



Migration, irregular status and deportation

An outline of international standards, regional trends and good practices

An estimated one-third of migrant workers in the Asia-Pacific region have irregular status.¹ A migrant with irregular status is one who entered a foreign country without going through the formal immigration process or without a valid work permit, or one who became irregular after entry. Porous borders, the often complex and more costly processes associated with legal migration and employment, and established migration routes, leave irregular migration the most viable option for many. In addition, restrictions on women's legal migration, often due to sectoral regulations and age limits, can push women into irregular migration. The term "illegal migrants" is often used, however while crossing a border without proper travel documents can break national laws, the act can never make an individual 'illegal'.

Migrants often have little control over the complex factors that determine their status as these frequently come down to administrative circumstances, not necessarily the actions of migrants. Migrants can slip easily from regular to irregular status, often through no fault of their own. Typical examples include: workers entering legally but then having their visa, work permit or passport expire; regular migrants leaving their designated employer or being dismissed, and thus invalidating their work permit; and people who were trafficked into the country.

In destination countries, inflammatory language is often used about the scale and impact of irregular migration on economies and societies. The prevailing discourse associates irregularity with criminality, and views irregular migration as a security issue. Irregular migrants are frequently subject to harassment, arrest, detention and deportation and are at risk of forced labour and trafficking. Without legal status in their country of employment they have no or very few avenues for seeking legal redress if their rights are violated. Irregular migrants are particularly vulnerable to deportation, and large-scale deportation campaigns have been seen in a number of countries in Asia.

Deportation of undocumented migrants in Malaysia

In September 2013 Malaysia entered the final phase of the Regularization and Comprehensive Settlement of Foreign Workers and Illegal Immigrants Programme (6P), an arrest and deportation campaign targeting 500,000 undocumented migrants in Kuala Lumpur, Selangor, Penang and Johor. The operation also targeted employers of undocumented migrant workers.

Many of those detained or arrested during the operation were migrant workers who were left in a 'legal limbo' as a result of government policies or practices that leave migrants undocumented. For example, migrant workers who failed to complete the full regularization process under the previous phases of the 6P Programme; and those whose passports and other documents were being held by immigration authorities or by their employers while applications were being processed. Refugees and asylum seekers may also be considered undocumented in Malaysia, and there was concern for their welfare and rights during the operation. The crackdown attracted widespread concern from human and migrants' rights activists and the international community. Of particular concern was that the mass deportations were in potential violation of the right to have individual case assessment and determination, as provided for in Article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

International Labour Organization instruments

Regardless of nationality, residence or migrant status, the principles and rights outlined in **The Declaration on Fundamental Principles and Rights at Work**, adopted in 1998, applies to all people in all States, and calls for special attention to vulnerable groups, including migrant workers.

The **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** was the first international standard to address irregular migration through a rights-based approach. The Convention calls on each Member to adopt measures, including sanctions, against organizers of illicit or clandestine movements of migrants, against those who employ workers who have immigrated in illegal conditions, and against

¹ ILO, Asian Decent Work Decade resource kit: Protecting migrant workers. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_098142.pdf.

traffickers. In addressing the situation of migrants who have become irregular through loss of employment, the Convention states that if a migrant worker has lived and worked legally in the country s/he shall not become irregular or illegal purely by losing his or her job. Loss of employment should not be considered a trigger for automatic cancellation of the work permit and right of residence.

The **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** and the **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** prohibit discrimination on the basis of nationality or immigration status regarding both membership in workers' organizations and in the establishment of trade unions.

ILO Multilateral Framework on Labour Migration

Guidelines on the principles for the effective management of labour migration and protection of migrant workers state that policies should be implemented to ensure that specific vulnerabilities faced by certain groups of migrant workers (including workers in an irregular situation) are addressed. The Multilateral Framework also addresses States' responsibilities indicating that member States should adopt and implement legislation and policies to prevent irregular labour migration.



United Nations Conventions

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)** sets out several workers' rights which apply to all migrant workers, regardless of legal status. The Convention provides for:

- non-discrimination,
- freedom from slavery and forced labour,
- the right to equality with nationals before courts and tribunals,
- equality of treatment between nationals and migrant workers in respect of remuneration and other conditions of work and terms of employment,
- the right to participate in trade unions,



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- the right to receive any medical care that is urgently required for the preservation of life or the avoidance of irreparable harm to health. Such emergency care shall not be refused by reason of irregularity with regard to stay or employment.

On deportation, Article 22 states that all migrants and members of their families, regardless of status: shall not be subject to collective expulsion, rather each case shall be examined and decided individually; the person concerned shall have the right to have his or her case reviewed; the decision shall be communicated in a language that the person concerned can understand; and the person concerned shall have the opportunity to claim wages and any other entitlements due.

In addition to the rights afforded to all migrant workers regardless of status outlined above, the Convention provides additional rights for documented workers (Articles 36–56).



Regional instruments

General Principle 2 of the **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)** states that sending and receiving States shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have become undocumented. However General Principle 4 indicates that “nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.”

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