up a report on which the Committee can base its conclusions and recommendations. This "**direct contacts**" procedure is very similar to the Fact Finding Commission procedures, and has been successfully used in several cases.⁶⁴

⁶⁴ Refer to www.ilo.org/public/english/standards/norm/applying/freedom.htm

The United Nations (UN)

The later formation of the United Nations in 1945, after World War II, represented a critical point in the evolution of human consciousness. The trauma of the two World Wars and the widespread abuses of groups of people motivated governments to demand, and set, standards for the treatment of people by their own governments. The Universal Declaration of Human Rights 1948 (UDHR) was the first international attempt to codify or write such standards.

Box 5: Rights Enshrined in the Declaration (UDHR)

Right to equality
Freedom from discrimination
Right to life, liberty, and security of the person
Freedom from slavery, torture, or degrading treatment
Recognition as a person before the law, to seek a remedy before a competent tribunal
Freedom expression and political participation

Source: Adapted from UN OHCHR, "Fact Sheet No. 2 (Rev 1), The International Bill of Rights" in Publications, www.ohchr.org/english/about/publications/docs/fs2.htm

The United Nations (UN) Human Rights System

The United Nations Commission on Human Rights (UNHCR) was established to oversee and implement the UN human rights system. In order to translate the UDHR Principles into legally binding human rights obligations, the UNCHR drafted the first human rights instrument. The instrument became two 'covenants' – one on *civil and political rights*, and the other on *economic, social, and cultural rights*. This division was a result of a compromise between states with "market-oriented or capitalist" economies (which tended to emphasise civil and political rights) and states with "planned or socialist" economies (which tended to emphasise economic and social rights). The two documents became respectively known as the International Covenant on Civil and Political Rights 1976 (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights 1976 (ICESCR). Together with the UDHR, the three instruments became collectively known as the **International Bill of Rights**.

Even as the international covenants were being drafted, the UN had begun to use **treaties** to guarantee human rights in specific subject areas, e.g. the Genocide Convention, 1948. In the 1970s and 1980s, treaties that guaranteed the human rights of specific groups of people began to take shape, e.g. the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (UN CEDAW), and the UN Convention on the Rights of the Child, 1989 (UN CRC).

The Core International Human Rights Treaties

There are seven core international human rights treaties. Some of the treaties are supplemented by Optional Protocols dealing with specific concerns.

Box 6: Main UN Human Rights Treaties and Optional Protocols

Acronym	Treaty / Convention	Adopted	Treaty Bodies / Committees
THE TREATIES			
ICERD	International Covenant All Forms of Racial Discrimination	21 Dec 1965	CERD

Acronym	Treaty / Convention	Adopted	Treaty Bodies / Committees
THE TREATIES			
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966	HRC
ICESCR	International Covenant on Economic, Social, and Cultural Rights	16 Dec 1966	CESCR
CEDAW	Convention on the Elimination of all forms of Discrimination against Women	18 Dec 1979	CEDAW
CAT	Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment	10 Dec 1984	CAT
CRC	Convention on the Rights of the Child	20 Nov 1989	CRC
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	18 Dec 1990	CMW
THE TREATIES			
ICCPR - OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966	HRC
ICCPR -OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty	15 Dec 1989	HRC
OP-CEDAW	Optional Protocol on the Elimination of Discrimination against Women	10 Dec 1999	CEDAW
OP-CRCAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	25 May 2000	CRC
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography	25 May 2000	CRC
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment	18 Dec 2002	CAT

Source: UN OHCHR, "The Core International Human Rights Instruments and their Monitoring Bodies" in *International Law*, www.ohchr.org/english/law/index.htm

Overview of the Rights covered under the UN Human Rights Conventions⁶⁵

International Convention on the Elimination of Racial Discrimination, 1965 (ICERD)

Rights covered under the ICERD that may be relevant to migrant workers include:

- Non-discrimination – equality of men and women;
- Freedom of movement;
- Right to a nationality;
- Right to equal treatment before the law;
- Right to freedom of thought, conscience and religion;
- Right to freedom of opinion and expression;
- Right to freedom of peaceful assembly and association;
- Right of security of person and protection by the State against violence or bodily harm;
- Right to form and join trade unions;
- Right to social security and social services;
- Right to public health, medical care, social security and social services;
- Right to education and training;
- Right to equal participation in cultural activities; and
- Right of access to any place or service intended for use by the general public (e.g. transport, hotels, restaurants, cafes, theatres, and parks).

International Covenant on Civil and Political Rights, 1966 (ICCPR)

Rights addressed under the ICCPR that may be relevant to migrant workers include:

- Non-discrimination – equality of men and women to enjoy civil and political rights;
- Right to life;
- Freedom from torture, cruel, inhuman and degrading treatment;
- Freedom from slavery and freedom from compulsory labour
- Right to liberty and security of person; freedom from arbitrary arrest or detention;
- Freedom of movement
- Children's right to protection – to be registered, have a name and a nationality;
- Right to a fair hearing;
- Right to equality before the law; right to a fair and public hearing; right to due process of the law; right to recognition as a person
- Right to privacy; right to freedom of thought, conscience and religion; right to hold opinions;
- Right to peaceful assembly;
- Freedom of association (or trade union rights); and
- Protection of the family; protection of the children in the event of dissolution of marriage.

International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)

Rights covered under the ICESCR that may be relevant to migrant workers include:

- Non-discrimination – equality of men and women to enjoy all economic, social and cultural rights;
- Right to work, including just and favourable conditions of work, freedom of association, and right to social security (including social insurance);
- Protection and assistance to the family;
- Maternity protection, with paid leave or social security benefits;
- Right to an adequate standard of living for an individual and his/her family;

⁶⁵ Appendix 7 is a tabulated summary of the UN Human Rights Conventions.

- Right to enjoy the highest attainable standard of physical and mental health;
- Right to education;
- Right to take part in cultural life;
- Right to enjoy the benefits of scientific progress and its application; and
- Right to benefit from the protection of moral and material interests resulting from any scientific, artistic, or literary production of which he / she is the author.

UN Convention on the Elimination of all forms of Discrimination against Women, 1979 (UN CEDAW)

Rights provided under CEDAW that may be relevant to migrant workers include:

- Non-discrimination on the basis of sex – equality of men and women;
- Freedom of movement;
- Right to equality before the law, including a legal capacity;
- Right to participate in NGOs and associations concerned with the public and political life of the country;
- Right to work;
- Right to the same employment opportunities as men, including the application of the same criteria for employment selection;
- Right to free choice of profession and employment;
- Right to promotion, job security, and all benefits and conditions of service;
- Right to receive vocational training and re-training, including apprenticeships, advanced vocational training, and recurrent training;
- Right to equal remuneration, including benefits;
- Right to equal treatment in respect of work of equal value;
- Right to equality of treatment in the evaluation of quality of work;
- Right to social security - in retirement, unemployment, sickness, invalidity, old age and other incapacity to work;
- Right to paid leave;
- Right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction;
- Prohibition of dismissal on the grounds of pregnancy or maternity leave;
- Introduction of maternity leave with pay, or with comparable social benefits, without loss of former employment, seniority or social allowances; and
- Provision of protection to women during pregnancy in types of work proved harmful to them.

UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984 (UN CAT)

- The Convention states the definition of "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.⁶⁶

UN Convention on the Rights of the Child, 1989 (UN CRC)

- Under the CRC, a "child" means every human being below the age of eighteen years, unless under the law applicable to the child majority is attained earlier.

⁶⁶ UN, *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 1984, Article 1; www.ohchr.org/english/law/cat.htm

- Children of migrant workers also have rights, with the “best interest of the child” as the primary consideration.
- Children are to be protected from all forms of physical and mental violence, injury, neglect, negligent treatment, maltreatment, exploitation, sexual abuse.
- Children’s rights covered under the Convention include the:
 - Right to life;
 - Right to nationality;
 - Right to protection of the law;
 - Right to freedom of thought, conscience and religion;
 - Right to freedom of expression – subject to certain restrictions;
 - Right to non-separation from parents, except if it is in the best interest of the child;
 - Children of working parents have the right to benefit from child care services and facilities;
 - Right to non-arbitrary or unlawful interference to the private home, correspondence;
 - Right of the child to highest attainable standard of health;
- Parents/legal guardians have common responsibilities for the up-bringing and development of the children.
- In cases of adoption, the interest of the child is of paramount consideration.
- Children are not to be trafficked for any purpose whatsoever.
- Refugee children are to receive appropriate protection and humanitarian assistance.
- Disabled children are to enjoy a decent life.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW)

- The Convention applies to all migrant workers and members of their families, regardless of sex, race, colour, language, religion/conviction, political/other opinion, national/ethnic/social origin, age economic position, property, marital status, birth or other status.⁶⁷
- It covers the entire migration process – from pre-departure, departure, transit, stay, employment, and return.⁶⁸
- “Migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.⁶⁹
- It goes beyond the ILO Conventions’ definition of migrant workers and includes frontier workers, seasonal workers, sea-farers, workers on off-shore installations, itinerant workers, project-tied/specified-employment workers, and self-employed workers.⁷⁰
- It excludes⁷¹ international civil servants,⁷² diplomats, development cooperation personnel of sending States, investors, refugees and stateless persons, students and trainees, and seafarers and workers on off-shore installations who have not been admitted to live and work in the State of employment.
- “Members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.⁷³
- Human Rights of ALL Migrant Workers and Members of their Families⁷⁴ highlighted under the Convention include:

67 UN, *International Convention on the Protection of the Rights of Migrant Workers and Members of their Families*, 1990, Article 1 (1), and Article 7.

68 UN, above n 67, Article 1 (2).

69 UN, above n 67, Article 2 (1).

70 UN, above n 67, Article 2 (2).

71 UN, above n 67, Article 3 (a) – (f).

72 “International Civil Servants” are people who work for the United Nations and its Programmes and Specialised Agencies. It excludes the World Bank and International Monetary Fund.

73 UN, above n 67, Article 4.

74 UN, above n 67, Part III, Articles 8 – 34.

- Freedom to move in and out of their State of origin. This right shall not be subject to any restrictions except those that are:
 - o provided by law,
 - o necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and
 - o consistent with the other rights recognized in the present part of the Convention.
 - Right to life;
 - Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
 - Freedom from slavery and servitude, forced or compulsory labour, including hard labour;
 - Freedom of thought, conscience and opinion;
 - Right to hold opinions without interference, and freedom of expression, including freedom to seek, receive, and share information;
 - Freedom from arbitrary or unlawful interference with his or her privacy;
 - Freedom from arbitrary deprivation of property;
 - Right to liberty and security of person;
 - Right to due process under the law in case of criminal charges;
 - Non-confiscation or destroying of identity documents, documents authorizing entry or stay, or work permits;
 - No collective expulsion. Each case of expulsion shall be examined and decided individually, except by a decision of a competent authority, in accordance with the law;
 - Right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State;
 - Right to recognition everywhere as a person before the law;
 - Right to equal treatment with nationals in respect to remuneration;
 - Freedom of association and the right to join trade unions;
 - Right to social security, similar to that of nationals, if they fulfil the requirements;
 - Right to receive medical care;
 - Respect for the cultural identity of migrant workers and members of their families;
 - Right to transfer their earnings and savings, personal effects and belongings, upon termination of stay, in accordance with the applicable legislation of the States concerned; and
 - Right to be informed of their rights under the Convention, conditions of admission, and their rights and obligations under the laws of the receiving State.
- Migrant workers and the members of their families have the obligation to comply with the laws and regulations of any State of transit, and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.
 - Other Human Rights of Migrant Workers and Members of their Families highlighted under the Convention, *which **only applies to those who are DOCUMENTED or in a REGULAR situation.***⁷⁵
NOTE: These rights are in addition to the rights listed above.
 - Right to information on all conditions applicable to their admission and particularly those concerning their stay and employment, including the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions – either at pre-departure or when they enter the destination country;
 - Freedom of movement shall not be subject to any restrictions, except those that are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the Convention;
 - Freedom of association and the right to join trade unions;
 - Right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation;

⁷⁵ UN, above n 67, Part VI, Articles 37 – 50.

- Establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families;
- Right to equality of treatment with nationals of the State of employment in relation to:
 - o Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
 - o Access to vocational guidance and placement services;
 - o Access to vocational training and retraining facilities and institutions;
 - o Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
 - o Access to social and health services, provided that the requirements for participation in the respective schemes are met;
 - o Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned; and
 - o Access to and participation in cultural life
- Right to protection of the unity of the families of migrant workers;
- Right to enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment, subject to the applicable laws of the States concerned:
 - Upon departure from the State of origin or State of habitual residence;
 - Upon initial admission to the State of employment;
 - Upon final departure from the State of employment; and
 - Upon final return to the State of origin or State of habitual residence.
- Right to transfer their earnings and savings;
- In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State. If it is not granted, before departure, they shall be allowed a reasonable period of time in order to enable them to settle their affairs in the State of employment.
- Human rights protected in relation to **employment** include:
 - Right to equality of treatment with nationals of the State of employment in respect of:⁷⁶
 - o Protection against dismissal;
 - o Unemployment benefits;
 - o Access to public work schemes intended to combat unemployment; and
 - o Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.
 - Work permit duration to be the same as period of residence;
 - Right NOT to be regarded as an irregular migrant worker, or to lose their residency authorization, just because of termination of employment; unless if the residency authorization was dependent on the specific work for which he/she was admitted into the country.

Overview of the UN Human Rights Optional Protocols

An **Optional Protocol** is an international instrument which is linked to a principal instrument and imposes additional legal obligations on States who chose to accept them. Optional protocols may be drafted at the same time as the main treaty, or drafted after the main treaty has entered into force. Optional protocols to the human rights treaties have been adopted for a number of reasons:

⁷⁶ UN, above n 67, Articles 54, 49, and 51.

- to allow States parties to sign up to additional obligations relating to international monitoring of implementation (ICCPR-OP1, CEDAW-OP, OPCAT);
- to allow States to assume additional obligations where these were not included in the main treaty (ICCPR-OP2); or
- to address particular problems in more detail (the two CRC optional protocols).

Optional Protocol to the Covenant on Civil and Political Rights, 1966 (ICCPR-OP1)

- This Optional Protocol provides the procedure that allows the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights in the Covenant.
- A State party to the Covenant that becomes a party to this Protocol recognises the competence of the Committee to receive and consider communications from individuals (that are subject to its jurisdiction) who claim to be victims of a violation, by that State party, of the rights under the Covenant.

Second Optional Protocol to the Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty (ICCPR-OP2)

- No one within the jurisdiction of a State party to this Optional Protocol shall be executed.

Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW-OP)

- This Optional Protocol provides the procedure that allows the Committee on the Elimination of Discrimination against Women (CEDAW) to receive and consider communications from individuals claiming to be victims of violations of any of the rights in the Covenant.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

- States Parties to this Optional Protocol shall ensure that persons who have not attained the age of 18 years (i.e. children) are not compulsorily recruited into their armed forces.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

- States Parties to this Optional Protocol shall prohibit the sale of children, child prostitution and child pornography as outlined in the Protocol.
- Under this Optional Protocol:
 - **sale of children** means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
 - **child prostitution** means the use of a child in sexual activities for remuneration or any other form of consideration;
 - **child pornography** means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.
- Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organised basis:
 - In the context of sale of children,
 - o offering, delivering or accepting, by whatever means, a child for the purpose of:
 - sexual exploitation of the child;
 - transfer of organs of the child for profit; or
 - engagement of the child in forced labour;
 - o improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

- Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
- The Protocol further encourages State parties to cover under its criminal/penal laws attempts to commit any of the acts stated above, including those who are complicit or participate in any such acts.
- State parties are further encouraged to assist one another with investigations, criminal or extradition proceedings in relation to offences stated above.
- States Parties are also encouraged to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process.
- Awareness and education programmes are encouraged under the Protocol for purposes of prevention.
- This Protocol can be used to protect children of migrant workers or immigrants from being exploited and abused.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

- The objective of this Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Other Relevant UN Conventions and Protocols that Addresses Migration-Related Problems

In addition to the human rights Conventions and Protocols, the UN has also developed a comprehensive body of international law that addresses some of the *migration-related problems faced by migrants, particularly in relation to trafficking and smuggling in persons and forced labour*. These standards include the:

- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organised Crime, 2000 (not in force);
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime, 2000 (not in force);
- Slavery Convention, 1927; and
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957;

Overview of the Key UN Conventions and Protocols that Addresses Trafficking, Smuggling and Forced Labour

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organised Crime, 2000 (not in force)⁷⁷

- The purpose of the Protocol is to prevent and combat the smuggling of migrants, and to promote cooperation amongst State parties to this end, while protecting the rights of smuggled migrants.
- “Smuggling of migrants” means the procurement of the illegal entry of a person into a State party’s territory, of which the person is not a resident, in order to obtain some material benefit, whether directly or indirectly.
- “Illegal entry” means crossing borders without following the necessary requirements of the receiving State.

⁷⁷ UN, *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000* (not in force); www.ohchr.org/english/law/organizedcrime.htm

- “Fraudulent travel or identity document” means any travel or identity document (1) that has been falsely made or altered in some way by anyone other than the official authorities; (2) that has been improperly issued or obtained through misrepresentation, corruption, duress or in an unlawful manner; (3) that is being used by a person other than the rightful holder.
- The Protocol applies to the prevention, investigation and prosecution of offences identified in the Protocol, where the offences are transnational and involves a criminal group.
- The Protocol also applies to the protection of persons who are objects [victims] of such offences stated in the Protocol.
- These offences include: (1) smuggling of migrants; (2) producing fraudulent travel or identity documents; (3) procuring, providing or possessing such fraudulent documents; (4) enabling a non-national/non-resident to remain in the State concerned without complying with the necessary legal requirements in order to remain; (5) attempting to smuggle migrants; (6) participating as an accomplice to the stated offences; (7) organising or directing other persons to commit any of the stated offences
- The Protocol further addresses the smuggling of migrants by sea; prevention and cooperation measures amongst State parties (such as bilateral or regional agreements); border measures; the security and control of travel and identity documents; the protection and assistance measures that is to be afforded to smuggled migrants, including the facilitation of their return to their country of origin.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949⁷⁸

- The aim of the Convention is to address the problem of trafficking in persons for purposes of prostitution. This is important to note given that there is anecdotal evidence from migrant workers that such activities are taking place.
- The Convention encourages State parties to punish any person who, to gratify another, procures, entices or leads away, for purposes of prostitution, another person, without that person’s consent. In addition, those who keep, manage or knowingly finance/take part in the financing of a brothel, or knowingly lets/rents a building for the purpose of the prostitution of others, the Convention states that such persons are to be punished by State parties.
- The offences stated above are extraditable offences under this Convention.
- In addition, the Convention encourages the exchange of information between State parties on any of the offences stated in the Convention, as well as information on any related prosecution, arrest, conviction, refusal of admission, or expulsion of persons guilty of any of the offences stated in the Convention.
- State parties are also encouraged to put in place measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution.
- The strengthening of immigration measures, so as to assist in the checking of trafficking in persons, of either sex, for purposes of prostitution, is encouraged under the Convention.
- Where there is to be a repatriation of destitute victims of international trafficking in persons for the purpose of prostitution, suitable provisions for their maintenance and care must be made.
- The Convention also encourages State parties to supervise employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime, 2000 (not in force)⁷⁹

- The aim of the Protocol is three-fold: (1) to prevent and combat trafficking in persons, with particular attention to women and children; (2) to protect and assist the victims of trafficking, respecting their human rights; and (3) to promote cooperation amongst State parties in order to meet the above two objectives.

⁷⁸ UN, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949*; www.ohchr.org/english/law/trafficpersons.htm

⁷⁹ UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000* (not in force); www.ohchr.org/english/law/protocoltraffic.htm

- The Protocol defines “trafficking in persons” as “the recruitment, transportation, transfer harbouring or receipt of persons, **by means of** the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”
- Under the Protocol, the consent of a victim of trafficking in persons will be irrelevant where any of the above mentioned means is used.
- Where there is the recruitment, transportation, transfer, harbouring or receipt of a **child** for the purpose of exploitation, under the Protocol, it shall be considered “trafficking in persons” even if this does not involve any of the means mentioned above. A “child” is anyone under the age of eighteen (18) years.
- The Protocol applies to the prevention, investigation and prosecution of criminal offences stated in the UN Convention against Transnational Organised Crime (UN CTOC) , where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences. Under the UN CTOC, accomplices to such crimes, and those that organise or direct other persons to commit offences as stated under the UN CTOC are to be treated as criminal offences also.
- The Protocol addresses assistance to, and protection of, victims of trafficking in persons, as well as prevention and cooperation measures (such as research, awareness-raising, bilateral and multilateral cooperation, law enforcement, border controls security and control of documents, to mention a few).

Slavery Convention, 1926⁸⁰

- Drafted in the 1920s, the purpose of the Convention is two-fold: (1) to prevent and suppress the slave trade; and (2) to bring about, progressively and as soon as possible, the complete abolition of slavery and all its forms.
- The Convention defines “slavery” as “the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised.
- “Slave trade” includes the following:
 - o all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery;
 - o all acts involved in the acquisition of a slave with a view to selling or exchanging him;
 - o all acts of disposal, by sale or exchange, of a slave acquired with a view to being sold or exchanged; and, in general,
 - o every act of trade or transport in slaves.”
- Cooperation between State parties in the prevention and abolition of slavery and slave trade is encouraged under the Convention.
- State parties are also encouraged to prevent compulsory or forced labour from developing into conditions similar to slavery.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956⁸⁰

- This Supplementary Convention is to be read in conjunction with the Slavery Convention, 1926, as it expands some of the issues addressed in it. For example, *it specifically identifies institutions and practices (where they still exist, and whether or not they are covered by the definition of slavery in the Slavery Convention, 1926) that are considered similar to slavery that State parties should address so as to bring about its complete abolition or abandonment, such as:*
 - (a) **Debt bondage**, i.e. the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

80 UN, *Slavery Convention*, 1926; www.ohchr.org/english/law/slavery.htm

- (b) **Serfdom**, i.e. the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
 - (c) *Any institution or practice whereby:*
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
 - (d) *Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.*
- Slave trade continues to be an offence under the Supplementary Convention.
 - Marking or branding of a slave/person in servile status should be made a criminal offence under the laws of State parties.
 - “A person of servile status” means a person in the condition or status resulting from any of the institutions or practices mentioned above in paragraphs (c) and (d).

UN Human Rights Bodies

The United Nations system for the promotion and protection of human rights, including migrant workers' rights, consists of two main types of bodies:

1. Bodies created under the **UN Charter**, including the Commission on Human Rights,⁸¹ and
2. Bodies created under **international human rights treaties/Conventions**.

Most of these bodies receive secretariat support from the Treaties and Commission Branch of the UN Office of the High Commissioner for Human Rights (UN OHCHR).

Box 7: The UN Charter, and Treaty, Bodies

UN Charter Bodies

- Human Rights Council (formerly known as the Commission on Human Rights (CHR))
- Sub-Commission on the Promotion and Protection of Human Rights
- Commission on the Status of Women

UN Treaty Bodies

There are seven human rights treaty bodies that **monitor implementation of the core international human rights treaties**:

- Human Rights Council (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Rights of the Child (CRC)

Source: Adapted from UN OHCHR, Human Rights Bodies, www.ohchr.org/english/bodies

⁸¹ UN, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 1956; www.ohchr.org/english/law/slavetrade.htm

UN Human Rights Mechanisms

A number of **conventional** and **extra-conventional** mechanisms are in place to monitor the implementation of international human rights standards, and to deal with complaints of human rights violations. Unlike the ILO mechanisms, the UN mechanisms are determined under the respective treaty/Convention, based on the type of human rights violation.

Box 8: UN Human Rights Conventional & Extra-Conventional Mechanisms

A. Conventional Mechanisms: Treaty - Monitoring Bodies	
Treaty-Monitoring Bodies	Treaty that is Monitored
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
Human Rights Committee (HRC)	International Covenant on Civil and Political Rights (ICCPR)
Committee on the Elimination of Racial Discrimination (CERD)	International Convention for the Elimination of all forms of Racial Discrimination (ICERD)
Committee against Torture (CAT)	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
Committee on the Elimination of Discrimination against Women (CEDAW)	UN Convention on the Elimination of all forms of Discrimination against Women (UN CEDAW)
Committee on the Rights of the Child (CRC)	UN Convention on the Rights of the Child (UN CRC)
Committee on the Rights of Migrant Workers and Members of their Families (CRMW)	International Convention on the Rights of Migrant Workers and Members of their Families (ICRMW)
B. Extra-Conventional Mechanism: Special Procedures	
Urgent Actions – by Theme or Country	Special Rapporteurs, Special Representatives, Special Envoys, Independent Experts, or Working Groups .
Complaints Procedure 1503	Based on UN Resolution No. 1503

Source: UN OHCHR, UN Staff College Project "Part 3: Human Rights Mechanisms" in *Human Rights: A Basic Handbook for UN Staff*, UN, New York, p. 37

A. Conventional Mechanisms

Conventional mechanisms refer to **Committees** of independent experts established to monitor the implementation of international human rights treaties (sometimes called Conventions) that have been ratified by State parties. By ratifying a treaty, State parties willingly submit their domestic legal system, administrative procedures, and other national practices to periodic review by the Committees. These Committees are often referred to as **Treaty-Monitoring Bodies** (or Treaty Bodies). Complaints of human rights violations under international human rights treaties are addressed through quasi-judicial mechanisms available to the respective Committees.⁸²

⁸² On 15 March 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council. It now replaces the Commission on Human Rights (CHR).

Overview of Conventional Mechanisms in General

Major Organs

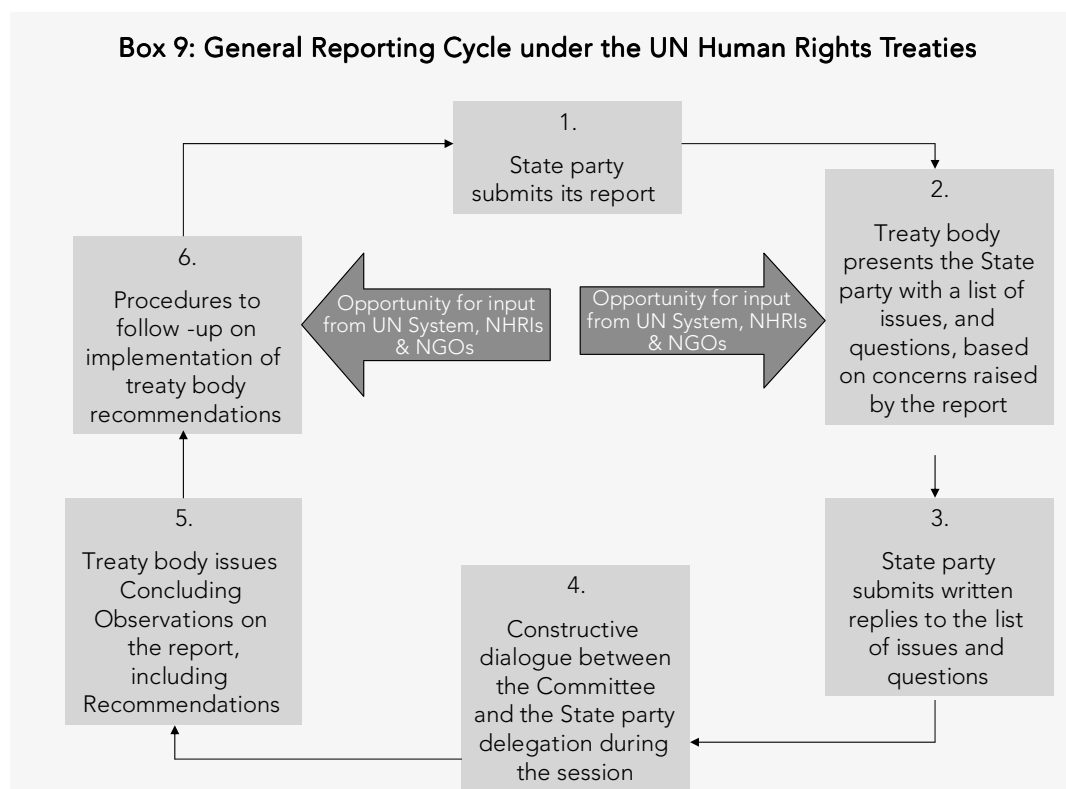
- Committee on Social, Economic and Cultural Right (CESCR) – 18 members
- Human Rights Council (HRC) – 18 members
- Committee on the Elimination of Racial Discrimination (CERD) – 18 members
- Committee against Torture (CAT) – 10 members
- Committee on the Elimination of Discrimination against Women (CEDAW) – 23 members
- Committee on the Rights of the Child (CRC) – 10 members
- Committee on the Rights of Migrant Workers and Members of their Family (CRMW) – 18 members

Role of Treaty-Monitoring Bodies

- Monitor the implementation of the major international human rights treaties by examining reports submitted by State parties, and considers complaints of human rights violations.

Supervision & Monitoring Procedures – How they Work

- The supervision and reporting procedure has a number of important functions. Among these are the initial review function, the monitoring function, the policy formulation function, the public scrutiny function, the evaluation function, the function of acknowledging problems and the information-exchange function.



Source: Adapted from UN OHCHR, "Consideration of State Parties' Reports" in *Human Rights Treaty Bodies: Monitoring the Core International Human Rights Treaties*, www.ohchr.org/english/bodies/treaty/index.htm#reports

Complaint Procedures – How they Work?⁸⁴

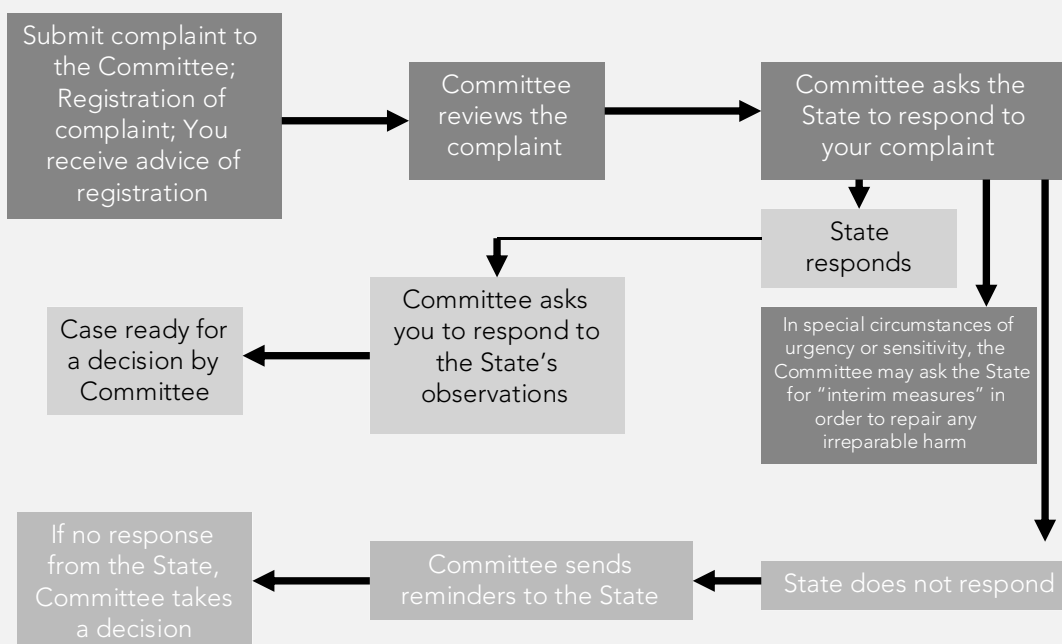
- **NOTE:** Complaints of human rights violations are technically referred to as **communications**. Each Treaty-Monitoring Body has its own Complaint Procedure.

Individual Complaints/Communications:

Four of the human rights treaty bodies may, under certain circumstances, consider individual complaints or communications

- The **HRC** may consider individual communications relating to State parties to the First Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR),
- The **CERD** may consider individual communications relating to State parties who have made the necessary declaration under Article 14 of the International Convention on the Elimination of all Racial Discrimination (ICERD),
- The **CEDAW** may consider individual communications relating to State parties to the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and
- The **CAT** may consider individual communications relating to State parties who have made the necessary declaration under Article 22 of the Convention against Torture and other Cruel, Inhuman Treatment or Punishment (CAT).
- The Convention on Migrant Workers also contains provision for allowing individual communications to be considered by the **CMW**. These provisions will become operative when 10 states parties have made the necessary declaration under article 77.

Box 10: INDIVIDUAL Complaints Procedure under the UN Human Rights Treaties



Source: Adapted from UN OHCHR, "Overview of Individual Complaints Procedure" in *Human Rights Treaty Bodies: Individual Communications, Procedure for Complaints by Individuals under the Human Rights Treaties, Introduction*, www.ohchr.org/english/bodies/petitions/individual.htm

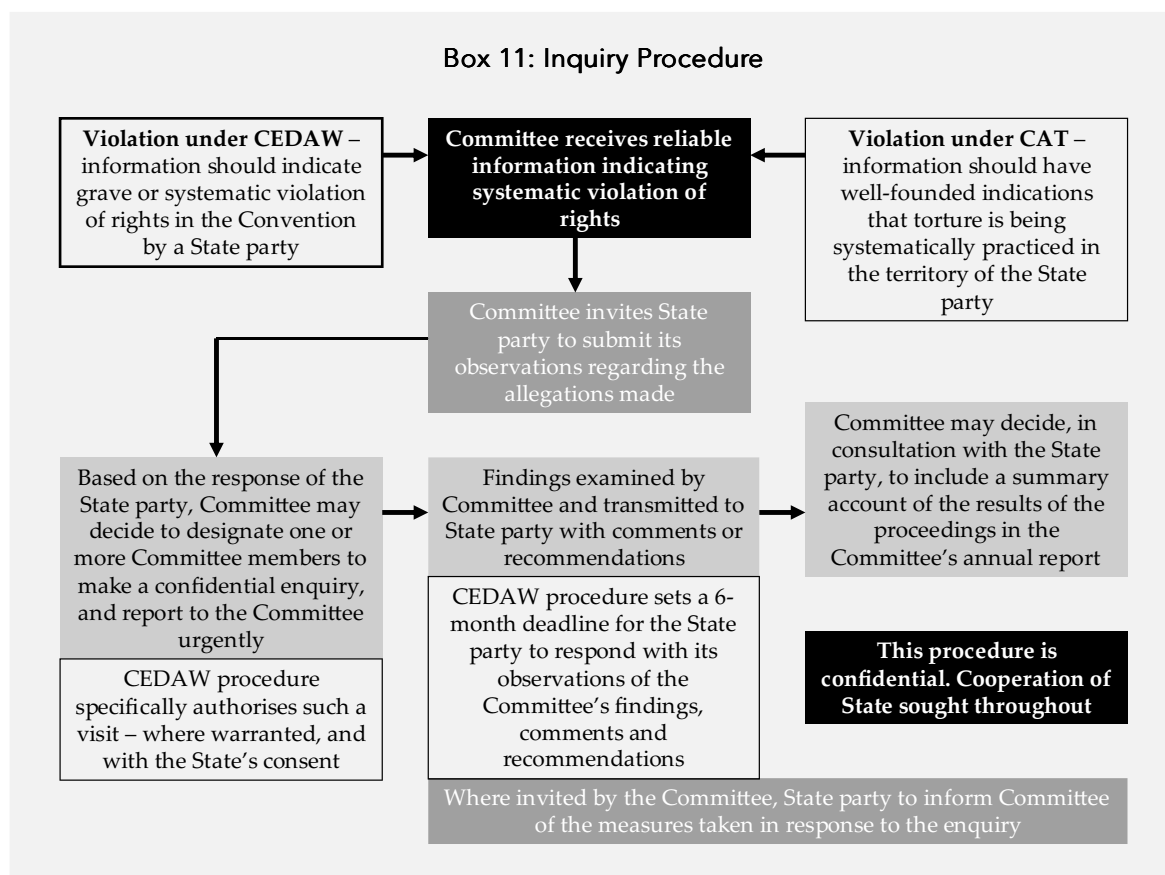
State-to-State Complaints:

Several of the human rights treaties contain provisions that allows State parties to complain to the relevant treaty body about alleged violations of the treaty by another State party. **This procedure has never been used.**

- Article 21 of **UNCAT** and Article 74 of **ICRMW** set out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard.
- Articles 13 – 11 of **ICERD** and Articles 41 – 43 of the **ICCPR** set out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant Convention/Covenant through the establishment of an *ad hoc* Conciliation Commission. The procedure normally applies to all States parties to ICERD, but applies only to States parties to the ICCPR which have made a declaration accepting the competence of the Committee in this regard.
- In the resolution of inter-State disputes concerning interpretation or application of a convention Article 29 of **UNCEDAW**, Article 30 of **UNCAT** and Article 92 of **ICRMW** provide for the resolution of disputes between States parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice (ICJ) if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other State parties.

Inquiries

- The CAT and CEDAW may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the Conventions in a State party.



Source: UN OHCHR, "Inquiries" in *Human Rights Bodies – Complaints Procedures: Complaining about Human Rights Violations*, www.ohchr.org/english/bodies/petitions/index.htm

Who can Access the Complaints Procedures?

Individual Complaints

Individuals can initiate a complaint, either of their own motion, or on behalf of someone whose rights have been violated, i.e.:

- Any individual who claims that her or his rights have, under the Covenant or Convention, been violated by a State party to that treaty may bring a communication before the relevant Committee, **provided that the State has recognized the competence of the Committee to receive such complaints**.
- Complaints may also be brought by third parties on behalf of individuals (provided they have given their written consent) or where they are incapable of giving such consent.

State-to-State Complaints

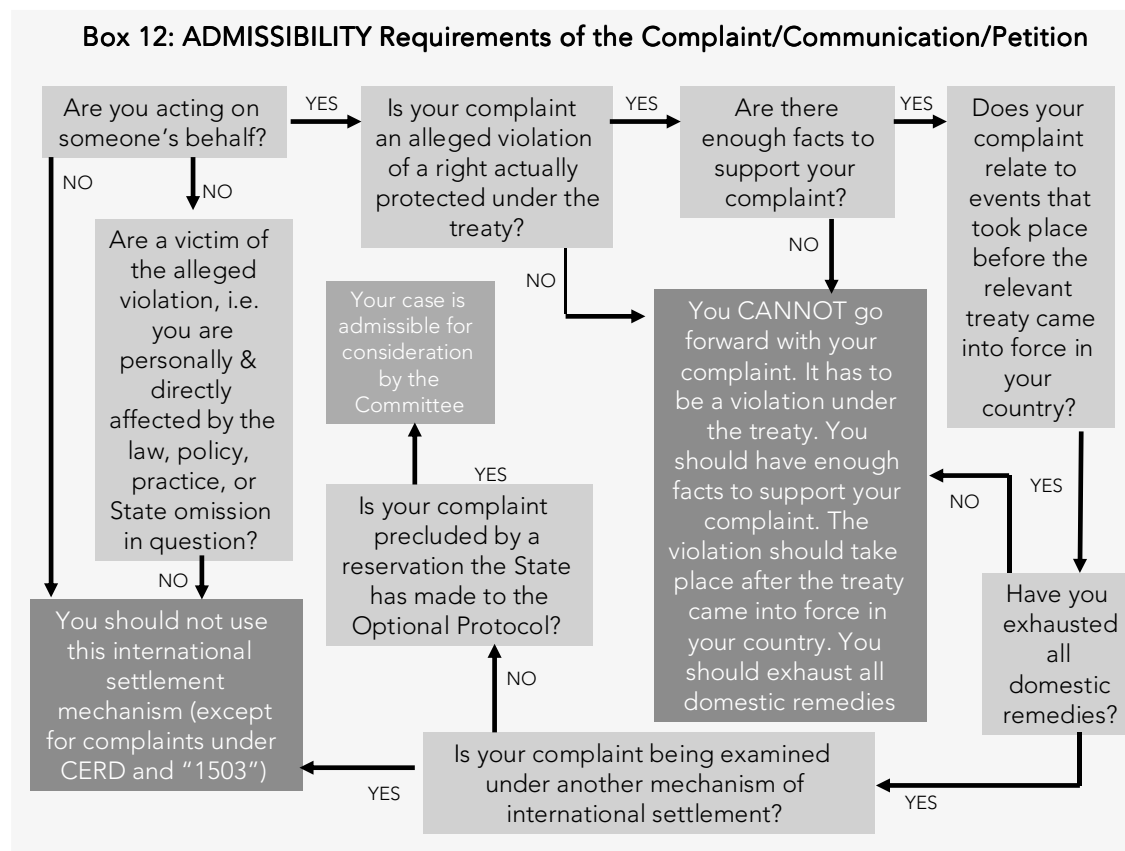
- A State files a complaint against another State for its action, or inaction, that has resulted in the violation of human rights.

Inquiries

- Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant Committee in this regard. States parties to **CAT may opt out**, at the time of ratification or accession, by making a declaration under Article 28. Similarly, States parties to the **UNCEDAW Optional Protocol may exclude the competence of the Committee** by making a declaration under Article 10.

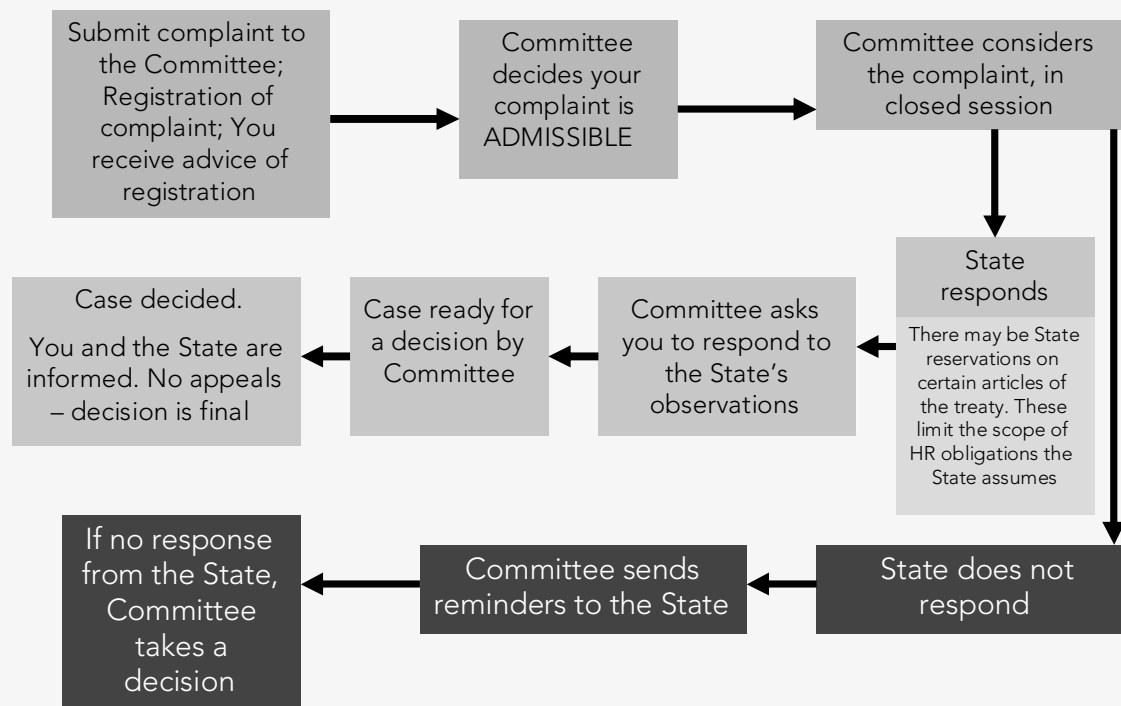
Receivability Requirements for Complaints

- The **admissibility**, and **merits**, of the case will be assessed initially before the Committee can consider the communication.



Source: UN OHCHR, "The Admissibility of your Case" in *Human Rights Treaty Bodies – Individual Communications: Procedure for Complaints by Individuals – Introduction*, www.ohchr.org/english/bodies/petitions/individual.htm

Box 13: Assessment of the MERITS of the Complaint/Communication/Petition



Source: Adapted from UN OHCHR, "The Merits of your Case" in *Human Rights Treaty Bodies – Individual Communications, Procedure for Complaints by Individuals under the Human Rights Treaties, Introduction, Overview of Individual Complaints Procedures*, www.ohchr.org/english/bodies/petitions/individual.htm

Individual Complaints

- The individual must first exhaust local remedies, including appeal to the highest court;
- The communication must not be anonymous or abusive;
- The communication must allege violations of human rights mentioned in the treaty that the Committee oversees;
- The communication must come from an individual who lives under the jurisdiction of a State which is party to the treaty;
- The communication must not be under current, or past, investigation in another international procedure; and
- The allegations set out in the communication must be substantiated, i.e. evidence must be provided.

State-to-State Complaints

- The communication must be in writing and not be anonymous or abusive;
- The communication must allege violations of human rights mentioned in the treaty that the Committee oversees;
- The communication must come from a State, and be directed at a State, which is party to the treaty;
- The communication must not be under current, or past, investigation in another international procedure; and
- The allegations set out in the communication must be substantiated, i.e. evidence must be provided.

Role of Migrant Workers' Rights Advocates

- Advocates can file **individual complaints** with the HRC, CAT, CERD and CEDAW on behalf of victims. Trade unions and NGOs can collaborate where violations of migrant workers rights are concerned.

Advantages & Disadvantages of Conventional Mechanisms

- By virtue of their responsibilities, treaty bodies serve as the most authoritative source of interpretation of the human rights treaties/Conventions they monitor.
- In addition, treaty bodies also share their understanding on, and experience of, various aspects of treaty implementation through the formulation and adoption of **general comments** or **general recommendations**. At present, there is a large body of general comments and recommendations serving as another valuable resource with regard to treaty interpretation.

We shall now look at each treaty-monitoring body and the work they do. Detailed information on each treaty body can be found in the references listed at the end of the Handbook.

The Human Rights Treaty Bodies

There are seven human rights treaty bodies that **monitor the implementation of the core international human rights treaties**. They are the:

- Human Rights Council (HRC);
- Committee on Economic, Social and Cultural Rights (CESCR);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Elimination of Discrimination Against Women (CEDAW);
- Committee Against Torture (CAT);
- Committee on the Rights of the Child (CRC); and
- Committee on Migrant Workers (CMW).

Overview of the Human Rights Council (HRC)⁸⁵

What it Covers

- The International Covenant on Civil and Political Rights (ICCPR)

Types of Procedures Available

- State Reporting
- Individual Complaints
- Inter-State Complaints

Supervision & Monitoring Procedures – How they Work

State Reporting:

- All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years).
- The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

Complaint Procedures – How they Work

Individual Complaints:

The *First Optional Protocol* to the Covenant gives the Committee competence to examine **individual complaints** with regard to alleged violations of the Covenant by States parties to the Protocol.

85 www.ohchr/english/about/publications/docs/fs16.htm#4

The full competence of the Committee extends to the *Second* Optional Protocol to the Covenant on the abolition of the death penalty with regard to States who have accepted the Protocol.

Inter-State Complaints:

Article 41 of the Covenant provides for the Committee to consider Inter-State Complaints through the establishment of an ad hoc Conciliation Commission, **ONLY** if all domestic remedies have been exhausted, and the State parties involved recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. This is done through a Declaration.⁸⁶

Who can Access the Complaint Procedures?

- Individuals
- States that recognize the competence of the Committee (done through a Declaration).

Remedies

- The Committee publishes its interpretation of the content of human rights provisions, known as **general comments** on thematic issues or its methods of work.

Overview of the Committee on Economic, Social and Cultural Rights (CESCR)⁸⁷

What it Covers

- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

Type of Procedure Available

- State Reporting **ONLY**

Supervision & Monitoring – How it Works

State Reporting:

- Within 2 years of accepting the Covenant, State parties to the ICESCR are required to submit reports stating progress made, and problems encountered, in the implementation of the rights under the treaty.
- Subsequent reports must be submitted at least every 5 years thereafter, or whenever the Committee requests.
- The Committee has assisted the reporting process by providing State parties with a detailed 22-page set of reporting guidelines specifying the types of information the Committee requires in order to monitor compliance with the Covenant effectively.

Complaint Procedures – How they Work

- At present it is not possible for individuals or groups who feel that their rights under the Covenant have been violated to submit formal complaints to the Committee, i.e. the Committee cannot consider individual complaints (although a **draft Optional Protocol** to the Covenant is under consideration which could give the Committee competence in this regard; the Commission on Human Rights has established a **Working Group** to this end).
- However, it may be possible for another Committee, with competence to consider **Individual Communications**, to consider issues related to economic, social and cultural rights in the context of its treaty.

⁸⁶ UN, *International Covenant on Civil and Political Rights*, 1966, Article 41(1).

⁸⁷ www.ohchr/english/about/publications/docs/fs16.htm#4

Who can Access the Complaint Procedures?

- No individual or group has access as there is no complaint procedure available.

Role of Migrant Workers' Rights Advocates

- The Committee has long recognized the important contribution which can be made by civil society in the provision of information concerning the status of the Covenant within State parties. The Committee was the first treaty body to provide non-governmental organizations (NGOs) with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Covenant in specific countries.
- On the first day of each session of the Committee, the afternoon meeting is set aside to give international and national NGOs and community-based organizations (CBOs) an opportunity to express their views about how the Covenant is, or is not, implemented by State parties. The Committee will receive oral testimony from NGOs as long as the information focuses specifically on the provisions of the Covenant, is of direct relevance to matters under consideration by the Committee, is reliable and is not abusive.
- In recent years, NGOs and CBOs have taken increased advantage of this procedure and provided the Committee with written, audio and video materials alleging the non-enjoyment of economic, social and cultural rights in State parties.
- The Committee has indicated that the purpose of the NGO procedure is to enable it to inform itself as fully as possible, to examine the accuracy and pertinence of information which would most probably be available to it anyway, and to put the process of receiving NGO information on a more transparent basis.
- NGOs and CBOs wishing to provide reliable and new information to the Committee may write to the secretariat of the Committee several months prior to the beginning of a particular session, with a specific request to intervene during the NGO procedure. Groups with written materials may also send these to the secretariat, and may attend Committee sessions. NGOs in consultative status with the United Nations or other groups which have relations with such NGOs may also attend Committee sessions. NGOs with consultative status may, in accordance with the relevant ECOSOC resolutions, submit written submissions to the Committee at any time. Committee sessions are generally held in public, with the exception of meetings at which it prepares its concluding observations, which are held privately.
- The active participation of NGOs in the work of the Committee has also proven fundamental in ensuring the wide distribution of information about the Covenant and the Committee at the national and local levels. In many instances, these organizations have generated substantial media attention in their countries following the adoption of concluding observations regarding the States in question.
- Trade unions can collaborate with NGOs and CBOs to highlight and address the violation of migrant workers' economic, social and cultural rights.

Remedies

- The Committee publishes its interpretation of the provisions of the Covenant, known as **general comments**.

Advantages & Disadvantages

- The absence of a complaints procedure places significant constraints on the ability of the Committee to develop jurisprudence or case-law and, of course, greatly limits the chances of victims of abuses of the Covenant obtaining international redress.

Overview of the Committee on the Elimination of all forms of Racial Discrimination (CERD)⁸⁸

What it Covers?

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Types of Procedures Available

- State Reporting
- Individual Complaints
- Inter-State Complaints
- Early Warning Procedure

Supervision & Monitoring Procedures

State Reporting:

- All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented.
- States must report initially one year after acceding to the Convention and then every two years.
- The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".
- The Committee has assisted the reporting process by providing State parties with a detailed 63-page set of reporting guidelines specifying the types of information the Committee requires in order to monitor compliance with the Covenant effectively.

Complaint Procedures – How they Work

Individual Complaints:

- An individual or a group of persons claiming to be the victim of racial discrimination can lodge a complaint with the Committee on the Elimination of Racial Discrimination against the State concerned.⁸⁹ This may only be done if the State is a party to the Convention and has declared that it recognizes the competence of CERD to receive such complaints.
- The Committee brings such communications confidentially to the attention of the State party in question, but does not - without its consent - reveal the identity of the individual or group claiming a violation.
- When the State has given an explanation of its views and perhaps suggested a remedy, the Committee debates the matter and may make suggestions and recommendations, which are transmitted both to the individual or group concerned and to the State party.
- NOTE: The Convention also provides that States which have made the declaration may establish or indicate a national body competent to receive petitions from individuals or groups who claim to be victims of violations of their rights and who have exhausted other local remedies (The procedures should be publicised and victims of racial discrimination should be helped to make use of them. The rules for making complaints should be simple, and complaints should be dealt with promptly. Legal aid should be available for poor victims of discrimination in civil or criminal proceedings and there should be the right to seek reparation for damages suffered). Only if petitioners fail to obtain satisfaction from the body indicated may they bring the matter to the Committee's attention.

Inter-State Complaints:

- Articles 11, 12, and 13 of the Convention provides for the Committee to consider Inter-State Complaints through the establishment of an ad hoc Conciliation Commission, ONLY if all domestic remedies have been exhausted, and the State parties involved recognizes the competence of the Committee to

⁸⁸ www.ohchr.org/english/about/publications/docs/fs16.htm#4; www.ohchr.org/english/bodies/cerd/index.htm; www.ohchr.org/english/about/publications/docs/fs12.htm; www.ohchr.org/english/bodies/cerd/early-warning.htm#about; www.ohchr.org/english/bodies/cerd/procedure.htm

⁸⁹ UN, *International Convention on the Elimination of all forms of Racial Discrimination*, 1965, Article 14.

receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. This is done through a Declaration.⁹⁰

Who can Access the Complaint Procedures?

- Individuals
- States that recognize the competence of the Committee (done through a Declaration)

Role of Migrant Workers' Advocates

- NGOs are given the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Covenant in specific countries.
- Trade unions can collaborate with NGOs in highlighting allegations of racial discrimination with regard to migrant workers and members of their families.

Remedies

- The Committee publishes its interpretation of the content of human rights provisions, known as **general recommendations (or general comments)** on thematic issues and organizes **thematic discussions**

Advantages & Disadvantages

- In keeping racial discrimination permanently on the international agenda, the Committee faces two problems which disrupt its work and make it difficult to carry out its mandate. One is the failure of some State parties to submit periodic reports – or their lateness. Various reasons have been given, including the lack of national staff competent in human rights reporting, and the burden of work in meeting international reporting obligations in an increasing number of human rights areas.
- The Committee's view is that reports from State parties are the key element in its monitoring task. The fact that racial discrimination persists and is liable to sudden flare-ups underlines the need for rigorous and regular monitoring.
- The second problem is financial. When CERD was established, it was decided that States parties – not the United Nations regular budget – would assume responsibility for the expenses of members of the Committee. This was one means, it was thought, of safeguarding the independence of the experts. Although the amounts due from individual State parties are small, many are late in meeting their commitment. The gap was bridged up to the end of 1985 through the regular budget of the United Nations, but since then the United Nations has not been able to assist due to the financial difficulties and CERD, which should hold two three-week sessions each year, has on several occasions had to shorten or cancel them.

Overview of the Committee on the Elimination of all forms of Discrimination against Women (CEDAW)⁹¹

What it Covers

The UN Convention on the Elimination of All Forms of Discrimination against Women (UNCEDAW)

Types of Procedures Available

- State Reporting
- Individual Complaints
- Inter-State Complaints

⁹⁰ UN, above n 89, Article 14 (1).

⁹¹ www.ohchr.org/english/about/publications/docs/fs16.htm#4; www.ohchr.org/english/bodies/cerd/index.htm; www.ohchr.org/english/about/publications/docs/fs12.htm; www.ohchr.org/english/bodies/cerd/early-warning.htm#about; www.ohchr.org/english/bodies/cerd/procedure.htm.

Supervision & Monitoring – How it Works

State Reporting:

- The Convention obliges State parties to submit to the Secretary-General a report on the legislative, judicial, administrative or other measures that they have adopted to implement the Convention, within a year after its entry into force and then at least every four years thereafter, or whenever the Committee on the Elimination of Discrimination against Women (CEDAW) so requests. These reports, which may indicate factors and difficulties in implementation, are forwarded to the CEDAW for its consideration.
- The Committee has adopted **Guidelines** to help states prepare these reports. According to these guidelines, the initial report is intended to be a detailed and comprehensive description of the position of women in that country at the time of submission; it is meant to provide a benchmark against which subsequent progress can be measured. Second and subsequent national reports are intended to update the previous report, detailing significant developments that have occurred over the last four years, noting key trends, and identifying obstacles to the full achievement of the Convention.
- Initial reports are considered by the Committee in the presence of a representative of the reporting country, who may make a supplementary presentation. Individual members are free to ask for clarification or elaboration of any issue related to the report, the presentation, or to the UNCEDAW's goals. Typically, the country representative returns a day or so later to respond to those questions; answers or supporting material are often presented in writing.
- Since 1990, second and subsequent reports have been reviewed by a pre-session working group of five Committee members. The working group draws up questions to guide the full Committee's examination of the report. These questions are submitted to the country's representative in advance. The representative then meets with the Committee to respond to these questions and any others that members may wish to ask.
- Following the consideration of each State Party report, the CEDAW Committee formulates concluding comments which outline factors and difficulties affecting the implementation of the Convention for that State party, positive aspects, principal subjects of concern, and suggestions and recommendations to enhance the implementation of the Convention.

Complaint Procedures – How they Work

Individual Complaints:

- Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women establishes a procedure that makes it possible for an individual or a group of persons claiming to be the victim of discrimination to lodge a complaint with the Committee on the Elimination of Discrimination against Women against the State concerned. This may only be done if the State is a party to the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, and has declared that it recognizes the competence of CERD to receive such complaints.⁹²

Inter-State Complaints:

- Article 29 of the UNCEDAW provides procedures in case of disputes between State parties concerning the interpretation or application of the Convention – it is to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other State parties.

Who can Access the Complaint Procedures?

- Individuals, or a group on behalf of victims
- States that recognize the competence of the Committee (done through a Declaration)

⁹² UN, *Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women*, 1979, Article 1, 2. The full procedure is outlined on www.ohchr.org/english/law/cedaw-one.htm

Role of Migrant Workers' Advocates

- NGOs are given the opportunity to submit written statements (called Shadow Reports) and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Convention when a State party's report is due.
- Trade unions can work with NGOs to highlight women migrant workers' enjoyment, or otherwise, of rights mentioned in the UNCEDAW.

Remedies

- The Committee also publishes its interpretation of the content of human rights provisions, known as **general recommendations (or general comments)** on thematic issues and organizes **thematic discussions**.

Advantages & Disadvantages

Advantages:

- The definition of "discrimination" is broader under this Convention than under the other human rights treaties.
- Shadow reports have improved the effectiveness of the Committee's work.

Disadvantages:

- There is no avenue for individual complaints.
- Enforcement is said to be weak – cannot enforce States' obligation to report.
- Reservations by States potentially undermines the usefulness of the Convention.

Overview of the Committee against Torture and other Cruel, Inhuman & Degrading Treatment or Punishment (CAT)⁹³

What it Covers

- The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Type of Procedures Available

- State Reporting
- Individual Complaints
- Inter-State Complaints
- Inquiries

Supervision & Monitoring – How it Works

State Reporting:

- All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention, and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "general comments".⁹⁴
- The Committee has adopted **Guidelines** to help states prepare these reports.

⁹³ www.ohchr.org/english/about/publications/docs/fs16.htm#4; www.ohchr.org/english/bodies/cerd/index.htm; www.ohchr.org/english/about/publications/docs/fs12.htm; www.ohchr.org/english/bodies/cerd/early-warning.htm#about; www.ohchr.org/english/bodies/cerd/procedure.htm

⁹⁴ UN, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1965, Article 19.

Complaint Procedures – How they Work

Individual Complaints:

- The Convention against Torture gives private individuals, in certain circumstances, the right to lodge with the Committee against Torture complaints regarding the violation of one or more of its provisions by a State party. For the Committee to admit and examine individual communications against a State party, however, its competence in that regard must have been expressly recognized by the State concerned.⁹⁵
- Individual complaints are always examined by the Committee in closed session. A communication may be submitted by any private individual who claims to be the victim of a violation of the Convention by a State party that has recognized the competence of the Committee under Article 22 and that is subject to its jurisdiction. If an alleged victim is not in a position to submit a communication, his or her relatives or representatives may act on his or her behalf.

Inter-State Complaints:

- Article 21 of the Convention sets out the procedure for the Committee to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to State parties who have made a declaration accepting the competence of the Committee in this regard.⁹⁶

Inquiry:

- If the Committee receives reliable information that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information, and to this end, to submit observations with regard to the information concerned.
- The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. The co-operation of the State Party concerned will be sought. In agreement with that State Party, such an inquiry may include a visit to its territory.
- Findings will be forwarded to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
- All the proceedings of the Committee shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.⁹⁷

Who can Access the Complaint Procedures?

- Individuals or a group on behalf of victims.
- States that recognize the competence of the Committee (done through a Declaration).

Remedies

- The Committee includes in its annual report a summary of the communications examined, the explanations and statements of the State parties concerned, and its own views.

Overview of the Committee on the Rights of the Child (CRC)⁹⁸

What it Covers

- The UN Convention on the Rights of the Child (UNCRC)
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

⁹⁵ UN, above n 94, Article 22; www.ohchr.org/english/bodies/petitions/index.htm

⁹⁶ UN, above n 94, Article 21; www.ohchr.org/english/law/cat.htm

⁹⁷ UN, above n 94, Article 20; www.ohchr.org/english/law/cat.htm

⁹⁸ www.ohchr.org/english/law/crc.htm#part1

- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Type of Procedure Available

- State Reporting ONLY

Supervision & Monitoring – How it Works

State Reporting:

- All State parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.⁹⁹
- The Committee reviews additional reports which must be submitted by States who have acceded to the two Optional Protocols to the Convention.
- The Committee has adopted Guidelines to help states prepare these reports.

Complaint Procedures – How they Work

- There are no complaint procedures under the Convention on the Rights of the Child, so the Committee cannot consider either individual or inter-State complaints. However, child rights may be raised before other Committees with competence to consider individual complaints insofar as they relate to children, e.g. the HRC, CESCR, CERD, CEDAW, CAT or CRMW.
- The Committee may, however, request further information relevant to the implementation of the Convention, particularly if there are indications of serious problems.

Remedies

The Committee publishes its interpretation of the content of human rights provisions, known as **general comments** on thematic issues, and organizes **days of general discussion**.

Role of Migrant Workers’ Rights Advocates

- The Committee devotes one or more of its regular sessions to **General Discussion** on one particular article of the Convention, or on specific issues, such as the situation of the girl-child, the economic exploitation of children, or children in the media, etc.
- Representatives of international organisations and NGOs participate in the Committee discussion, which is normally announced in the report of the session immediately preceding the General Discussion session.
- All interested parties, including NGOs, are invited to make written contributions. Trade unions could collaborate with NGOs where violations of the rights of children of migrant workers are concerned.

Advantages & Disadvantages

Advantages:

- The rights of children of migrant workers can be addressed by the Committee when they are reviewing State reports.

Disadvantages:

- There is no avenue for individual or inter-State complaints.
- Enforcement is said to be weak – cannot enforce States’ obligation to report.
- Reservations by States potentially undermines the usefulness of the Convention.

⁹⁹ UN, *Convention on the Rights of the Child*, 1989, Article 44; www.ohchr.org/english/about/publications/docs/fs10.htm

Overview of the Committee on the Rights of Migrant Workers (CRMW)¹⁰⁰

What it Covers

- The International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW)

Type of Procedures Available

- State Reporting
- Individual Complaints
- Inter-State Complaints

Supervision & Monitoring – How it Works

State Reporting:

- All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.¹⁰¹
- The Committee has adopted Guidelines to help states prepare these reports.

Complaint Procedures – How they Work

Individual Complaints:

- The Committee can, under certain circumstance, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated (once 10 States parties have accepted this procedure in accordance with article 77 of the Convention).
- Any individual who claims that her or his rights have, under the Covenant or Convention, been violated by a State party to that treaty may bring a communication before the relevant committee, **provided that the State has recognized the competence of the Committee to receive such complaints**. Complaints may also be brought by third parties on behalf of individuals, provided they have given their written consent, or where they are incapable of giving such consent.

Inter-State Complaints:

- Article 74 of the Convention sets out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to State parties who have made a declaration accepting the competence of the Committee in this regard.
- Article 92 states that disputes between States parties concerning interpretation or application of the Convention are to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. State parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other State parties.

Who can Access the Complaint Procedures?

- Individuals
- States that recognize the competence of the Committee

Remedies

The Committee publishes its interpretation of the content of human rights provisions, known as **general comments** on thematic issues.

¹⁰⁰ www.ohchr.org/english/law/crc.htm#part1

¹⁰¹ UN, *International Convention on the Rights of Migrant Workers and Members of their Families*, 1990, Article 73; www.ohchr.org/english/law/cmw.htm

Role of Migrant Workers' Rights Advocates

- Representatives of international organisations and NGOs participate in the Committee discussion, which is normally announced in the report of the session immediately preceding the General Discussion session.
- All interested parties, including NGOs, are invited to make written contributions. At the very least, trade unions could collaborate with NGOs insofar as the labour rights of migrants are concerned.

Advantages & Disadvantages

Advantages:

- The Convention covers a wider scope of migrant workers in comparison to the ILO Conventions.
- The Convention also goes beyond the migrant worker only and includes the family of the migrant worker.

Disadvantages:

- There is no avenue for individual complaints.
- Enforcement is potentially weak – cannot enforce States' obligation to report.
- Reservations by States can potentially undermine the usefulness of the Convention.

B. Extra-Conventional Mechanisms

In contrast to conventional mechanisms, **extra-conventional mechanisms** refers to those mechanisms established by mandates emanating, not from treaties, but from the Resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights, or the General Assembly.

Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on Prevention of Discrimination and Protection of Minorities).

The extra-conventional mechanisms normally take the form of an independent expert, or a working group. Three such mechanisms are the **Special Procedures** (i.e. **urgent actions by thematic or country mandates**), the **1503 Procedure**, and the **Procedure of the Commission on the Status of Women**.

The Special Procedures

"Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights to address either specific country situations, or thematic issues. The special procedures are a way for the Commission to be constantly engaged on an issue of concern throughout the year.

The 1503 Procedure

The procedure before the Commission on Human Rights, called the 1503 procedure after the resolution of the Economic and Social Council whereby it was established, generally deals with situations in countries rather than individual complaints. Substantially amended in 2000 by the Economic and Social Council (to make it more efficient, to facilitate dialogue with the Governments concerned and to provide for a more meaningful debate in the final stages of a complaint before the Commission on Human Rights), it is this so-called revised 1503 procedure that is explained below.

The Procedure of the Commission on the Status of Women

While the 1503 procedure is designed to reveal gross violations of human rights in particular countries, the confidential complaint procedure of the Commission on the Status of Women is designed to identify global trends and patterns concerning women's rights. It was established pursuant to a series of resolutions of the Economic and Social Council, under which the Commission considers confidential and non-confidential complaints on the status of women. As with the 1503 procedure, it does not afford direct redress to victims of human rights violations.

Overview of the Special Procedures¹⁰²

What it Covers

- It addresses either specific country situations, or thematic issues.¹⁰³

Composition

- Special procedures are either an individual (called “Special Rapporteur”, “Special Representative of the Secretary-General”, “Representative of the Secretary-General”, and “Representative of the Commission on Human Rights” or “Independent Expert”) or a Working Group, usually composed of five members.

Mandates

- Although the mandates given to special procedure mechanisms vary, they usually are to examine, monitor, advise, and publicly report on human rights situations in specific countries or territories (known as country mandates), or on major phenomena of human rights violations worldwide (known as thematic mandates). Various activities can be undertaken by special procedures, including conducting studies, providing advice on technical cooperation, responding to individual complaints, and engaging in general promotional activities.
- In carrying out their mandates, Special Rapporteurs and other mandate-holders undertake **country visits** (sometimes referred to as fact-finding missions) and report back to the Commission on Human Rights. These missions take place at the request of the relevant special procedure or at the invitation of the country concerned. Many countries have extended **standing invitations** to all thematic special procedures of the Commission.
- The activities which can be undertaken, along with the scope and length of the mandate of each special procedure, are set out in the Commission on Human Rights resolutions on the specific mandate. All special procedures are required to report on their activities to the annual session of the Commission on Human Rights, which takes place in March-April each year.
- The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial retribution for their work. The independent status of the mandate-holders is crucial in order to be able to fulfill their functions in all impartiality.

Of Interest to Migrant Workers’ Advocates

- The objective of the special procedures is to make international human rights more operative.
- Each special procedure has its own mandate, which has, in certain cases, evolved in accordance with specific circumstances and needs.
- While certain basic principles and criteria are common to all special procedures, the complexities and peculiarities of each individual mandate have, at times, required special arrangements.

Complaint Procedures – How they Work

- **There are no formal complaints procedures for special procedures** even though their activities are based on information received from various sources (i.e. the victims, or their relatives, local or international NGOs, etc.) containing allegations of human rights violations.
- Information of this kind may be submitted in various forms (e.g. letters, faxes, cables, and emails) and may concern individual cases, as well as details of situations of alleged violations of human rights.
- Other details pertaining to the specific alleged violation may be required by the relevant thematic mandates (e.g. past and present places of detention of the victim; any medical certificate issued to the victim; identification of witnesses to the alleged violation; any measures undertaken to seek redress locally, etc.).

¹⁰² www.ohchr.org/english/bodies/chr/special/complaints.htm

¹⁰³ A full and current list of the country, and thematic, mandates can be found at www.ohchr.org/english/bodies/chr/special/index.htm

- To facilitate the examination of reported violations, questionnaires relating to several mandates are available to persons wishing to report cases of alleged violations. It should, however, be noted that communications are considered even when they are not submitted in the form of a questionnaire.
- For specific information concerning the individual complaint procedures of each special procedure mandate please consult the thematic mandates or country mandates lists.¹⁰⁴

Receivability Requirements of Complaints

In order to pursue a complaint, a number of requirements must be fulfilled:

- Identification of the alleged victim(s);
- Identification of the government agents responsible for the violations;
- Identification of the person(s) or organisation(s) submitting the communication;
- Date and place of the incident; and
- A detailed description of the circumstances of the incident in which the alleged violation occurred.

In order to be considered admissible, a communication must:

- Not be anonymous;
- Not contain abusive language;
- Not convey an overtly political motivation; and
- Describe the facts of the incident, and the relevant details referred to above, clearly and concisely.

Role of Migrant Workers' Rights Advocates

- International, regional and national non-governmental organizations provide invaluable support to the special procedures system. Human rights NGOs have been at the forefront of the advocacy for the creation of specific mandates. They provide essential analysis and information on the human rights situation in many countries and with regard to many thematic issues. Such information is verified by the experts and often transmitted to Governments for their views. The NGOs disseminate the work of the experts to their local constituencies.
- The significant contribution that NGOs make to enhance the system is widely recognized by Governments, the experts and the United Nations.
- The establishment of a mandate on human rights defenders in 2000 constitutes a recognition not only of the indispensable contribution of NGOs, but also of the fact that many human rights defenders are harassed and intimidated for carrying out their human rights work and of their need for protection.
- Trade unions can collaborate with NGOs to ensure the promotion and protection of migrant workers rights.

Remedies

- Interpretation of specific treaty provisions can be found in the **views** of the Special Rapporteurs/Representatives/Independent Expert on complaints, and in the **concluding observations** or **concluding comments** which they adopt based on their findings.
- Follow-up to the concluding observations or comments are examined in future reports.

Advantages & Disadvantages

- By virtue of their responsibilities, Special Rapporteurs/Representatives/Independent Expert contribute to the authoritative source of interpretation of the human rights treaties/Conventions that treaty-monitoring bodies monitor.

¹⁰⁴ Above n 103.

Overview of the 1503 Procedure¹⁰⁵

What it Is

- Each year, the UN receives thousands of communications alleging various human rights violations. The UN ECOSOC consequently adopted a procedure for dealing with such communications. The 1503 Procedure is an extra-conventional complaint mechanism that is designed to reveal the existence of gross and systematic violations of human rights and fundamental freedoms. Such complaints are addressed by the Commission on Human Rights (now called the Human Rights Council) – a political body composed of State representatives.
- It is the oldest human rights complaint mechanism in the UN system. It is called the 1503 Procedure after Council Resolution 1503 of 27 May 1970 which established the procedure. Council Resolution 2000/3 of 16 June 2000 reformed the procedure.

Mandate

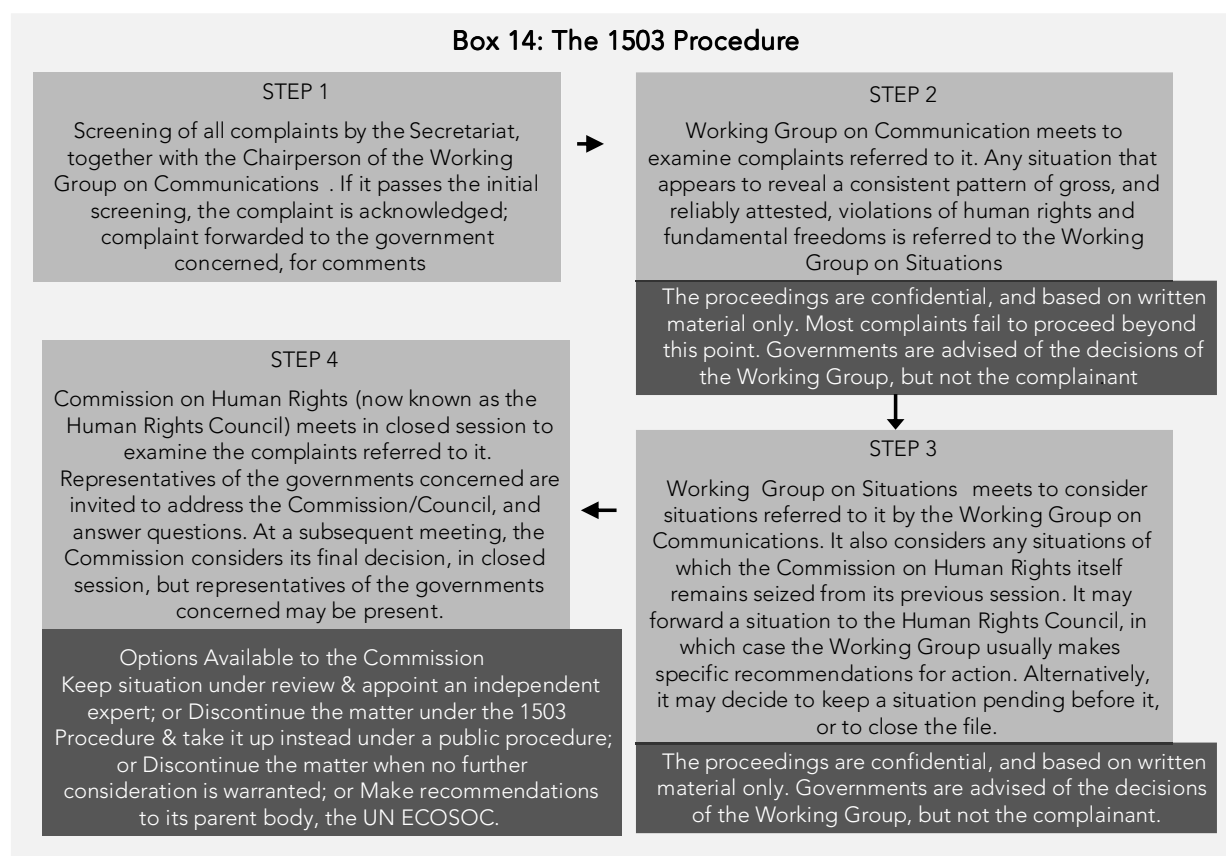
- It generally deals with situations in countries rather than individual complaints.
- The Council has the mandate to examine a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms occurring in any country of the world.
- Any individual or group claiming to be the victim of such human rights violations may submit a complaint, as may any other person or group with direct and reliable knowledge of such violations.
- Where an NGO submits a complaint, it must be acting in good faith and in accordance with recognized principles of human rights. The organization should also have reliable direct evidence of the situation it is describing.

Of Interest to Migrant Workers' Rights Advocates

- The Working Group on Communications, meets annually, immediately after the Sub-Commission session, to examine communications (complaints) received from individuals and groups alleging human rights violations and any government responses.
- The fact that a communication is being transmitted to the State and acknowledged to the complainant does not imply any judgment on the admissibility or merits of the communication. Where the Working Group identifies reasonable evidence of a consistent pattern of gross violations of human rights, the matter is referred to the Working Group on Situations.
- The Working Group on Situations comprises five members nominated by the regional groups, due attention being paid to rotation in membership. It meets at least one month prior to the Commission, to examine the particular situations forwarded to it by the Working Group on Communications and decide whether or not to refer any of these situations to the Commission.
- Subsequently, it is the turn of the Commission to take a decision concerning each situation brought to its attention in this manner.
- All initial steps in the process are confidential until a situation is referred to the Economic and Social Council. Since 1978, however, the Chairperson of the Commission on Human Rights has announced the names of countries that have been under examination. Thus, if a pattern of abuse in a particular country remains unresolved in the early stages of the process, it can be brought to the attention of the world community through the Economic and Social Council - one of the principal bodies of the United Nations.

¹⁰⁵ www.ohchr.org/english/bodies/petitions/1503.htm#1503

1503 Procedure – How it Works



Source: Adapted from UN OHCHR, "The 1503 Procedure of the Commission on Human Rights" in *Fact Sheet No. 7, Revision 1, Complaints Procedure, Part 2: Complaints to the Commission on Human Rights and the Commission on the Status of Women*, www.ohchr.org/english/about/publications/docs/fs7.htm#1503

Admissibility & Receivability Requirements of Complaints

- No communication will be admitted if it runs counter to the principles of the Charter of the United Nations or appears to be politically motivated.
- A communication will only be admitted if, on consideration, there are reasonable grounds to believe - also taking into account any replies sent by the Government concerned - that a *consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms exists*.
- Communications may be submitted by individuals or groups who claim to be victims of human rights violations or who have direct, reliable knowledge of violations.
- Where an NGO submits a complaint, it must be acting in good faith and in accordance with recognized principles of human rights. The organization should also have reliable direct evidence of the situation it is describing.
- Anonymous communications are inadmissible, as are those based only on reports in the mass media.
- Each communication must describe the facts, the purpose of the petition and the rights that have been violated.
- As a rule, communications containing abusive language or insulting remarks about the State against which the complaint is directed will not be considered.
- Domestic remedies must have been exhausted before a communication is considered - unless it can be shown convincingly that solutions at the national level would be ineffective or that they would extend over an unreasonable length of time.
- The submission of complaints overlapping with other procedures in the United Nations system and the duplication of complaints already considered by such procedures should be avoided.

Role of Migrant Workers' Rights Advocates

- Advocates can initiate individual complaints under the 1503 Procedure.

Remedies

- Although the initial steps of the process are confidential, since 1978 the names of the countries which are under examination are not. This ensures that a pattern of abuses in a particular country, if not resolved in the early stages of the process, can be brought to the attention of the world community.

Advantages & Disadvantages

Advantages:

- The pluses of the 1503 procedure are that you may submit a complaint against any country without needing to check whether it has ratified a particular treaty or limited its obligations under the instrument.
- Once you have submitted a complaint, you do not have to respond again at a later point with further information - the initial complaint is sufficient.
- With the 1503 procedure, it is possible for your complaint to reach the highest level of the United Nations human rights machinery – the Human Rights Council. It may thus result in very significant pressure being brought to bear upon a State to change laws, policies or practices that infringe internationally guaranteed human rights.

Disadvantages:

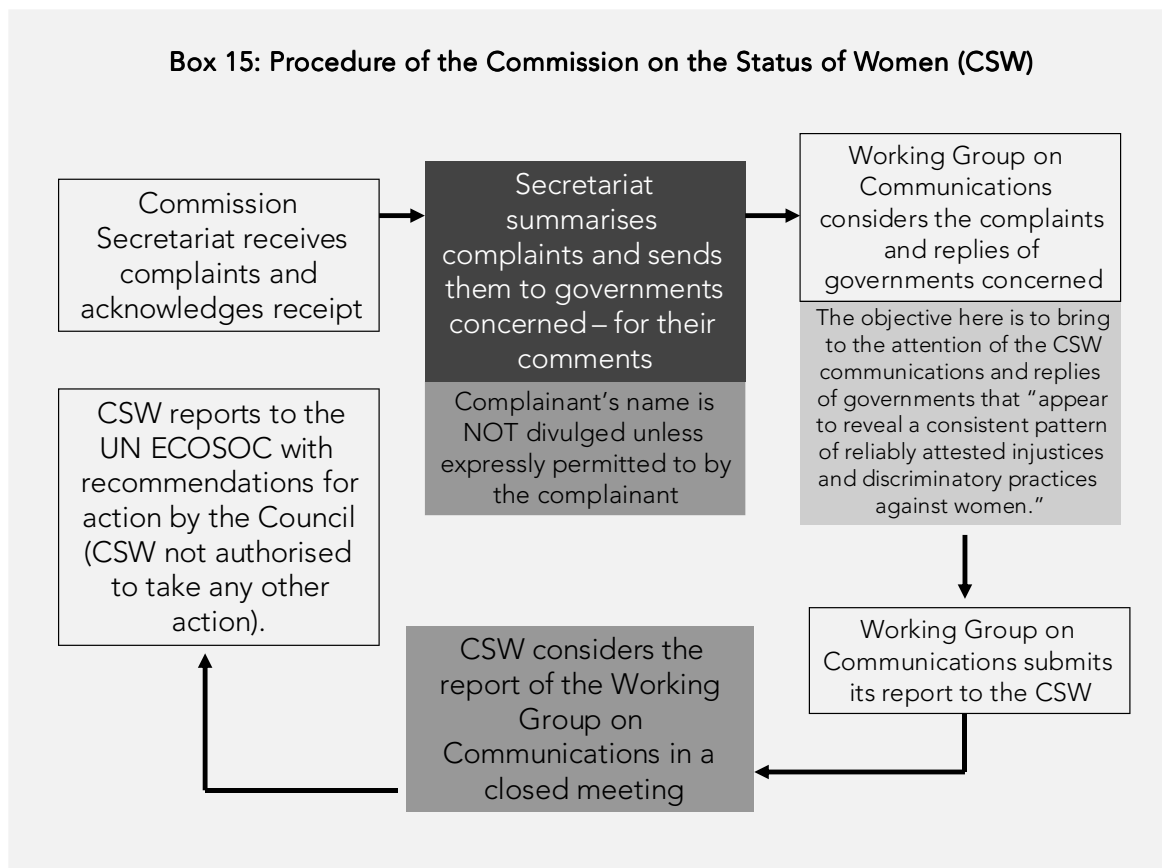
- Possible drawbacks of the procedure are that you will not be informed of the decisions taken at the various stages of the process or the reasons for them.
- Nor will you be informed of the relevant Government's responses to your complaint.
- You should also be aware that the procedure can be protracted and, unlike complaints under the human rights treaties, there is no provision for urgent measures of protection.

Overview of the Procedure of the Commission on the Status of Women

What it Is

- The confidential complaints procedure of the Commission on the Status of Women is designed to identify global trends and patterns concerning women's rights.

Complaints Procedure – How it Works



Source: Adapted from UN OHCHR, "The Procedure of the Commission on the Status of Women" in *Fact Sheet No. 7, Revision 1, Complaints Procedure, Part 2: Complaints to the Commission on Human Rights and the Commission on the Status of Women*, www.ohchr.org/english/about/publications/docs/fs7.htm#women

Advantages & Disadvantages

- The Commission itself can only make recommendations for action by the UN ECOSOC and cannot take any other action.

Comparison of the ILO and UN Conventions and Mechanisms

If UN member States have not ratified or acceded to any of the mentioned UN human rights Conventions, they cannot be held directly accountable for their actions or inaction, although there are some procedures in place that can look into allegations of gross human rights violations.¹⁰⁶

UN Conventions can also be ratified with **reservations**, i.e. the Member State agrees to abide by only certain articles of a Convention. On articles where it has placed a reservation, the Member State will not be held accountable for the implementation of those articles domestically but will have to report on the steps that it is taking towards the removal of the reservation.

¹⁰⁶ This refers to the "1503 Procedure".

ILO Conventions, on the other hand, cannot be ratified with reservations – either a Member State agrees to abide by all its articles and ratifies the Convention, or holds-off ratification until it is ready to commit to implementing all the articles of the Convention.

The ILO supervisory mechanisms do not directly allow NGOs access to the ILO procedures, and individuals do not receive any compensation for violations they have incurred. In addition, ILO decisions have been criticised for not having a strong enforcement mechanism. However, it must be noted that the ILO mechanisms are comprehensive enough to encourage governments to cooperate with the ILO, and implement its decisions, given its promotion of social dialogue between the tripartite constituents (i.e. the government, employers' and workers' organisations).

CHAPTER 3

Other International Instruments

In addition to international human rights Conventions, some government and non-government organisations have developed other non-binding international instruments that provide voluntary principles and standards for responsible business conduct in a variety of areas, including:

- employment and industrial relations,
- human rights,
- environment,
- information disclosure,
- combating bribery,
- consumer interests,
- science and technology,
- competition, and
- taxation.

Such government and non-government organisations include:

- the **OECD Group**, who have developed the **OECD Guidelines**;
- the **Global Union Federations (GUFs)**, who have developed a body of **International Framework Agreements (IFAs)** that reflects an on-going social dialogue with a number of multinational enterprises in their sectors or industries.
- the ILO, whose tripartite constituents have developed the ILO's **Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Tripartite Declaration)**; and
- the UN, whose member States have developed the **Global Compact (GC)**.

We shall now look at each organisation and the instruments they have developed that can contribute to the promotion and protection of the rights of migrant workers and that of their family members.

Organisation for Economic Cooperation and Development (OECD)

The **OECD Group** comprises 30 member countries¹⁰⁷ sharing a commitment to democratic government and the market economy. An active relationship exists with some 70 other countries, NGOs and civil society – it thus has a global reach. Best known for its publications and its statistics, its work covers economic and social issues – from macro-economics to trade, education, development, science and innovation.

The OECD plays a prominent role in fostering good governance in the public service and in corporate activity. Through sectoral monitoring, it helps governments to ensure the responsiveness of key economic areas within their countries. It produces internationally agreed instruments, decisions, and recommendations to promote rules of the game in areas where multilateral agreement is necessary for individual countries to make progress in a globalised economy. Sharing the benefits of growth is also crucial as shown in its activities on emerging economies, sustainable development, territorial economy, and aid. Dialogue, consensus, peer review, and pressure are at the very heart of the OECD.

The OECD Guidelines for Multinational Enterprises¹⁰⁸

The **OECD Guidelines** are recommendations by governments, addressed to multinational enterprises operating in, or from, their territories. All 30 OECD member countries adhere to the Guidelines, as well as nine non-member countries (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia). More countries are now in the process of adhering to the Guidelines. To do so, governments must meet their responsibilities with regard to, for example, setting up a functioning and effective National Contact Point (NCP), and must work constructively with trade unions.

Though not binding in a legal sense, they are not optional for corporations. Corporations cannot pick and choose among the provisions of the Guidelines, nor subject them to their own interpretation. Their application does not depend on endorsement by companies. They are the only multilaterally endorsed and comprehensive rules that governments have negotiated, committing themselves to help solve problems arising in corporations. They express the shared view of what major governments believe to be good corporate behaviour, and corporations are expected to abide by their contents in their business operations worldwide.

More importantly, the Guidelines are supported by an implementation procedure, where the ultimate responsibility for their enforcement lies with governments. This is a fundamental difference between the Guidelines and, for example, unilateral company Codes of Conduct. It makes the Guidelines more than just a public relations exercise.

The Guidelines are part of a wider OECD Declaration on International Investment and Multinational Enterprises package of investment-related provisions which also covers the national treatment of foreign-owned corporations, measures to avoid or minimise the imposition of conflicting requirements on them, and transparency regarding the provision of official incentives and disincentives.

¹⁰⁷ Refer to Appendix 8 for a list of the OECD member countries.

¹⁰⁸ www.oecd.org/dataoecd/56/36/1922428.pdf

Overview of the National Contact Point (NCPs)¹⁰⁹

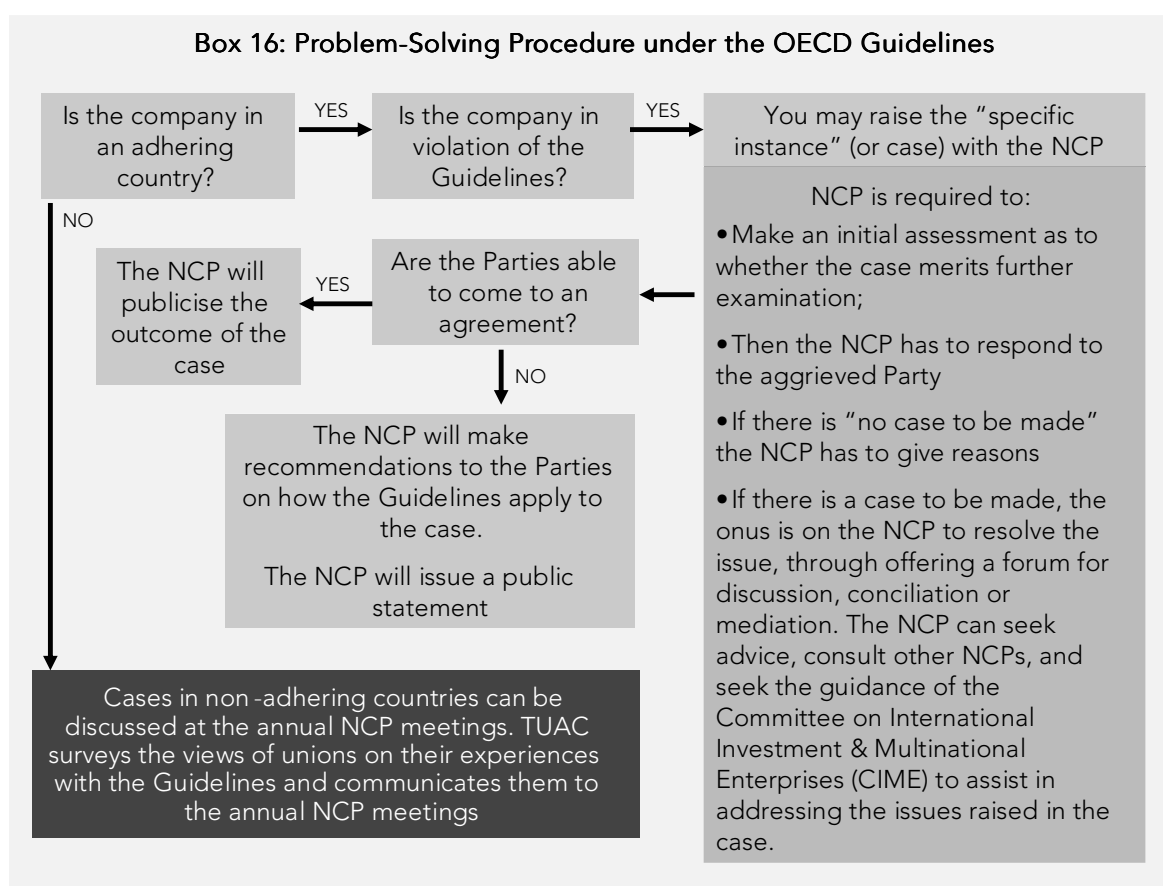
What it Covers

- The OECD Declaration on International Investment and Multinational Enterprises, which includes the OECD Guidelines for Multinational Companies

OECD Guideline Implementation Procedure

- The government establishes a National Contact Point – it can be a simple government agency or multi-agencies, or a tripartite body.
- The NCP's role is to:
 - Undertake promotional activities, i.e. translate the Guidelines, raise the public's awareness of the Guidelines, and inform both inward and outbound investors (including potential investors) about the Guidelines;
 - Handle enquiries;
 - Contribute to the solution of problems that may arise; and
 - Maintain relations with representatives of labour, business and other interested parties (such as NGOs and CSOs)

Reported Cases – How they are Processed



Source: Adapted from *A User's Guide for Trade Unionists on the OECD Guidelines for Multinational Enterprises*, www.tuac.org/publicat/guidelines-EN.pdf, p. 6

109 UNI, *A User's Guide for Trade Unionists on the OECD Guidelines for Multinational Enterprises*, p. 5; www.tuac.org/publicat/guidelines-EN.pdf

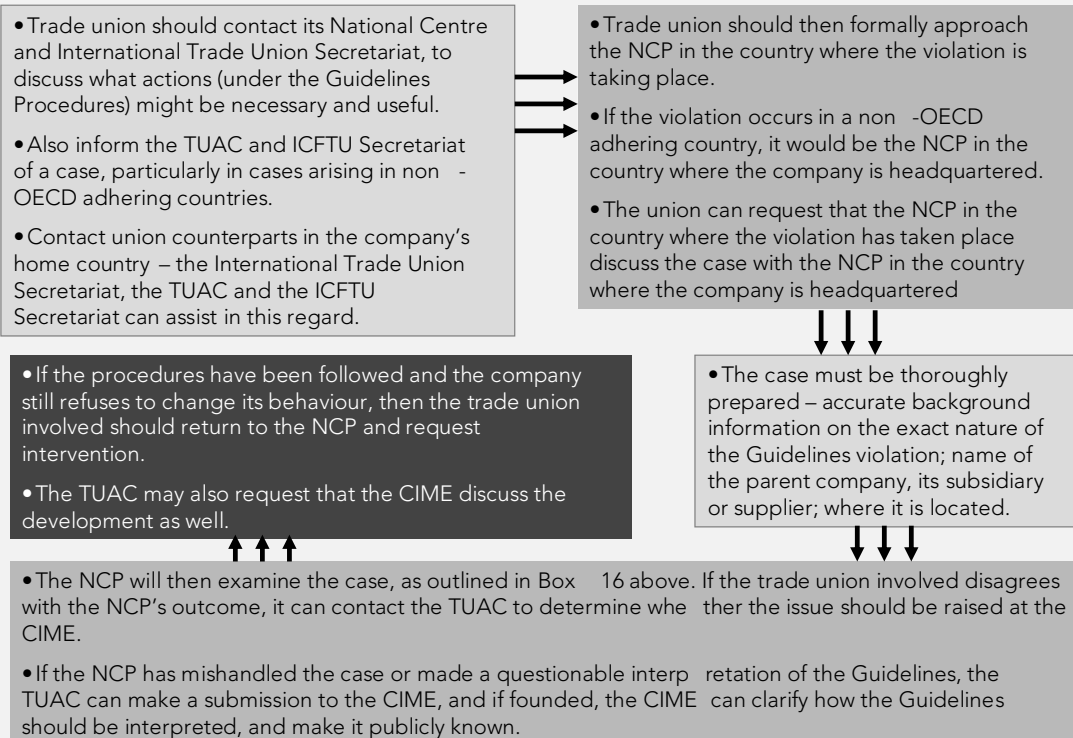
Who can Access the NCPs?

- Workers (through workers' organisations) and businesses.

Role of Migrant Workers' Rights Advocates

- Trade unions can work with NGOs (and vice versa) to bring to the NCPs attention cases where migrant workers are exploited and abused.
- The process is as follows:

Box 17: Suggested Procedure for Unions where OECD Guidelines are Violated



Source: Adapted from *A User's Guide for Trade Unionists on the OECD Guidelines for Multinational Enterprises*, www.tuac.org/publicat/guidelines-EN.pdf, pp. 6 – 7.

Remedies

- NCPs can publicise the outcomes of discussions that it has facilitated between Parties. This can have an impact and affect a company's behaviour.

Advantages and Disadvantages

- Sensitive business, and individual, information may not be divulged if it will result in harm to either Party. Outcomes of such discussions remain confidential.
- However, parties are free to comment publicly on the case, though they cannot disclose the information and views provided by another party during proceedings, unless that other party agrees to their disclosure.

The Global Union Federations

Trade unions have also developed ethical human, and labour, related international agreements to ensure that the human and labour rights of workers are protected regardless of where a multi-national company operates.

“Global Unions” comprises:

- the International Trade Union Confederation (ITUC), which represents most national trade union centres. Most individual unions relate to the ITUC through their national union centre;
- the ten Global Union Federations (GUFs) – the international representatives of unions organising in specific industry sectors or occupational groups (EI, ICEM, IFJ, ITGLWF, PSI, ITF, BWI, IMF, IUF, & UNI); and
- the Trade Union Advisory Committee to the OECD (TUAC).

An individual union will usually belong to a national union centre in its country, which will then affiliate to a world body such as the ITUC. The same individual union will also usually affiliate to a GUF relevant to the industry where it has members.

International Framework Agreements (IFAs)

Through initiatives and pressure from the United Nations, OECD, governments and others, a growing number of big Multinational Companies (MNCs) have entered into a Corporate Social Responsibility (CSR) process based on a sustainable development approach, including the three pillars of social responsibility, environmental protection and economic viability.

However, the vast majority of MNCs are operating without respecting such standards. It is also known that many governments in developing countries do not put pressure on foreign MNCs to respect labour standards because of the need to attract investment.

There are, however, many examples of Multinational Companies achieving high productivity and good business by respecting labour standards and motivating and training employees. Over the years, the global union federations (GUFs) have established an on-going social dialogue with a number of multinational enterprises in their sectors or industries. These discussions have led to a wide range of formal and informal agreements and understandings. This includes regular contacts through well established communication channels as well as, in some cases, formal Framework Agreements.

A **Framework Agreement** is an agreement negotiated between a multinational company and a global union federation concerning the international activities of that company. The main purpose of a framework agreement is to establish a formal on-going relationship between the multinational company and the global union federation which can solve problems and work in the interests of both parties. In many cases they contain a complaint and/or monitoring system, and also covers suppliers and subcontractors.

Some consider framework agreements to be negotiated codes of conduct with complaints systems, but this is not a useful way of looking at these agreements, as they are qualitatively different from Codes of Conduct. Framework Agreements constitute a formal recognition of social partnership at the global level. They provide a global framework for protecting trade union rights and encouraging social dialogue and collective bargaining. They, therefore, complement – and are not a substitute for – agreements at the national or local level. Most IFAs also include a review mechanism, which makes the agreement a practical, living document that better enables monitoring of a company's performance and one that can be amended or improved in light of experience. This further distinguishes an IFA from a company's Code of Conduct.

IFAs put in place the very best standards on trade union rights, health, safety and environmental practices, and quality of work principles across a company's global operations. They establish a set of principles in all operations of a multinational, regardless of whether or not those standards exist in an individual country's national laws.

An IFA does not supplant collective bargaining at a particular worksite, but rather assures that high standards are consistently met regarding human rights, trade union rights and health, safety, and environmental practices wherever a company has operations. Local trade unions affiliated to the Global Unions can include migrant workers' rights issues in their dialogue with MNCs where it is known to employ migrant workers.

Some of the GUFs that have concluded IFAs with some MNCs are:

- **ICEM – International Federation of Chemical, Energy, Mine and General Workers' Union.**¹¹⁰ The ICEM has Global Agreements with Rhodia (chemical, France), Electricite de France (energy, France), Lukoil (oil, Russia), Svenska Cellulosa Aktiebolaget – SCA – (chemical, Sweden), Elgin National Industries – ENI – (mining, USA), AngloGold (mining, USA), Norske Skog (paper, Norway), Endesa (energy, Spain), Freudenberg (chemical, Germany), Statoil (oil, Norway) and Lafarge (construction cement, France).
- **BWI – Building and Wood Workers International.**¹¹¹ BWI signed several International Framework Agreements on workers rights with major MNCs, namely with: IKEA (furniture, Sweden), Faber-Castell (pencils, Germany), Hochtief (construction, Germany), Skanska (construction, Sweden), Ballast Nedam (construction, Holland) , Stabilo (instruments for writing and cosmetics, Germany) , Impregilo (construction, Italy), Veidekke (construction, Norway), Lafarge (construction, France) and Royal BAM Groep (construction, Netherlands).
- **IMF – International Metal Workers Federation.**¹¹² The IMF has IFAs with Merloni Elettrodomestici (kitchen appliance, Italy), Volkswagon (cars, Germany), Daimlerchrysler (cars, Germany), Leoni (cables, Germany), GEA (energy, Germany), SKF (metal bearings and seals, Sweden), Rheinmetal (automotive, Germany), Bosch (appliances and tools, Germany), Prym (electrical and metal, Germany), and Renault (cars, USA), BMW (cars, Germany), Rochling (automotive parts, plastics, electronics, Germany), PSA Peugeot Citroen (cars, Germany) and EADS (aeronautics, Germany).
- **IUF – International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association.**¹¹³ The IUF has IFAs with Accor (hotels, France), Danone (food, France), Chiquita (food, USA), Fonterra (food, New Zealand), and Club Mediterranee (hotels, France).
- **UNI – Union Network International.**¹¹⁴ UNI currently has IFAs with Telefonica (telecom, Spain), Carrefour (supermarkets, France), OTE (telecom, Greece), ISS (property, Denmark), H&M (clothing, Sweden), Euradius (printing, Netherlands), Falck (services, Denmark), Metro, Nampak (packaging, South Africa), Portugal Telecom (telecom, Portugal), Securitas security services, Sweden), and UPU (postal services, Switzerland).

Using IFAs as a guide, trade unions can monitor, and promote, the protection of migrant workers' rights, particularly in the workplace/in MNCs (or its subsidiaries) where migrant workers are employed.

¹¹⁰ www.icem.org

¹¹¹ www.bwint.org

¹¹² www.imfmetal.org/main/index.cfm

¹¹³ www.iuf.org

¹¹⁴ www.union-network.org/UNIsite/In_Depth/Multinationals/GFAs.html

The ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Tripartite Declaration)

The advent of multinational enterprises (MNEs) on the world economic scene, and in particular their activities in the 1960s, provoked intense discussions that resulted in efforts to draw up international instruments to regulate their conduct and define the terms of their relationship with host countries. Since labour-related and social policy issues were among the specific concerns to which MNE activities gave rise, the ILO was inevitably drawn into the search for international guidelines in its sphere of competence. The result is the Tripartite Declaration, the only development-oriented instrument in the area of corporate social responsibility that is based on universal principles and standards and has the support of employers, workers and governments.

Overview of the Tripartite Declaration

What it Is

- Contains universal guidelines for corporate social responsibility;
- Balances roles and responsibilities of governments, multinationals, employers and workers, and encourages partnerships; and
- Applies equally across countries of operation.

Aims of the Tripartite Declaration

- To encourage multinationals' positive contribution to economic and social progress; and
- To minimise and resolve difficulties arising from their operations.

What it Covers

- The Tripartite Declaration covers issues on general policies, employment, training, conditions of work and life, and industrial relations.
- It also provides a set of Recommendations, which are as follows:

Box 18: Recommendations under the ILO Tripartite Declaration:

ILO Tripartite Declaration: Recommendations on General Policies

Obey national laws;
Respect international standards – UN human rights principles and the ILO fundamental principles & rights at work; and
Support development priorities.

ILO Tripartite Declaration: Recommendations on Employment

Promote full and productive employment in multinationals;
Pursue equality of employment opportunity and treatment; and
Enhance employment security during set-up and changes of multinational's operations.

ILO Tripartite Declaration: Recommendations on Skills Training

Develop national policies for vocational training and guidance;
Ensure training meets the needs of multinationals, and of the host country labour market; and
Encourage skills development for employability.

ILO Tripartite Declaration: Recommendations on Conditions of Work & Life

Offer wages, benefits and conditions of work as favourable as those of comparable employers;
Provide basic amenities, that is of a good standard, to workers;
Help abolish child labour; and
Ensure highest standards of safety and health at work.

ILO Tripartite Declaration: Recommendations on Industrial Relations

Respect freedom of association and the right to organise;
Recognise and facilitate collective bargaining;
Provide consultation mechanisms;
Provide processes to examine individual and joint grievances, and voluntary conciliation machinery, to prevent and settle disputes.

Source: Adapted from "Tripartite Declaration", ILO Power Point Presentation, www.ilo.org/public/englis/employment/multi/download/present.pdf

Role of Migrant Workers' Rights Advocates

- Trade unions and NGOs can work together to highlight the situation of migrant workers and members of their families in national, sectoral and regional dialogue and advisory activities, particularly where multinational companies, or their subsidiaries and suppliers, employ migrant workers.

Advantages and Disadvantages

- As the Tripartite Declaration is a non-binding document, multinationals cannot be held directly accountable, although countries where they operate, or where they are headquartered, can be questioned by the ILO on the implementation and application of ratified ILO Conventions in those countries in relation to the recommendations under the Tripartite Declaration.
- Tripartite surveys, on the use of the Tripartite Declaration, are also conducted. It is possible for such surveys to capture information on the types of workers companies employ, i.e. whether they are nationals or non-nationals. This can indicate the level of recruitment of migrant workers in multinational companies around the world, thus assisting trade union and NGOs map and monitor the workplace and employment experiences of migrant workers that are employed in these companies.

The UN Global Compact

The Global Compact is an initiative that brings companies together with UN agencies, workers and civil society to support universal environmental and social principles. Through the power of collective action, the Global Compact seeks to promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation. In this way, the private sector – in partnership with other social actors – can help realize the UN Secretary-General's vision: a more sustainable and inclusive global economy.

The Global Compact is a purely voluntary initiative with two objectives:

- Mainstream the ten principles in business activities around the world
- Catalyse actions in support of UN goals

To achieve these objectives, the Global Compact offers facilitation and engagement through several mechanisms: Policy Dialogues; Learning; Country/Regional Networks; and Projects.

The Global Compact is NOT a regulatory instrument – it does not “ police”, enforce or measure the behaviour or actions of companies. Rather, the Global Compact relies on public accountability, transparency and the enlightened self-interest of companies, workers and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based.

The Global Compact is a network. At its core are the Global Compact Office and six UN agencies, namely the:

- Office of the High Commissioner for Human Rights (UN OHCHR);
- United Nations Environment Programme (UNEP);
- International Labour Organisation (ILO);
- United Nations Development Programmes (UNDP);
- United Nations Industrial Development Organisation (UNIDO); and
- United Nations Office on Drugs and Crime (UNODC).

The Global Compact involves all the relevant social actors:

- governments, who defined the principles on which the initiative is based;
- companies, whose actions it seeks to influence;
- workers, in whose hands the concrete process of global production takes place;
- civil society organizations, representing the wider community of stakeholders; and
- the United Nations, the world's only truly global political forum, as an authoritative convener and facilitator.

Overview of the UN Global Compact

What it Is

- It is an initiative that brings companies together with UN agencies, workers and civil society to support universal environmental and social principles.

What it Covers

- The Global Compact works to advance ten principles in the areas of human rights, labour, the environment, and anti-corruption. These are derived from the:
 - Universal Declaration of Human Rights;
 - ILO's Declaration of Fundamental Principles and Rights at Work;
 - Rio Declaration on Environment and Development; and
 - UN Convention against Corruption.

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values or **principles** in the areas of human rights, labour standards, the environment, and anti-corruption, which are highlighted below.

Box 19: The Global Compact's 10 Principles

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies

Anti-Corruption

Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

Source: Adapted from About the Global Compact: The Ten Principles, www.unglobalcompact.org

Monitoring System (or "Governance Framework") – How it Works

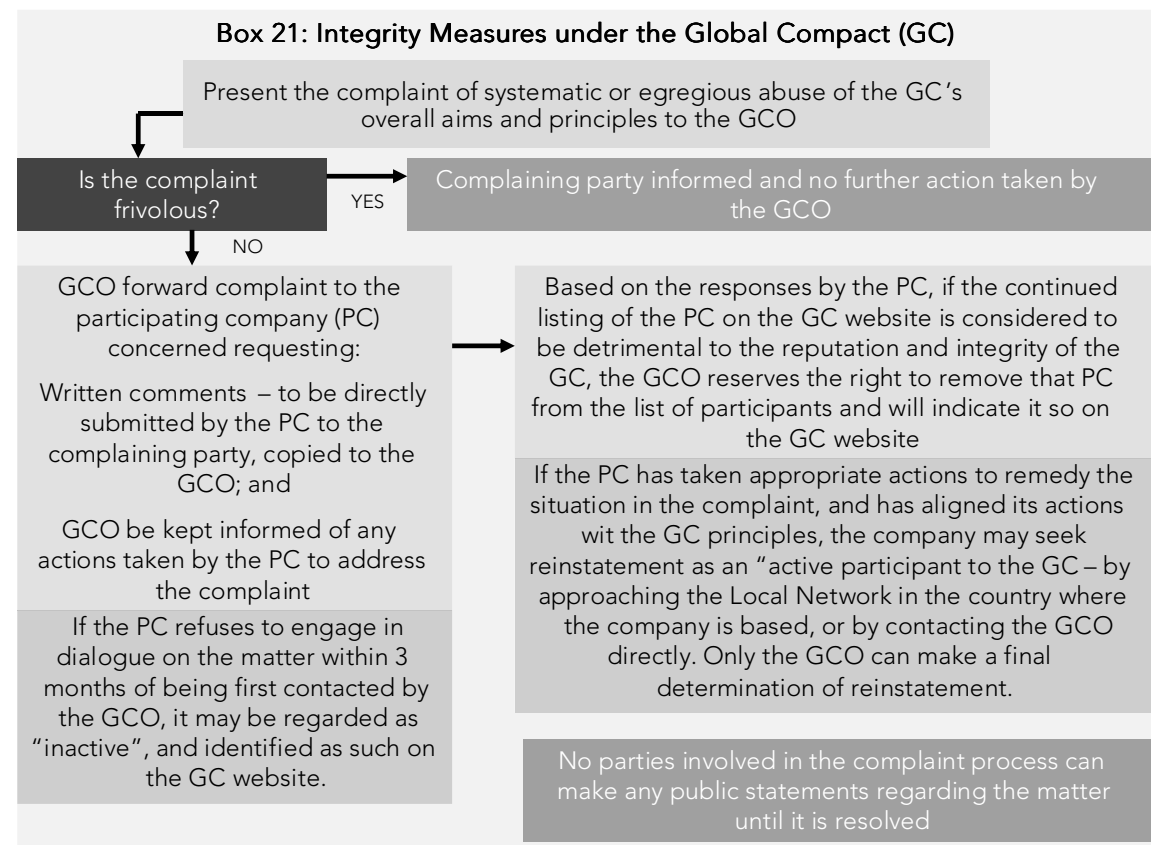
- In keeping with the Global Compact's voluntary and network-based character, the **governance framework** is light, non-bureaucratic and designed to foster greater involvement in, and ownership of, the initiative by participants and other stakeholders themselves.
- Governance functions are shared by six entities, each with differentiated tasks within a multi-centric framework:
 - o Global Compact Leaders Summit
 - o Local Networks
 - o Annual Local Networks Forum
 - o Global Compact Board
 - o Global Compact Office
 - o Inter-Agency Team
- The role of each entity in the governance framework is as follows:

Box 20: Global Compact (GC) Governance Structure

Global Compact Board It's role is to provide ongoing strategic and policy advice for the initiative as a whole, and make recommendations to the Global Compact Office, participants and other stakeholders. Composition: business, civil society, labour and the United Nations – with differentiated roles and responsibilities apart from their overall advisory function.	Global Compact Leader's Summit Aims: to deepen the commitment of participating leaders from business, labour and civil society to the Global Compact and its principles; to build and scale up momentum within the business sector; and to foster enabling environments and collective action.
Global Compact Office The UN Global Compact Office (GCO) is the UN entity formally entrusted with the support and overall management of the Global Compact initiative. Responsibilities: advocacy; issue leadership; fostering network development; maintaining the GC communications infrastructure; and implementation of the integrity measures. The GCO represents itself and the other members of the Inter-Agency Team on the Board.	Local Networks Their role is to facilitate the progress of companies (both local firms and subsidiaries of foreign corporations) engaged in the Compact with respect to implementation of the ten principles, while also creating opportunities for multi-stakeholder engagement and collective action. There are currently more than 50 Local Networks around the world. Local Networks are self-governing.
Inter-Agency Team Responsible for ensuring coherent support for the internalisation of the principles within the United Nations and among all participants. The agencies most closely associated with the ten principles also have an advisory role with respect to the management of the integrity measures complaints procedure.	Annual Local Networks Forum It is the main forum for Local Networks from around the world to share experiences, review and compare progress, identify best practices, and adopt recommendations intended to enhance the effectiveness of Local Networks in achieving quality improvements.

Source: Adapted from *About the Global Compact: Global Compact Governance*, www.unglobalcompact.org

Integrity Measures (similar to Complaint Procedures) – How it Works



Source: Adapted from *About the Global Compact: Global Compact Governance*, www.unglobalcompact.org

Role of Migrant Workers' Rights Advocates

- Using the ten principles under the Global Compact, trade unions and civil society organisations can work together to ensure that migrant workers employed in companies around the world are not exploited and abused.

Advantages and Disadvantages

- As the Global Compact is a voluntary initiative rather than a regulatory instrument, its enforcement is sometimes said to be weak.
- However, trade unions and civil society can make use of the Governance Framework (i.e. Local Networks, GC Leaders' Summit, GC Board, etc.) to ensure that where companies are employing migrant workers, that their human and labour rights are promoted and protected.

Chapters Two and Three introduced some of the mechanisms that can be used to seek redress and/or call attention to violations of migrant workers' rights. This chapter provides an overview of migrant workers' rights advocacy, placing the use of international human, and labour, rights mechanisms in the context of advocacy strategies, and highlighting the key components and characteristics of effective advocacy.

What is Advocacy?

- It is a political process designed to influence policy decisions at national and international levels.
- It is citizen-initiated and aimed at changing popular beliefs and attitudes, culminating in definable policies, practices or even rights.
- It consists of actions designed to draw a community or country's attention to an issue and to direct policy-makers to a solution, as well as political and legal activities that influences the shape and practice of laws or public policies.

Successful advocacy often results in the recognition and greater respect of citizen rights. Advocacy initiatives require organisation, strategic thinking, information, communication, outreach, and mobilisation. Achieving a policy solution in relation to migrant workers means that advocates must:

- Identify a clear migrant workers' rights issue, concern, or problem that citizen action can play a role in resolving;
- Investigate the nature and extent of the problem or concern;
- Define a clear position and desired outcomes, e.g. articulate the entitlements or the rights desired, and offer policy or legislative proposals, etc.;
- Articulate the strategy – goals, target, and actions to be taken;
- Build alliances in support of the proposition;
- Educate constituents, allies, and the public about the issues; and
- Lobby for the changes needed, or litigate test cases to clarify the content of the rights or achieve the desired judgment.

What is Migrant Workers' Rights Advocacy?

Human rights advocacy uses the same basic approach as above but focuses on human rights and uses the human rights system as a guide. Thus, it uses Constitutional guarantees and international norms, standards and mechanisms to:

- hold governments accountable for their actions;
- expand the core content of the guaranteed rights; and
- make the human rights system itself more responsive and effective.

In the same context, migrant workers' rights advocacy aims to ensure respect for, and protection of, migrant workers' human rights, and in particular, to:

- amplify the definition and understanding of human rights to cover abuses of migrant workers' that are not yet generally acknowledged as human rights violations;
- expand the scope of State responsibility for the protection of migrant workers' rights in both public and private spheres; and
- enhance the effectiveness of the human rights system at both national and international levels in enforcing migrant workers' rights, and holding abusers accountable.

Within the framework of promoting, and protecting, migrant workers' rights, advocacy initiatives vary widely because they are always grounded in particular circumstances, issues, opportunities and constraints. They tend, however, to focus on a few key targets within the human rights system – at national, regional and international levels, particularly on:

- the laws and policies that determines how migrant workers' rights are interpreted;
- the national, regional and international institutions charged with upholding these rights; and
- the attitude and behaviour of officials and ordinary citizens (including migrant workers) about migrant workers' rights.

For example, one advocacy initiative may aim to ensure that government and national human rights bodies take migrant workers' rights more seriously, while another initiative may seek to bring violations to the attention of monitoring bodies, governments and/or human rights organisations with the political influence and credibility to take up or remedy the cause of the victims. Still another initiative may aim to achieve a definite decision, or action, with regard to a specific case. Yet another initiative may seek to bring national laws into compliance with international human rights standards that the State is a party to.

Each of these initiatives, in one way or another, contributes to expanding the scope of rights, holding States accountable for violations and/or inaction, and assuring that abusers and exploiters are punished and remedies provided.

The Role of Advocates

As highlighted in the ILO Report on Migrant Workers,¹¹⁵ migration, even for temporary periods, represents one of the most complex policy challenges for government, as they find themselves balancing a host of different issues and interests – some economic (labour needs), some social (education, health, social welfare), some political (international development). In essence, these are concerned with ideas of difference and equality, i.e. migration is fuelled by differences between countries or regions, and yet the protection of migrants demands equal treatment for all workers, whatever their nationality.

The rising mobility of people across borders (for reasons of tourism, work, business, study, or asylum), and the ever-increasing size of populations in an irregular status warrants effective action from all stakeholders concerned in the:

- protection of migrant workers rights;
- prevention of their exploitation, abuse, and discrimination; and
- promotion of cooperative schemes for managing migration.

What can migrant workers' rights advocates do? Presented below in Table 7 are recommended actions¹¹⁶ that key stakeholders to the labour migration discussion can undertake. The list is not exhaustive.

Table 7: Role of Key Stakeholders in the Labour Migration Debate

Trade Unions¹¹⁷

- Mobilize and organize migrant workers;
- Make representation to the authorities on behalf of migrant workers;
- Play an advocacy role, in coordination with NGOs, highlighting the plight of victims of illegal recruitment, forced labour and trafficking;
- Provide direct services to migrant workers, such as negotiating for standard employment contracts, providing pre-departure programmes, referral and legal aid services, identifying unscrupulous agencies/employers, etc.; and
- Share information on recruitment and placement of migrant workers between sending and receiving countries.

NGOs¹¹⁸

- Ensure ready, easily accessible and realistic information about recruitment and employment abroad;
- Cooperate with trade unions and other civil society groups to bring order and discipline to recruitment process;
- Act as "watch dog" at grassroots level against illegal recruiters and traffickers;
- Conduct campaigns and advocacy against illegal recruitment;
- Run special training courses and pre-departure programmes;
- Provide special services that encourages legal migration, including assistance to process applications for employment or travel documents, legal aid, etc.

Migrant Workers Themselves¹¹⁹

- Make sure that you are legally recruited, and migrate as a documented migrant worker;
- Get all the information you can about the recruitment agency, employer, and country of destination, etc;

115 ILO, above n 7 p. 109.

116 ILO, above n 39, PowerPoint Presentation of Booklet 4, pp. 37 – 74.

117 ILO, above n 116, Slide No. 17.

118 ILO, above n 116, Slide No. 18.

119 ILO, above n 116, Slide No. 19.

- Make sure you have a valid employment contract: in a written form in language you understand, check all the contents carefully, be sure that it is signed by both you and the employer;
- Make sure that you have all the necessary travel documents and that you know the total costs that you will have to pay; and
- Be aware that a marriage is legal only with the consent of both partners: you cannot be forced to marry someone.

Destination Country Governments¹²⁰

- Conclude bilateral or multilateral labour agreements with sending countries;
- Ensure that immigration policies are gender-sensitive;
- Provide adequate labour protection to migrant workers;
- Consider specific legislation to cover domestic workers;
- Regulate and supervise the activities of recruitment agencies;
- Provide adequate checks on employers;
- Protect the health and occupational safety of, and improve social security for, migrant workers;
- Improve assistance and support facilities and services for migrant workers and their families;
- Allow freedom of association and facilitate organization and representation of migrant workers; and
- Take measures to promote gender equality and end xenophobia and racism.

Origin Country Governments¹²¹

- Establish and monitor bilateral or multilateral labour agreements;
- Set minimum standards for recruitment of nationals;
- Establish exit control measures – but ensure such measures do not inadvertently lead to forced labour and trafficking;
- Provide public recruitment services;
- Develop national regulations covering private recruitment;
- License, supervise and control private recruitment;
- Provide information for migrants and their families;
- Provide support services for migrant workers and their families; and
- Consulates abroad to provide specific services that addresses migrant worker needs and concerns, e.g. legal advice and counselling, organising social events, etc.¹²²

Employers' Organisation¹²³

- Engage in dialogue with authorities, so as to have a say in bilateral/multilateral labour agreements;
- Engage in tripartite consultation to assess the demand for migrant workers;
- Monitor the implementation of labour agreements;
- Provide information about receiving countries;
- Support and conduct training programmes to prepare migrant workers for overseas employment; and
- Employers' organizations in receiving countries can help to fund vocational training for specific industries in source countries.

¹²¹ ILO, above n 120, Slide No. 11.

¹²² Appendix 5 refers to the Vienna Conventions on Diplomatic and Consular Relations, 1961, 1963, sourced from the ILO, Indonesian Ministry of Foreign Affairs, 2006, *Training Manual on the Protection of Migrant Workers Abroad: Protecting Human Rights, Participants Training Manual*, ILO Jakarta Office, Jakarta.

¹²³ ILO, above n 120, Slide No. 13.

Public Employment Agencies¹²⁴

- Improve quality, and lower cost, of services;
- Equip staff so that they can provide gender-sensitive information and counselling on job opportunities at home and abroad;
- Ensure that staff are sensitive to the specific vulnerabilities of women migrant workers;
- Link recruitment with other support services, such as pre-departure training;
- Ensure that public employment agencies are free from corruption; and
- Promote close cooperation with private agencies.

Sending country governments can encourage the activities of legitimate recruitment agencies while protecting migrant workers from abuse through:¹²⁵

- Licensing private recruitment agents/agencies;
- Requiring financial performance guarantees from agencies;
- Specifying limits on recruitment fees that agencies can charge;
- Providing for labour inspections; and
- Providing incentives for good performance.

Private Recruitment Agencies¹²⁶

Practice self-regulation through the adoption of codes of practice covering:

- Minimum standards for professionalisation of services;
- Full and unambiguous disclosure of all charges and terms of business to clients;
- Information from the employer of all details concerning the job, working conditions, etc.;
- Not knowingly recruiting for jobs that involve undue hazards or risks;
- Providing information to migrant workers in language they understand;
- Not bidding down wages of migrant workers; and
- Maintaining a register of all migrants recruited and placed.

Source: Adapted from sources cited throughout the table.

124 ILO, above n 120, Slide 14.

125 ILO, above n 120, Slide No. 15.

126 Ibid., Slide No. 16.

The ILO Multilateral Framework on Labour Migration

The recently adopted non-binding ILO Multilateral Framework on Labour Migration provides useful guidelines that can assist Member States and their tripartite constituents in developing appropriate policy and legislative frameworks, as well as improved unilateral, bilateral and multilateral action on the ground. The important features of the Framework, developed in tripartite consultation between 2004 and 2006 as a follow-up to the 2004 ILO Report “Towards a Fair Deal for Migrant Workers”, are highlighted in Table 8 below.

Table 8: Overview of the ILO Multilateral Framework on Labour Migration, 2006

No.	Framework Areas	Summary of the Guidelines
I.	Decent Work	- Developing and implementing economic and social policies that create productive employment and decent work for all workers; - Supporting the implementation of the Global Employment Agenda at the national level.
II.	Means of international cooperation on labour migration	- Developing international cooperation to promote managed migration for employment purposes. - Entails information exchange, inter-governmental and tripartite dialogue at regional, international, and multilateral levels, and the promotion of bilateral and multilateral agreements
III.	Global knowledge base	- Collection and analysis of sex-disaggregated labour migration data, and applying it to labour migration policy. - Promotion and support of research on labour migration, and its dissemination. - Collecting and exchanging profiles of good practices on labour migration on a continuing basis.
IV.	Effective management of labour migration	- Formulating and implementing coherent, comprehensive, consistent, and transparent policies to effectively manage labour migration that is beneficial to both women and men in sending and destination countries. These policies are to be guided by international human rights and labour standards, and to be gender-sensitive. - Expanding avenues for regular labour migration, taking into account labour market needs, gender issues, and demographic trends. - Promotion and implementation of social dialogue as an essential mechanism for the development of sound labour migration policies, including consultations with civil society and migrant associations.

No.	Framework Areas	Summary of the Guidelines
V.	Protection of migrant workers	- Ensuring that national laws and practice that promotes and protects human rights apply to ALL migrant workers, using international human rights and labour rights standards as a guide. - Providing information to migrant workers on their human and labour rights, and assisting them with defending their rights. - Providing effective enforcement mechanisms for the protection of migrant workers' rights, and providing training on human rights to all government and non-government officials involved in migration.
VI.	Prevention of, and protection against, abusive migration practices	Formulating and implementing measures (laws and/or policies) to prevent and eliminate abusive migration conditions, including irregular labour migration, smuggling and trafficking in persons, and other abusive practices.
VII.	Migration process	- Promotion of an equitable and orderly process of labour migration in both sending and destination countries, to guide women and men migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration. - Simplifying administrative procedures. - Promoting the participation of employers' and workers' organisations (and civil society) in disseminating correct information to migrant workers. - Establishing effective consular services in destination countries, with male and female officers to assist men and women migrant workers. - Ensuring that recruitment and placement services operate in accordance with the law. - Implementing laws and policies containing effective enforcement mechanisms and sanctions to deter unethical practices.
VII.	Social integration and inclusion	- Promotion of the economic, social and cultural integration and inclusion of migrant workers and their families in destination countries. - Provision of language and cultural orientation courses. - Promoting public education and awareness-raising on the contribution migrant workers make to the countries in which they are employed, in order to facilitate their integration into society. - Ensuring that the children of migrant workers born in destination countries have the right to birth registration and to a nationality. - Facilitating the integration of migrant workers' children into the national education system in destination countries.

No.	Framework Areas	Summary of the Guidelines
VIII.	Migration and development	• Recognition and maximisation of the contribution of labour migration to employment, economic growth and development for the benefit of both sending and destination countries. • Integrating and mainstreaming labour migration in employment, labour market and macro-and micro-economic policy development. • Providing incentives to promote the productive investment of remittances. • Adopting measures to mitigate the loss of workers with ethical skills, including by establishing guidelines for ethical recruitment. • Promoting linkages with trans-national communities and business initiatives.

Source: Adapted from *ILO Multilateral Framework on Labour Migration*, 2006.

APPENDIX 1: UN Fact Sheet on International Migration

INTERNATIONAL MIGRATION AND DEVELOPMENT

FACTSHEET¹²⁹

International migration facts & figures

- › At the global level, international migrants numbered 191 million in 2005.
- › Roughly one third live in a developing country and came from another developing country, while another third live in a developed country and originated in a developing country. That is, "South-to-South" migrants are about as numerous as "South-to-North" migrants.
- › In 2005, Europe hosted 34 per cent of all migrants; Northern America, 23 per cent, and Asia, 28 per cent. Only 9 per cent were living in Africa; 3 per cent in Latin America and the Caribbean, and another 3 per cent in Oceania.
- › Nearly six out of every ten international migrants (a total of 112 million) reside in countries designated as "high income". But these high income nations include 22 developing countries, such as Bahrain, Brunei, Kuwait, Qatar, the Republic of Korea, Saudi Arabia, Singapore and the United Arab Emirates.
- › Nearly half of all migrants worldwide are women. In the developed countries they are more numerous than male migrants.
- › In 72 countries, the number of migrants decreased between 1990 and 2005. Seventeen nations accounted for 75 per cent of the increase in the migrant stock over that period — the US gained 15 million migrants, with Germany and Spain adding more than 4 million each.
- › Between 1990 and 2005, at least 35 programmes were undertaken in both developed and developing countries to bring the status of migrants who were in an irregular situation into conformity with national regulations. Overall, these programmes regularized the status of at least 5.3 million migrants.

Skilled migration

- › In 2000, there were about 20 million migrants with tertiary education and aged 25 or over living in OECD countries, up from 12 million in 1990.
- › People with tertiary education accounted for nearly half the increase in migrants older than 25 years in the OECD countries during the 1990s.
- › Nearly 6 out of every 10 highly-educated migrants living in OECD countries in 2000 originated in developing countries.
- › Between 33 and 55 per cent of the highly-educated people of Angola, Burundi, Ghana, Kenya, Mauritius, Mozambique, Sierra Leone, Uganda and the United Republic of Tanzania live in OECD countries. That proportion is even higher, about 60 per cent, for Guyana, Haiti, Fiji, Jamaica, and Trinidad and Tobago.

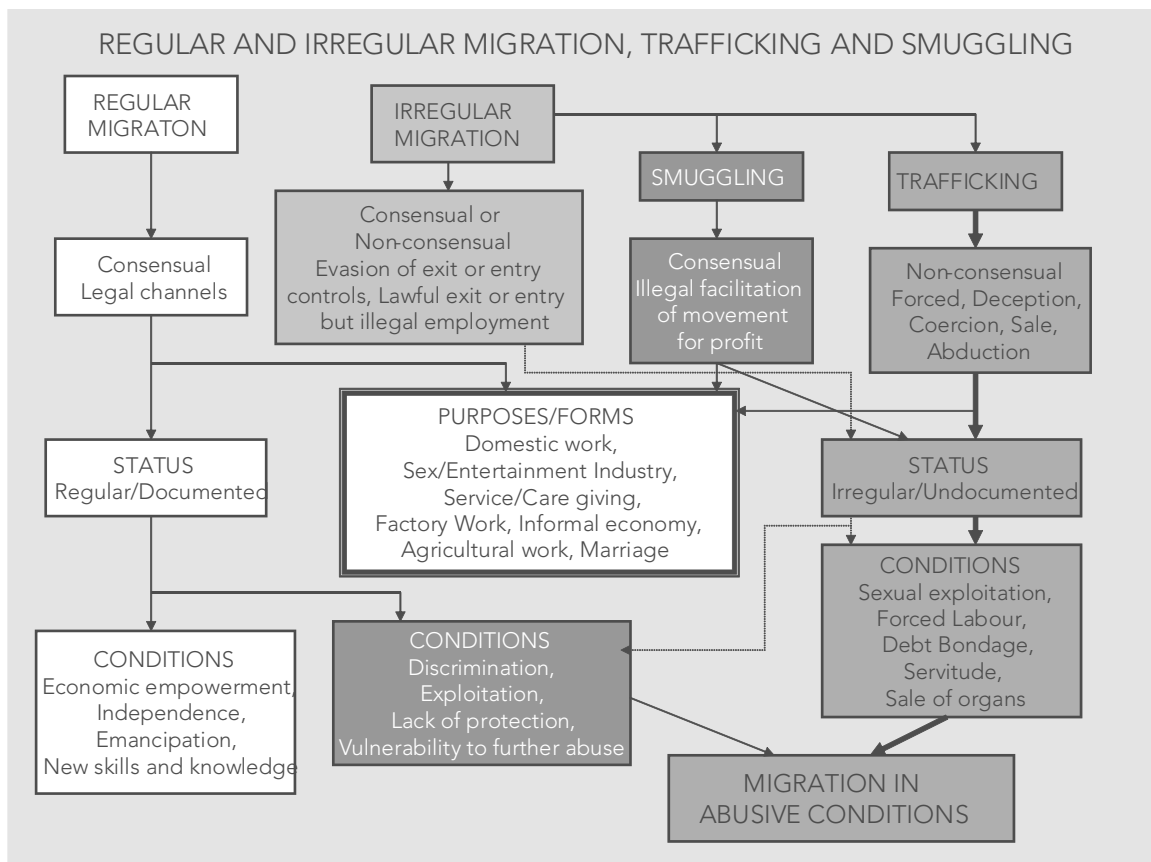
127 www.un.org

Remittances

- › Money sent home by migrants worldwide increased from US\$102 billion in 1995 to an estimated US\$232 billion in 2005.
- › The share of global remittances going to developing countries has also increased, from 57 per cent in 1995 (US\$58 billion) to 72 per cent in 2005 (US\$167 billion).
- › The top 20 recipient countries accounted for 66 per cent of world remittances in 2004. Only eight of them are developed countries. One third of global remittances went to only four countries: in order of total money received, these were India, China, Mexico and France.
- › Remittances constituted a high share of gross domestic product in only two of the major recipients: the Philippines, and Serbia and Montenegro. Most of the 20 countries where remittances accounted for at least a tenth of GDP are small developing economies.

Source: UN Department of Economic and Social Affairs, Population Division
For further information, please visit www.unmigration.org or contact Ms. Hania Zlotnik, Director,
United Nations Population Division, Tel: (212) 963-3179, e-mail: zlotnik@un.org.

APPENDIX 2: Regular & Irregular Migration, Trafficking, and Smuggling



Source: ILO, 2003, *An Information Guide, Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, PowerPoint on Booklet 1.

APPENDIX 3: Summary of the ILO Supervisory Procedure

For Ratified Conventions:

STEP 1

In general, the first detailed report is requested 12 months after a Convention comes into force in a given country. The second detailed report is requested two years later (or one year, if that is the year when a periodic report is, in any event, due from all countries bound by that Convention).

STEP 2

These government reports are first examined by the **Committee of Experts on the Application of Conventions and Recommendations (CEACR)**.

Detailed periodic reports are automatically requested every two years on the following 10 priority Conventions:

- › Freedom of association: Nos. 87 and 98;
- › Abolition of forced labour: Nos. 29 and 105;
- › Equal treatment and opportunities: Nos. 100 and 111;
- › Employment policy: No. 122;
- › Labour inspection: Nos. 81 and 129; and
- › Tripartite consultation: No. 144.

Simplified reports are requested every five years on other Conventions.

A *detailed* report is, nevertheless, requested where:

- › the CEACR has made an observation, or direct request, calling for a reply; or
- › the CEACR considers that a *detailed* report should be communicated because of possible changes in legislation, or practice, in a member State which might affect its application of the Convention.¹²⁸

Non-periodic *detailed* reports on the application of a ratified Convention are required:

- › when the CEACR, or the Conference Committee, so requests;
 - › when the CEACR is asked to consider the follow-up to proceedings instituted under Articles 24 or 26 of the ILO Constitution, or before the Committee on Freedom of Association (CFOA);
 - › when comments have been received from national or international employers' or workers' organisations, and the CEACR considers that a detailed report is warranted in light of the government's comments in reply, or the fact that the government has not replied;
- when no report is supplied, or no reply is given, to comments made by the supervisory bodies.

The ILO asks for reports on the application of ratified Conventions by a letter sent to governments each February. Copies of the requests for reports are also sent to national employers' and workers' organisations. Enclosed in the letter is the report format.¹²⁹

¹²⁸ No reports are requested on Conventions which no longer correspond to present-day needs – namely Conventions Nos. 15, 20, 21, 28, 34 – 40, 43, 48 – 50, 60, 64, 65, 67, 86, and 104).

¹²⁹ As the Report Formats are too long to annex to the Handbook, it can be found on www.ilo.org/ilolex/english/reportforms/reportformsE.htm

STEP 3

The report of CEACR is submitted to each annual session of the International Labour Conference. Here, it is examined and discussed by an especially appointed ***Tripartite Conference Committee on the Application of Conventions and Recommendations (Conference Committee)*** – a general discussion on ratification, application, and compliance by Members States in general, then an examination of individual cases of non-compliance. In such cases, non-complying governments may be invited to make a statement to the Tripartite Conference Committee on the application of Conventions and Recommendations in their country. The objective is not to apportion blame but to obtain results – it helps to maintain momentum towards better compliance with standards.

The discussions on individual cases are summarized as annexes to the report which the Conference Committee submits to the International Labour Conference (ILC), for their deliberation and discussion.

For Unratified Conventions:

There is no set pattern for reviewing unratified Conventions. Some are chosen quite frequently; others more rarely. The choice depends on the current importance of the subject, and the extent to which circumstances may have changed since the previous review.¹³⁰ It has, however, been the consistent policy of the ILO Governing Body to select, at frequent intervals, the ILO Conventions particularly concerned with the protection of basic human rights.

In addition, governments that have not ratified any of the ILO fundamental Conventions submit special reports on them in a four yearly cycle.

¹³⁰ ILO, International Labour Standards, 1998, p. 78.

Appendix 4: ILO Core/Human Rights Conventions at a Glance

At a Glance: Important Features of the ILO Core/Human Rights Conventions

Declaration on Fundamental Principles and Rights at Work, 1998

- Although non-legally binding, ALL member States of the ILO are bound to uphold its principles by virtue of being members.
- All member States, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote, and to realize the principles concerning the fundamental rights embodied in the core Conventions.
- These core Conventions (listed below) apply to all workers, nationals or non-nationals, whether they are regular or irregular status migrants.¹³¹

Forced Labour Convention, 1930 (C. 29)

Ratified by Indonesia on 12 June, 1950

- Aims at the immediate suppression of all forms of forced or compulsory labour;
- Defines forced or compulsory labour as “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”
- Calls for adequate and strictly enforceable penal sanctions for the illegal exaction of forced or compulsory labour.

Abolition of Forced Labour Convention, 1957 (C. 105)

Ratified by Indonesia on 7 June, 1999

- Prohibits the use of any form of forced labour as a means of:
 1. political coercion or education, or the punishment of political or ideological views;
 2. workforce mobilization for purposes of economic development;
 3. labour discipline;
 4. punishment for participation in strikes; or
 5. racial, social, national, or religious discrimination.

Minimum Age Convention, 1973 (C. 138)

Ratified by Indonesia on 7 June, 1999

- Calls for the abolition of child labour through the prohibition of employment or work of children under a nationally determined fixed minimum age.
- Sets a number of minimum ages depending on the type of employment of work: (1) the minimum age should not be less than age 15 or less than the age for completing compulsory schooling; (2) a higher minimum age of 18 years should be set for hazardous work; (3) for light work, a minimum age of 13 is promoted.

¹³¹ The Committee of Experts on the Application of Conventions and Recommendations has also referred to the situation of migrant workers in supervising the application of the core conventions.

Worst Forms of Child Labour Convention, 1999 (C. 182)

Ratified by Indonesia on 28 March, 2000

- Confirms that child trafficking is a practice similar to slavery and as such a worst form of child labour;
- Calls for immediate and effective measures to secure the prohibition and elimination of trafficking of girls and boys under 18 years of age;
- Targets trafficking of children that leads to exploitation of boys and girls, including in illicit activities such as drug trafficking and prostitution;
- Provides guidelines to effectively eliminate child trafficking and to protect children that have fallen victim to traffickers or are at risk to do so;
- Requests Member States to establish mechanisms to monitor child trafficking and to draw up a programme of action to eliminate child trafficking as a matter of priority;
- Calls for effective and time-bound measures for prevention, to provide support for the removal of child victims of trafficking and their rehabilitation, to ensure access to basic education or vocational training for all children removed from trafficking situations; to identify children at special risk and to take account of the special situation of girls;
- Calls for international cooperation and assistance among the ratifying States to combat child trafficking.

Equal Remuneration Convention, 1951 (C. 100)

Ratified by Indonesia on 11 August, 1958

- Aims to ensure that men and women workers receive equal remuneration for work of equal value, establishing rates of remuneration without discrimination based on sex;
- Aims to ensure equal remuneration in the public sector and promote equal remuneration in the private sector.

Discrimination (Employment & Occupation) Convention (C. 111)

Ratified by Indonesia on 7 June, 1999

- Defines discrimination as “any distinction, exclusion or preference made on the basis of 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;
- Requires the provision of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination;
- The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment;
- Protection against gender-based violence or exploitation in the sphere of work can be part of a national policy to promote equality of opportunity and treatment.

Freedom of Association & Protection of the Right to Organise, 1948 (C. 87)

Ratified by Indonesia on 9 June, 1998

- Guarantees employers and workers the right to establish and join organizations, and to exercise freely their right to organize;
- Protects employers’ and workers’ organizations against interference or restrictions by public authorities.

Right to Organise & Collective Bargaining Convention (C. 98)

Ratified by Indonesia on 15 July, 1957

- Protects workers who are exercising the right to organize;
- Upholds the principle of non-interference between workers' and employers' organizations;
- Promotes voluntary collective bargaining.

Is there a supervisory or monitoring mechanism?

- Under the Declaration, there is an issuance of a Global Report.
- For non-ratified fundamental Conventions, there is an annual follow-up.
- For ratified fundamental Conventions, Regular reports, by the government, are requested every 2 years from the year of ratification. This allows for the supervision of the application of Conventions and related Recommendations.
- Employers' and Workers' Organisations contribute to it by commenting on the report before it is sent to the International Labour Office, Geneva.

Can civil society have access to, and comment on, the government reports?

Yes, through the national Employers' Organisation, and the national Workers' Organisations'. This means that there must be contact and cooperation between NGOs and the Employers' and Workers' Organisations.

Is there a complaints mechanism?

Under the Declaration, there is no complaints mechanism. However, there is the "Special Procedures, "i.e. the REPRESENTATION PROCEDURES, and the COMPLAINT PROCEDURES.

When can the ILO Special Procedures be used?

- The REPRESENTATION PROCEDURE can be accessed at any time through the national or international Employers', or Workers', Organisations' if the Convention has been ratified by the State in question.
- The COMPLAINT PROCEDURE can only be accessed by Member States, the Governing Body, or a delegate of the International Labour Conference (i.e. a government, employer, or worker delegate), if both the complainant and respondent Member States concerned have ratified the Convention whose effective application is being called into question by the complainant Member State.
- The exception are complaints on freedom of association (or the right to form a workers' organisation): A REPRESENTATION or COMPLAINT can be filed with the ILO regardless of whether or not the State in question has ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Can civil society have access to the ILO Special Procedures?

- No, it cannot have direct access to either procedure.
- Access to the REPRESENTATION PROCEDURE is only possible through a national or international Employers' Organisations' or the Workers' Organisations.

Appendix 5: Key ILO Conventions of Relevance to Migrant Workers

ILO Conventions	Important Features
Migration for Employment (Revised) Convention, 1949 (C. 97) Not yet ratified by Indonesia	- Aimed at: - regulating the conditions under which labour migration takes place; and - providing specific protection for a very vulnerable category of workers while employed in countries other than their own. - No distinction between permanent or temporary migrants. - However, certain provisions of Convention No.97 only relate to migrant workers and their families who have been admitted on a permanent basis, for example the provisions that protect these workers against expulsion on the mere ground of incapacity to work. - It covers those regularly admitted as migrants for employment. - It includes measures to regulate the conditions in which migration for employment should occur, such as: - general protection measures relating to the maintenance of free services to assist migrants; - provision of information; - steps against misleading propaganda, the journey and arrival of migrants, transfer of their earnings; and - measures related to expulsion of permanent migrants. - It provides for measures aiming to ensure equality of treatment between regular migrant workers and nationals with regard to social security, working and living conditions, employment taxes and access to justice. - Calls for the implementation of a policy of <i>equality of treatment</i> between national and regular migrant workers. - Categories of migrants excluded from the coverage of this Conventions are: (1) seafarers, (2) frontier workers (3) short-term entry members of the liberal profession and artists; and (4) the self-employed – they are not covered by the Convention.
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) Not yet ratified by Indonesia	- Aimed at: - regulating the conditions under which labour migration takes place; and - providing specific protection for a very vulnerable category of workers while employed in countries other than their own. - No distinction between permanent or temporary migrants. - It is the first attempt by the international community to deal with the problems arising out of irregular migration and illegal employment of migrants. - It includes provisions for minimum standards of protection for both regular and irregular migrant workers. - Without challenging the right of States to regulate migratory flows, it lays down the general obligation to: (1) respect the basic human

ILO Conventions	Important Features
	rights of all migrant workers;¹³² (2) provide for certain protective measures for migrant workers who have lost their employment¹³³ and for those in an irregular situation.¹³⁴ - Without challenging the right of States, it affirms to: - regulate migratory flows; - the right of migrant workers to be protected, whether or not they entered the country on a regular basis, with or without official documents. - The Convention also stresses the importance of consulting representative organizations of employers and workers in regard to the laws, regulations and other measures provided for, and designed, to prevent and eliminate migration in abusive conditions. - Calls for the provision of equality of opportunity with regard to migrants' access to employment, trade union rights, cultural rights and individual and collective freedoms. - However, permits limited restrictions on equality of opportunity in access to employment. The national policy required under this Convention must not only promote but also guarantee equality of opportunity and treatment in employment and occupation for migration workers and members of their families who are lawfully within the territory of the country of employment.¹³⁵ - Categories of migrants excluded from the coverage of this Conventions are: (1) seafarers, (2) frontier workers (3) short-term entry members of the liberal profession and artists; and (4) the self-employed – they are not covered by the Convention. - In addition, Convention No. 143 also excludes trainees and specific duty assignments. However, these exclusions in Convention No. 143 only apply to Part II, which deals with equality of opportunity of regular women and men migrants with nationals. This means that all migrant workers, without distinction, have the right to some minimum protection with respect to their basic human rights and certain rights arising out of past employment.
Equality of Treatment (Social Security Convention, 1962 (No. 118) Not yet ratified by Indonesia	- Contains provisions relating to all 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; and (9) family benefit. - But a State which ratifies this Convention may limit its application to certain of these branches. - For each of the branches (above) that it accepts, a State party undertakes to grant, within its territory, to nationals of any other State which has ratified the Convention, equality of treatment in social security with its own nationals. - Equality of treatment must be granted to refugees and stateless persons.

132 Article 1, ILO C. 143

133 Article 8 ILO C. 143

134 Article 9, ILO C. 143

135 Article 14, ILO C. 143

ILO Conventions	Important Features
	• In addition, where, under the national legislation, entitlement to benefit is subject to a residence requirement, such a condition cannot, in principle, be imposed only on non-nationals. • A State party to this Convention has to ensure the provision of benefits abroad, in a specific branch, for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for the same branch, irrespective of the place of residence of the beneficiary.¹³⁶ This principle shall apply, without any condition of reciprocity, to refugees and stateless persons.
Maintenance of Social Security Rights Convention, 1982 (No. 157) Not yet ratified by Indonesia	• Contains provisions relating to all 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; and (9) family benefit. • A State which ratifies this Convention (Convention No. 157) cannot limit its application to certain of these branches, like in Convention No.1118. • A State party to this Convention (Convention No.157) has to ensure the provision of benefits abroad, in all branches of social security, for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for any branch of social security, in which the States concerned have laws in force, irrespective of the place of residence of the beneficiary.¹³⁷ This principle shall apply, without any condition of reciprocity, to refugees and stateless persons.
Private Employment Agencies Convention, 1997 (C. 181) Not yet ratified by Indonesia	• Considering the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, this Convention (Convention No. 181) offers guidance for designing a legal framework to address illegal recruitment practices and trafficking of human beings, especially women and girls. • The purpose of this Convention is to allow the operation of private employment agencies, while protecting the workers, using their services against abuses, and ensuring that these workers are entitled to their basic rights provided for under the core labour standards, as well as the provisions relating to recruitment and placement in Conventions No. 97 and No.143. • To promote equality of opportunity and treatment in access to employment and occupations, this Convention stipulates that member States shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice.¹³⁸

¹³⁶ The *maintenance of acquired rights* permits migrant workers to receive benefits which are due to them from a State, even when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant workers, is intended to ensure them real equality of treatment and not just legal equality.

¹³⁷ Ibid.

¹³⁸ Article 5, ILO C. 181

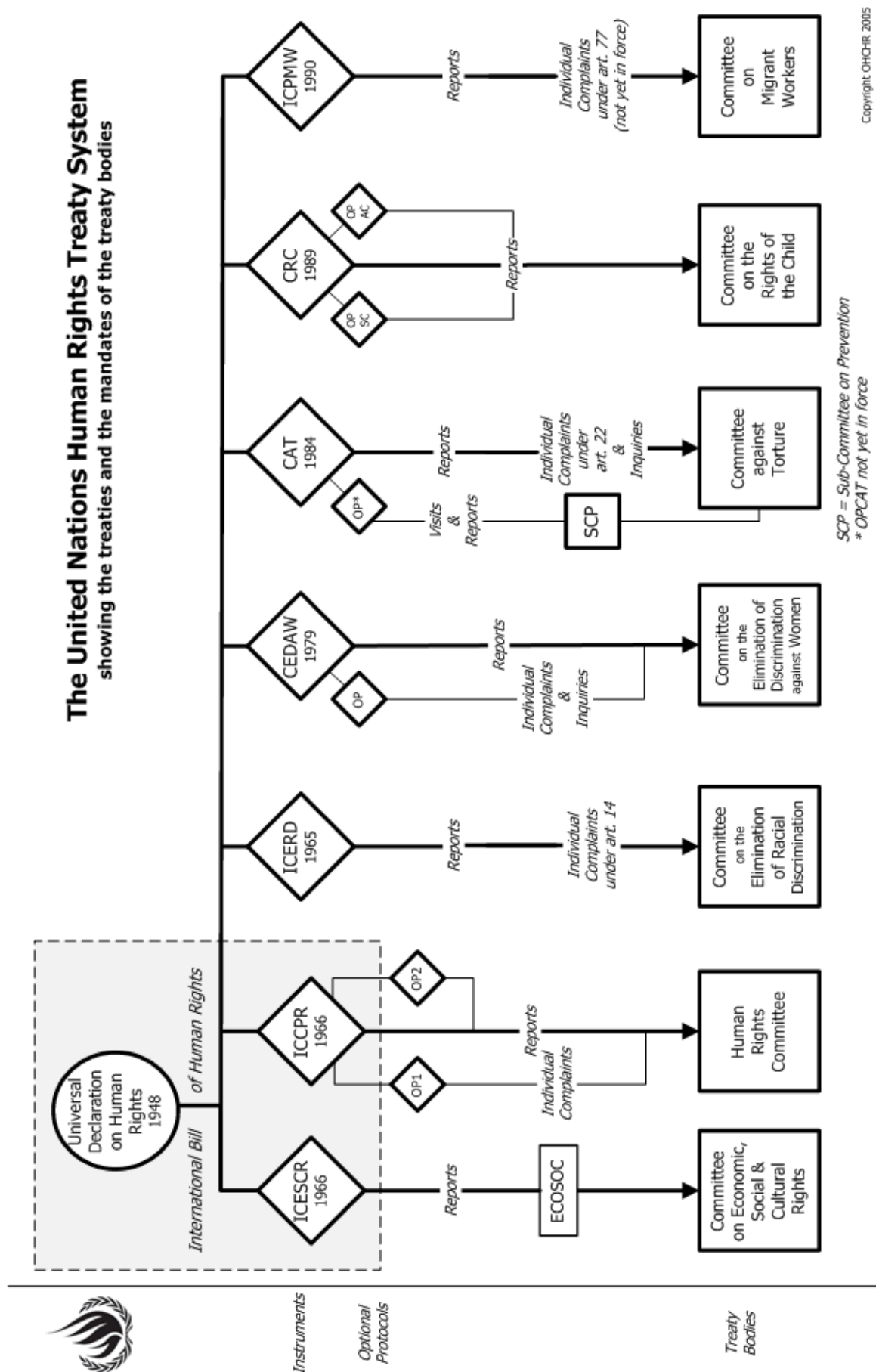
ILO Conventions	Important Features
	• With certain exceptions, private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.¹³⁹ • Ratifying States are required to adopt measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.¹⁴⁰ • Member States concerned shall consider bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.¹⁴¹
Is there a supervisory or monitoring mechanism?	
• There is no set pattern for reviewing unratified Conventions, as Indonesia has not ratified any of the above ILO Conventions. Some Conventions are chosen quite frequently; others more rarely. The choice depends on the current importance of the subject, and the extent to which circumstances may have changed since the previous review.	
Can civil society have access to, and comment on, the government reports?	
• Yes, but through the national Employers', and Workers' Organisations' representatives should a report be requested. This means that there must be contact and cooperation between NGOs and the national Employers' and Workers' Organisations.	
Is there a complaints mechanism?	
• Yes, there is, but it is called the "Special Procedures, "i.e. the REPRESENTATION PROCEDURES, and the COMPLAINT PROCEDURES. • Refer to page 38 for an explanation of the ILO Special Procedures	
When can the ILO Special Procedures be used?	
• As Indonesia has not ratified any of these ILO Conventions, no complaints against the Indonesia Government that are based on these Conventions can be entertained by the ILO.	
Can civil society have access to the ILO Special Procedures?	
• Should civil society/NGOs want to access the ILO complaints mechanism, it will have to do so through the national Employers' Organisations' or the Workers' Organisations. However, as Indonesia has not ratified any of these ILO Conventions, no complaints from Indonesia that are based on these Conventions can be entertained by the ILO.	

139 Article 7, ILO C. 181

140 Article 8.1, ILO C. 181

141 Article 8.2, ILO C. 181

APPENDIX 6: The UN Human Rights Treaty System



APPENDIX 7: Summary of Important Features of the UN Human Rights Treaties/Conventions/Covenants

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
Notes on definitions and/or human rights relevant to migrant workers	It applies to all migrant workers and members of their families, regardless of sex, race, colour, language, religion/ conviction, political/other opinion, national/ ethnic/social origin, age economic position, property, marital status, birth or other status.¹⁴² It covers the entire migration process – from pre-departure, departure, transit, stay, employment, and return.¹⁴³ + been engaged in a remunerated activity in a State of which he or she is not a national. ¹⁴⁴	- A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. - Children of migrant workers also have rights, with the best interest of the child as the primary consideration. The rights of the child includes: - Protection from all forms of physical and mental violence, injury, neglect, negligent treatment, maltreatment, exploitation, sexual abuse - Right to life; - Right to nationality;	The Convention states the definition of "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when	- Non-discrimination on the basis of sex – equality of men and women - Freedom of movement - Right to equality before the law, including a legal capacity - Right to participate in NGOs and associations concerned with the public and political life of the country - Right to work; - Right to the same employment opportunities as men, including the application of the same criteria for employment selection; - Right to free choice of	- Non-discrimination – equality of men and women to enjoy all economic, social and cultural rights; - Right to work, including just and favourable conditions of work, freedom of association, and right to social security (including social insurance); - Protection and assistance to the family; - Maternity protection, with paid leave or social security benefits; - Right to an adequate standard of	- Non-discrimination – equality of men and women to enjoy civil and political rights - Right to life - Freedom from torture, cruel, inhuman and degrading treatment - Freedom from slavery; freedom from compulsory labour - Right to liberty and security of person; freedom from arbitrary arrest or detention - Freedom of movement - Children's right to protection – to be registered, have a name and a nationality	- Non-discrimination – equality of men and women - Freedom of movement - Right to a nationality - Right to equal treatment before the law - Right to freedom of thought, conscience and religion - Right to freedom of opinion and expression - Right to freedom of peaceful assembly and association - Right of security of person and protection by the State against violence or bodily harm - Right to form and join trade unions

¹⁴² Article 1 (1), and Article 7, ICRMW

¹⁴³ Article 1 (2), ICRMW

¹⁴⁴ Article 2 (1), ICRMW

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
	- It goes beyond the ILO Conventions' definition of migrant workers and includes frontier workers, seasonal workers, seafarers, workers on off-shore installations, itinerant workers, project-tied/ specified-employment workers, and self-employed workers.¹⁴⁵ - It excludes ¹⁴⁶ international civil servants,¹⁴⁷ diplomats, development cooperation personnel of sending States, investors, refugees and stateless persons, students and trainees, and seafarers and workers on off-shore installations who have not been admitted to live and work in	- Right to protection of the law; - Right to freedom of thought, conscience and religion; - Right to freedom of expression – subject to certain restrictions; - Non-separation from parents, except if it is in the best interest of the child; - Parents/legal guardians have common responsibilities for the up-bringing and development of the children; - In cases of adoption, the interest of the child is of paramount consideration; - Children of working parents have the right to benefit from child care services and facilities;	such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁴⁹	- profession and employment; - Right to promotion, job security, and all benefits and conditions of service; - Right to receive vocational training, and re-training, including apprenticeships, advanced vocational training, and recurrent training; - Right to equal remuneration, including benefits; - Right to equal treatment in respect of work of equal value; - Right to equality of treatment in the evaluation of quality of work; - Right to social security - in retirement, unemployment, sickness, invalidity, old age and other	living for an individual and his/her family; - Right to enjoy the highest attainable standard of physical and mental health; - Right to education; - Right to take part in cultural life; - Right to enjoy the benefits of scientific progress and its application; - Right to benefit from the protection of moral and material interests resulting from any scientific, artistic, or literary production of which he / she is the author.	- Right to a fair hearing (for legal migrants) - Right to equality before the law; right to a fair and public hearing; right to due process of the law; right to recognition as a person - Right to privacy; right to freedom of thought, conscience and religion; right to hold opinions - Right to peaceful assembly - Freedom of association (or trade union rights) - Protection of the family; protection of the children in the event of dissolution of marriage	- Right to social security and social services - Right to public health, medical care, social security and social services - Right to education and training - Right to equal participation in cultural activities - Right of access to any place or service intended for use by the general public (e.g. transport, hotels, restaurants, cafes, theatres, and parks)

¹⁴⁵ Article 2 (2), ICRMW

¹⁴⁶ Article 3 (a) – (f), ICRMW

¹⁴⁷ "International Civil Servants" are people who work for the United Nations and its Programmes and Specialised Agencies. It excludes the World Bank and International Monetary Fund.

¹⁴⁹ Article 1, Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; www.ohchr.org/english/law/cat.htm

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
	- the State of employment. "Members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.¹⁴⁸	- No arbitrary or unlawful interference to the private home, correspondence; - Right of the child to highest attainable standard of health; - Non-trafficking of children; - Refugee children to receive appropriate protection and humanitarian assistance; and - Disabled children to enjoy a decent life.	The Convention states the definition of "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on	- incapacity to work; - Right to paid leave; - Right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction; - Prohibit dismissal on the grounds of pregnancy or maternity leave; - Introduce maternity leave with pay, or with comparable social benefits, without loss of former employment, seniority or social allowances; - Provide protection to women during pregnancy in types of work proved harmful to them;			

UN Treaty / Convention	ICRMW, 1990	CRC, 1989	CAT, 1984	CEDAW, 1979	ICESCR, 1966	ICCPR, 1966	ICERD, 1965
	Acceded to by Indonesia on 22 September, 2004	Ratified by Indonesia on 5 September 1990	Ratified by Indonesia on 28 October 1998	Ratified by Indonesia on 13 September, 1984	Acceded to by Indonesia on 23 February, 2006	Acceded to by Indonesia on 23 February 2006	Acceded to by Indonesia on 25 June 1999
Supervision of Implementation through Government Reporting	Government has to report on the legislative, judicial, administrative and other measures they have taken to give effect to Convention: (a) Within 1 year after the entry into force of the Convention for the State Party concerned; (b) Thereafter every 5 years and whenever the Committee so requests. Reports shall also indicate factors and difficulties, if any, affecting the implementation of the Convention, and shall include information on the characteristics of migration flows in which the State Party concerned is involved. The Committee shall decide any further guidelines applicable to the content of the reports.	Government has to report on the legislative, judicial, administrative and other measures they have taken to give effect to Convention: (a) Within 2 years after the entry into force of the Convention for the State Party concerned; (b) Thereafter every 5 years Reports shall also indicate factors and difficulties, if any, affecting the implementation of the Convention. The reports should contain sufficient information to provide the Committee on the Rights of the Child with a full understanding of the implementation of the Convention in the country.¹⁵⁰	Government has to report on the legislative, judicial, administrative and other measures they have taken to give effect to Convention: (a) Within 1 year after the entry into force of the Convention for the State Party concerned; (b) Thereafter every 4 years and whenever the Committee on the Elimination of Discrimination against Women so requests. Reports shall also indicate factors and difficulties affecting the degree of fulfilment of obligations under the Convention.¹⁵² Civil society can submit "Shadow Reports" which becomes a supplement that is independent of the government report.	Government has to report on the measures which they have adopted and the progress made in achieving the observance of the rights recognized under the Covenant within 1 year after the entry into force of the Covenant. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.¹⁵³ Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.¹⁵⁴			

150 Article 44, UNCRC
151 Article 19(1), UNCAT
152 Article 18, CEDAW
153 Article 16, ICESCR
154 Article 17, ICESCR

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
Can civil society have access to the government reports?							
	Yes – it has to be made “widely available to the public.” ¹⁵⁵	Yes – it has to be made “widely available to the public.” ¹⁵⁶	Yes	Yes	Yes	Yes	Yes
Can civil society comment on the government reports?							
Yes – through public consultations with government as it prepares to write the report.							
Is there a complaints mechanism?	Yes, there is. The appropriate complaints mechanism (INDIVIDUAL and INTER-STATE COMPLAINT) can be used if your country is a party to the Convention. However, note the different requirements under each Convention.	There is NO complaint mechanism available to individuals under this Convention. Only State parties can bring a complaint against another State who is a party to the Convention.	Yes, there is. The appropriate complaints mechanism (INDIVIDUAL and INTER-STATE COMPLAINT) can be used if your country is a party to the Convention. However, note the different requirements under each Convention.	Yes, there is. The appropriate complaints mechanism (INDIVIDUAL and INTER-STATE COMPLAINT) can be used if your country is a party to the Convention. However, note the different requirements under each Convention.	There is NO complaint mechanism available under this Convention	Yes, there is. The appropriate complaints mechanism (INDIVIDUAL and INTER-STATE COMPLAINT) can be used if your country is a party to the Convention. However, note the different requirements under each Convention.	Yes, there is. The appropriate complaints mechanism (INDIVIDUAL and INTER-STATE COMPLAINT) can be used if your country is a party to the Convention. However, note the different requirements under each Convention.
Who can use the Individual Complaints mechanism?	Individuals: NOTE, however, that the Committee shall not consider any communication from an individual under the present article unless it has ascertained that: (a) The same matter has not been, and is	The Committee cannot consider individual complaints, although child rights may be raised before other committees with competence to consider individual complaints. ¹⁵⁹	Individuals: NOTE, however, that the Committee shall not consider any communications from an individual under this article unless it has ascertained that: (a) The same matter has not been, and is	The Committee on the Elimination of Discrimination against Women (CEDAW) may consider individual complaints relating to States parties to the Optional Protocol to CEDAW. ¹⁶¹	No one	The Human Rights Committee (HRC) may consider individual complaints relating to States parties to the First Optional Protocol to the ICCPR. ¹⁶²	Individuals, BUT only if the State party recognizes the competence of the Committee to receive communications from individuals or groups of individuals within its jurisdiction claiming to

155 Article 73(4), ICRMW

156 Article 44(6), UNCRC

159 Sourced from the UN OHCHR website: <http://www.ohchr.org/english/bodies/crc/index.htm>161 Sourced from the UN OHCHR website: <http://www.ohchr.org/english/bodies/petitions/index.htm#communications>

162 Ibid

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR. 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
	not being, examined under another procedure of international investigation or settlement; (b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.¹⁵⁷ These provisions will become operative when 10 states parties have made the necessary declaration under Article 77.¹⁵⁸		not being, examined under another procedure of international investigation or settlement; (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.¹⁶⁰				be victims of a violation by that State Party of any of the rights in this Convention. This is done through a Declaration. Any State Party which makes such a declaration may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.¹⁶⁴ A register of petitions shall be kept by the body established or indicated, and certified copies of the register shall be filed annually, through the appropriate channels, with the UN Secretary General.¹⁶⁵

160 Article 22(4), UNCAT

164 Article 14(2), ICERD

165 Article 14(4), ICERD

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
Who can use the Inter-State Complaints mechanism? NOTE: This has never been used. ¹⁶⁷	State parties that recognizes the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. This is done through a Declaration. ¹⁶⁸	State parties only.	xONLY State parties that recognizes the competence of the Committee Against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. This is done through a Declaration. ¹⁶⁷	None	ONLY State parties that recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. This is done through a Declaration. ¹⁷⁰	ONLY State parties who consider that another State Party is not giving effect to the provisions of this Convention – it may bring the matter to the attention of the Committee on the Elimination of Racial Discrimination. Applies to ALL State parties. ¹⁷¹	In the event of failure to obtain satisfaction from the body established or indicated (above), the petitioner shall have the right to communicate the matter to the Committee within six months. ¹⁶⁶

¹⁶⁶ Article 14(5), ICERD

¹⁶⁷ Sourced from the UN OHCHR website: <http://www.ohchr.org/english/bodies/petitions/index.htm#communications>

¹⁶⁸ Article 77(1), ICRMW

¹⁶⁹ Article 22(1), UNCAT

¹⁷⁰ Article 41(1), ICCPR

¹⁷¹ Article 11(1), ICERD

UN Treaty / Convention	ICRMW, 1990 Acceded to by Indonesia on 22 September, 2004	CRC, 1989 Ratified by Indonesia on 5 September 1990	CAT, 1984 Ratified by Indonesia on 28 October 1998	CEDAW, 1979 Ratified by Indonesia on 13 September, 1984	ICESCR, 1966 Acceded to by Indonesia on 23 February, 2006	ICCPR, 1966 Acceded to by Indonesia on 23 February 2006	ICERD, 1965 Acceded to by Indonesia on 25 June 1999
Resolution of Inter-State Disputes on the Interpretation of a Convention	To be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties. ¹⁷²	Does not apply to this Convention	To be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties. ¹⁷³	To be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties. ¹⁷⁴	Does not apply to this Convention	Does not apply to this Convention	Does not apply to this Convention

172 Article 92, ICRMW

173 Article 30, UNCAT

174 Article 29, CEDAW

APPENDIX 8: List of OECD Member Countries

Twenty countries originally signed the Convention on the Organisation for Economic Co-operation and Development on 14 December 1960. Since then a further ten countries have become members of the Organisation. The Member countries of the Organisation and the dates on which they deposited their instruments of ratification are:

AUSTRALIA: 7 June 1971
AUSTRIA: 29 September 1961
BELGIUM: 13 September 1961
CANADA: 10 April 1961
CZECH REPUBLIC: 21 December 1995
DENMARK: 30 May 1961
FINLAND: 28 January 1969
FRANCE: 7 August 1961
GERMANY: 27 September 1961
GREECE: 27 September 1961
HUNGARY: 7 May 1996
ICELAND: 5 June 1961
IRELAND: 17 August 1961
ITALY: 29 March 1962
JAPAN: 28 April 1964
KOREA: 12 December 1996
LUXEMBOURG: 7 December 1961
MEXICO: 18 May 1994
NETHERLANDS: 13 November 1961
NEW ZEALAND: 29 May 1973
NORWAY: 4 July 1961
POLAND: 22 November 1996
PORTUGAL: 4 August 1961
SLOVAK REPUBLIC: 14 December 2000
SPAIN: 3 August 1961
SWEDEN: 28 September 1961
SWITZERLAND: 28 September 1961
TURKEY: 2 August 1961
UNITED KINGDOM: 2 May 1961
UNITED STATES: 12 April 1961

APPENDIX 9: Summary of the Vienna Conventions on Diplomatic and Consular Relations, and Government Responsibilities under Indonesian Laws

1. Responsibilities under the Vienna Conventions on Diplomatic and Consular Relations

The mandate of Foreign Service Offices (FSOs) is to protect their citizens abroad. This is clearly established as a function of consular staff in the UN Conventions on Diplomatic and Consular Relations in the 1960s, but protecting nationals has become even more important in recent years because of the huge numbers of migrant workers continuing to go overseas.

The responsibilities of consulates are established in the 2 Conventions:

- Vienna Convention on Diplomatic Relations and its Optional Protocols, 1961.
- Vienna Convention on Consular Relations and its Optional Protocols, 1963.

Vienna Convention on Diplomatic Relations and its Optional Protocols, 1961

Under Article 3, one of the five functions of diplomatic missions (i.e. embassies) is to protect the interests of nationals in the receiving State, within the limits permitted by international law.

Vienna Convention on Consular Relations and its Optional Protocols (1963)

Vienna Convention on Diplomatic Relations and its Optional Protocols, 1961

Article 3:

1. The functions of a diplomatic mission consist inter alia in:
 - (a) representing the sending State in the receiving State;
 - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
 - (c) negotiating with the Government of the receiving State;
 - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
 - (e) promoting friendly relations between the sending State and the receiving State, and
 - (f) developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Under Article 3 of the **Consular** Convention, consular functions are exercised by both diplomatic and consular missions. Thus Article 5 of the Vienna Convention applies to both embassies and consulates exercising consular functions. Article 5 of the Vienna Convention sets out the consular functions, of which assistance to nationals is a repeated priority. Consular staff must protect, assist, help nationals, especially protecting the interests of minors and ensuring all nationals have appropriate legal representation to safeguard their rights and interests.

Vienna Convention on Consular Relations and its Optional Protocols, 1963

Article 3: EXERCISE OF CONSULAR FUNCTIONS

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 5: CONSULAR FUNCTIONS

Consular functions consist in:

- (a) **protecting** in the receiving State **the interests of** the sending State and of its **nationals**, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the

Government of the sending State and giving information to persons interested;

- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) **helping and assisting nationals**, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) **safeguarding the interests of nationals**, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving

State, in accordance with the laws and regulations of the receiving State;

- (h) **safeguarding**, within the limits imposed by the laws and regulations of the receiving

State, **the interests of minors and other persons lacking full capacity** who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

- (i) subject to the practices and procedures obtaining in the receiving State, **representing or arranging appropriate representation for nationals** of the sending State **before the tribunals and other authorities** of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures **for the preservation of the rights and interests of these nationals**, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken

by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

2. Responsibilities under Indonesian foreign policy

Law Number 37 of 1999 on Foreign Relations elaborates on the specific functions of Indonesian FSOs under Chapter V. Specifically Articles 18, 19 and 21 set out that embassies are obliged to provide a sense of security, protection and legal aid to Indonesian citizens and especially if Indonesians are in danger, give them protection and assistance including repatriation at the cost of the State.

LAW NO. 37 OF 1999 ON FOREIGN RELATIONS

(For a copy of the full Act go to <http://www.deplu.go.id/2003/detail.php?doc=5395c422306ce51b08f50f75e9a9d686>)

Chapter V

Protection of Indonesian Citizens

Article 18

1. The Government of the Republic of Indonesia shall protect the interests of Indonesian citizens and legal bodies in legal disputes with foreign missions accredited to Indonesia.
2. Such protection as stipulated in paragraph (1) shall be effected in conformity with the provisions of international law and practice.

Article 19

Missions of the Republic of Indonesia are obliged to:

1. Foster unity and harmony amongst Indonesia citizens abroad;
2. Provide sense of security, protection, and legal aid to Indonesian citizens and Indonesian legal bodies abroad, in conformity with national legislation and international law and practice.

Article 21

In the case where Indonesian citizens are threatened with real danger, the Mission of the Republic of Indonesia is obliged to give protection and assistance and to assemble said citizens in a safe area, as well as to endeavour to repatriate them to Indonesia at the expense of the state.

Article 23

Implementation of stipulations as laid down in Articles 21 and 22 shall be carried out through cooperation with the local government or the relevant government of other countries or international organizations.

Law Number 39 of 2004 on Protection of Indonesian workers abroad state the responsibility of the Indonesian Government for protecting Indonesian workers in foreign countries while they are working as well as to use diplomatic efforts to guarantee the fulfilment of rights and protection of Indonesian workers abroad (Articles 6 and 7). Embassies shall give protection to Indonesian workers in foreign countries in accordance with national laws as well as international laws and conventions including by deploying labour attaches as appropriate (Article 78). Embassies shall supervise and monitor employment agencies at destination as well as advising and providing services to Indonesian workers (Article 79). This service should include providing legal assistance and advocacy assistance to ensure rights are protected in line with their employment contract and the destination country's law (Article 80).

LAW 39 OF 2004 CONCERNING PLACEMENT AND PROTECTION OF INDONESIAN WORKERS IN FOREIGN COUNTRIES

Chapter II

The Government's Duties, Responsibilities and Obligations

Article 5

1. The Government shall have the duties of regulating, supervising, and controlling the organization [administration] of job placement and protection of Indonesian Workers in Foreign Countries
2. In carrying out the its duties as referred to under subsection (1), the [central] Government may transfer/ delegate part of its authority and/ or assign and share part of its duty to provide assistance to regional [district/ city] governments according to laws and regulations. [Translator's note: The phrase 'duty to provide assistance' is here used to translate *tugas perbantuan*, meaning that one of the duties of the Government is to provide assistance [to job placement agencies as well as to regional governments] to facilitate job placement and protection of Indonesian Workers bound for employment or being employed in foreign countries, in addition to the duties enumerated under subsection (1) above. However, the word *perbantuan* normally suggests 'secondment' that usually refers to the act of the central government of sending a skilled person or an expert to work for a regional government with the intention to help the regional government in a certain matter, which, in this case, is to help the regional government in handling job placement and protection of Indonesian Workers bound for employment or being employed in foreign countries who come from the region.]

Article 6

The Government shall be responsible for improving effort to protect Indonesian Workers in foreign countries.

Article 7

In carrying out its duties and responsibilities as referred to under Article 5 and Article 6, the Government has the obligation:

- (a) To guarantee the fulfilment of the rights of prospective Indonesian Workers (calon TKI)/Indonesian Workers (TKI) who depart [go to a foreign country] via private implementers or who depart independently [on their own, without help from a job placement agency];
- (b) To supervise and control the placement of prospective Indonesian Workers in jobs in foreign countries;
- (c) To establish and develop an information system for the placement of prospective Indonesian Workers in jobs in foreign countries;
- (d) To make diplomatic efforts to guarantee the fulfilment of rights and protection of Indonesian Workers optimally in destination countries; and
- (e) To provide protection to Indonesian Workers during the period of time prior to [their] departure [to destination countries], during the period of employment [in foreign countries], and during the post-placement period.

Chapter VI: Protection for Indonesian Workers

Article 77

1. Every prospective Indonesian Worker/ every Indonesian Worker going to be employed or already being employed in a foreign country is entitled to receive protection according to laws and regulations.
2. The protection for Indonesian Workers employed in foreign countries as referred to under subsection (1) shall be provided starting from their pre-placement [prior to their employment in foreign countries], during the course of their placement [during their employment in foreign countries], until their post-placement [until the end of their employment in foreign countries].

Article 78

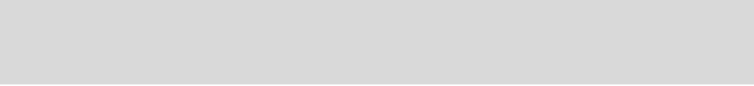
1. The Representative Office of the Republic of Indonesia shall provide protection to Indonesian Workers during the course of their placement [employment] in foreign countries according to laws and regulations as well as international laws and conventions.
2. To provide more effective protection to Indonesian Workers during the course of their placement [employment] in foreign countries, the Government may establish labour attachés embedded in the Representative Offices of the Republic of Indonesia in certain foreign countries where Indonesian Workers are placed [employed].
3. The appointment of labour attachés as referred to under subsection (2) shall be carried out according to laws and regulations.

Article 79

In order to provide protection to Indonesian Workers during their placement [employment] in foreign countries, the Representative Offices of the Republic of Indonesia [in those foreign countries] shall provide advisory and supervisory services to and perform inspection on the representatives of private implementers for the placement of Indonesian Workers in foreign countries [which operate in those foreign countries] as well as providing advisory, and supervisory service to Indonesian Workers employed in those foreign countries.

Article 80

1. Protection provided to Indonesian Workers during their employment in foreign countries shall cover, among others:
 - (a) The provision of legal assistance according to the laws and regulations of the destination countries where the Indonesian Workers are placed [employed] and according to international laws and conventions;
 - (b) The provision of advocacy service to ensure the fulfilment of the rights of the Indonesian Workers according to their work agreements and or the laws and regulations of the foreign countries where they are employed;
2. Further provisions/ regulations concerning the provision of protection to Indonesian Workers during their employment in foreign countries as referred to under subsection (1) shall be specified with a Government Regulation.



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