

International Obligations Regarding Migrant Workers

A GUIDE FOR COUNTRIES OF ORIGIN



INTERNATIONAL OBLIGATIONS REGARDING MIGRANT WORKERS

A Guide for Countries of Origin



About the Author

The UNSW Human Rights Clinic works to systemically advance the rights of temporary migrants and asylum seekers in Asia and Australia. Under intensive faculty supervision, clinic students work as legal advisers and advocates with individual clients, NGOs, governments and inter-governmental institutions globally. Bridging theory and practice, students learn the skills and responsibilities of human rights lawyering.

For further information on the clinic and its publications, see <http://www.law.unsw.edu.au/current-students/law-action/clinics/human-rights-clinic>.

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INTERNATIONAL OBLIGATIONS REGARDING MIGRANT WORKERS

A Guide for Countries of Origin



1 | INTRODUCTION

This Guide has been produced to assist state and non-state actors to advance the human rights and labour rights of the world's 150 million migrant workers. It is the first of its kind to provide a systematic overview of international obligations regarding migrant workers from the **perspective of countries of origin**.

The Guide sets out key international standards that can guide migrants' home countries as they regulate, negotiate, and implement labour migration programs. It also provides useful standards against which states and other actors can measure and report on compliance with international human rights and labour rights standards in countries of origin and employment.

The Guide is structured so that it can either be read as a whole, or it can be regularly consulted as a desk or online reference for standards that apply at a particular stage of migration, or concerning a particular issue.

Five distinctive content and design features make the Guide an accessible, practical and essential resource for all stakeholders involved with migrant workers, including policymakers, diplomats, service providers, and migrant workers and their advocates:

1st, it uses the definition of ‘migrant worker’ contained in the *Migrant Workers Convention*, namely ‘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.’¹

Recognising that human rights responsibilities to migrant workers are enlivened at **all stages of a migrant’s journey**, the Guide outlines international obligations and standards that apply: before departure, when the migrant engages in recruitment and prepares to leave home; while in the country of employment, when the migrant may rely on the services of diplomatic missions for protection of his or her rights; and upon the migrant’s return and reintegration into his or her home country.

2nd, the Guide uniquely draws together migrant workers’ rights and corresponding state obligations contained within **diverse international instruments and areas of law**, and provides states with recommendations and global good practice examples to enable fulfilment of these rights. These include:

- **Labour rights** and state responsibilities under key ILO conventions and related instruments.
- **Human rights** and state responsibilities, including civil, political, social, cultural and economic rights held by migrant workers in both their countries of origin and employment. Key instruments include:
 - International Covenant on Civil and Political Rights;
 - International Covenant on Social, Economic and Cultural Rights;
 - Convention on the Elimination of all Forms of Discrimination Against Women;
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and
- State responsibilities regarding migrant workers who may be victims of **trafficking** under the Trafficking Protocol to the Convention on Transnational Organised Crime.
- State **consular responsibilities** under the Vienna Convention on Consular Relations.

¹ [Migrant Workers Convention](#) article 2(1).

3rd, the Guide recognises that responsibility for protection of migrant workers' rights rests with both countries of origin and destination. The Guide has a particular focus on the roles and responsibilities of authorities from countries of origin – in both the home and destination countries through its consular staff. At the same time, it recognises that in order to ensure protection of their migrant workers, countries of origin and their diplomatic missions need to understand and advocate for enforcement of destination countries' obligations towards migrant workers.

Therefore in addition to focusing on the pre-departure and return phases in which the migrant worker is in his or her home country, the Guide provides a detailed overview of **migrant workers' civil, political, social, economic and cultural rights while they are in the country of employment**, and the **obligations of diplomatic missions** to migrant workers while they are abroad. The Guide will also therefore be useful to migrant worker countries of employment and related stakeholders.

4th, the Guide focuses on **all migrant workers, including those in an irregular status**. It provides a particular focus on the specific vulnerabilities, needs and additional protections for **women and children** at each stage of their migration journey. Lastly, the Guide addresses situations in which exploitation of migrant workers may constitute **forced labour and human trafficking**. The Guide provides an overview of the elements of each offence along with examples of how they may arise in the labour migration context, and sets out corresponding state obligations in relation to prevention, services for victims and accountability.

5th, the Guide has been structured with expert and non-expert users in mind. The Table of Contents incorporates detailed **section and sub-section headings that also act as a summary of rights** and obligations relevant to each stage of migration. The Guide contains **hyperlinks** to international treaties and other instruments to enable the reader to view the text of the instruments directly. The appendices also set out the **ratification status** of each instrument to enable users to determine which of the instruments referenced are binding on a particular state.

INTERNATIONAL OBLIGATIONS REGARDING MIGRANT WORKERS

A Guide for Countries of Origin



WHO SHOULD USE THIS GUIDE?

States

The Guide will assist a broad range of state actors in countries of origin and destination to strengthen regulation and domestic law, identify gaps in services, conduct capacity assessments and as benchmarks through which programmes and activities can be monitored and evaluated. It can form the basis for training of national and local government officials on human rights and labour rights obligations and standards concerning migrant workers under international law, and will also be an important resource for periodic reporting to UN and ILO bodies on states' compliance with obligations under the specific international conventions to which they are a party.

Country of origin authorities

The Guide provides a thorough overview of the obligations of countries of origin and the obligations of states where their citizens are working. In giving content and context to the ways in which states ought to fulfil these obligations, the Guide will be useful to a range of government ministries and agencies at national and local levels.

These include: ministries of labour/manpower and other agencies involved in governance of recruitment and placement of migrant workers; justice ministries with responsibilities for criminal justice and migrant workers' access to remedies against recruiters and other actors at home and abroad; social services ministries with responsibilities for returned migrant workers; and specialist agencies responsible for migrant worker protection. It will also, of course, be useful to ministries of foreign affairs in their negotiation and implementation of labour migration programs and standards with countries of employment, and in particular to staff of diplomatic missions and labour attaches responsible for protection of migrant workers while they are abroad.

The Guide provides an extensive overview of the obligations of countries of employment to migrant workers to enable countries of origin to hold destination countries accountable for fulfilling the rights of their migrant workers, and also provides detailed guidance in a dedicated chapter on the responsibilities of consular officials in destination countries including legal assistance, information and

Destination country authorities

protection services.

Countries of migrant worker employment will find the Guide a useful and accessible resource for understanding their obligations and good practices in relation to the labour rights and human rights of migrant workers under a range of international instruments to which they are state parties. These include the spectrum of rights and responsibilities while migrant workers are living and working in the destination country, as well as the obligations of destination countries in relation to recruitment, and migrants' rights to return to their country of origin.

Migrant Workers

The Guide is a resource for migrant workers and their communities who seek to better understand their rights and the responsibilities of state authorities abroad and at home. It can equip them with knowledge, language and examples to more forcefully advocate for protection and enforcement of their rights and hold duty bearers accountable for their actions and inactions.

NGOs and trade union

There are a number of ways in which the Guide can support civil society actors to protect and advance the rights of migrant workers. These include: training migrant workers, advocates, unions and government on migrant workers' human rights and labour rights and corresponding state responsibilities; UN shadow reporting (using common international language and terminology); providing benchmarks for governments' responsibilities as a basis for evaluation, advocacy and lobbying for law and policy reform; identifying service gaps and supporting service provision; collaborating with counterparts in other countries using shared language and objectives; identifying and promoting a rights-based approach to specific aspects of labour migration governance and implementation; and for training and education purposes.

Donors

Likewise, the Guide may be helpful for donors to assess, monitor, report, advocate and hold states and other actors accountable for their obligations to their migrant workers.

Intergovernmental organisations and international institutions

In drawing together state obligations across different areas of international law, the Guide will enable inter-governmental organisations and international institutions to identify intersections with other mandates and support collaboration on areas of concern. It may also facilitate transfer or reinforcement of approaches, jurisprudence, and initiatives among different bodies and mandate-holders operating under different international instruments that govern the same issue.

The Guide has been structured to follow the journey of a migrant worker over eight chapters.



Chapter One	Introduction
Chapter Two	Explores rights and obligations during the pre-departure phase – specifically examining education and training requirements and obligations concerning contract issues and oversight.
Chapter Three	Focuses on the obligations of states to regulate and provide oversight of recruitment agencies.
Chapter Four	Provides a detailed summary of the rights of migrant workers in the destination country. This covers a range of contexts such as work rights, living conditions, access to services, political rights and protection obligations. It focuses on rights for all migrant workers including those in an irregular status, with particular focuses on women and children.
Chapter Five	Gives further detail on the key consular protection services required under international law for migrant workers and how they ought to be implemented.
Chapter Six	Concerns remittances and the right to transfer earnings.
Chapter Seven	Examines obligations on destination countries and countries of origin in relation to a migrant worker’s return home and reintegration, including service provision requirements and obligations to ensure access to justice.
Chapter Eight	Considers situations of forced labour and human trafficking. It outlines origin countries’ obligations in preventing, identifying and responding to forced labour and human trafficking in the labour migration context.



2 | PRE-DEPARTURE

Low-wage migrant workers often encounter a range of problems in the pre-departure phase, including during recruitment, such as:²

- Inadequate access to accurate and reliable information about the labour market abroad and legal channels of migration;
- Illegal recruitment and trafficking;
- Overcharging of fees for placement and documents;
- Deception with regard to the nature or conditions of employment;
- Falsification of documents;
- Cheating and extortion by employment agencies and brokers;
- Debt bondage;
- Inefficiency and abuse of authorities;
- Inappropriate and expensive training programs;
- Exploitation and abuse while waiting for the job (for example, confinement in pre-departure training centres); and
- Lack of knowledge about transit procedures and requirements.

Many of these problems directly harm workers. They also make workers more vulnerable to abuse when they are abroad. Indeed, the quality of education, training and contract oversight provided in the pre-departure phase has an impact on whether, and to what degree, migrant workers are subjected to harms and exploitation abroad and on their ability to seek redress when problems arise.

This section outlines the international obligations of countries of origin to protect their nationals from a number of these harms. It also sets out international standards contained in non-binding sources of international law, which can be used as further guidance. In addition, this section identifies particular vulnerabilities of migrant workers that ought to be taken into account in giving content to pre-departure obligations and fulfilling them effectively.

² This is based on a list that appears in International Labour Organization, [International Labour Standards on Migrant Workers: Guide for Policymakers and Practitioners in Asia and the Pacific](#) (2007) 25.

2.1 PRE-DEPARTURE EDUCATION & TRAINING

2.1.1 The obligation to provide pre-departure information



MIGRANT WORKERS CONVENTION

Article 33

All migrant workers – including workers in an irregular status and members of their families – have the right **to be informed** by their country of origin (and destination) of their rights arising out of the Convention, their conditions of admission to the country of employment, their rights and obligations under the law, and other matters that will help them to comply with the formalities of the country of employment. States must take appropriate measures to disseminate such information, or to ensure that it is provided by relevant third parties. Such information must be adequate, and it must be provided to migrant workers and their families on request, at no cost and, to the extent possible, in a language they understand.

Article 37

Regular and documented migrant workers are entitled to receive more detailed and specific information from their country of origin (or the destination country, if appropriate), concerning all conditions and requirements applicable to their entry, stay and employment in the destination country. They are also entitled to know which authority they must go to if they wish to change any of these conditions. They have the right to receive this information before departing, or at the latest, at the time of admission into the destination country.

Article 65(1)(d)

Countries of origin are required to maintain services to provide information to migrant workers and members of their families regarding requirements and necessary arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the state of employment and on customs, currency, tax and other relevant laws and regulations.

ILO MIGRATION FOR EMPLOYMENT CONVENTION

Article 2

States undertake to maintain an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 4

States shall take appropriate measures, within their jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

Countries of origin have obligations under a number of human rights and labour rights instruments to ensure that prospective migrant workers are adequately informed about the process of working abroad, as well as about their rights and responsibilities. The content of these obligations have also been further elaborated through various comments and recommendations issued by international treaty bodies and other international organisations. Set out below are the key applicable treaty provisions, and relevant comments.

Countries of origin have an obligation to provide pre-departure education and training in a non-discriminatory manner, under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ('Migrant Workers Convention') and the Convention on the Elimination of All forms of Discrimination against Women ('CEDAW'). This obligation is also reflected in the [ILO Convention Concerning Migration for Employment \(Revised\), 1949 \(No. 97\)](#) ('ILO Migration for Employment Convention').

According to the Committee on Migrant Workers, 'migrant workers should be able to acquire a basic understanding of the language, culture, and legal, social and political structures of the states to which they are going'.³

In its General Comment No. 1, the Committee on Migrant Workers considers the specific case of domestic migrant workers, who can be particularly vulnerable to exploitation and abuse.

The Committee notes that migrants are often not provided with sufficient information or avenues for reporting rights abuse. Therefore, it recommends that states provide general background information to those considering whether to migrate for domestic work. It also recommends that countries provide specific pre-departure training for those who have already decided to migrate. Such training could include the provision of information on the rights and obligations of migrant workers under international law as well as information specific to each destination country, information regarding finances and logistics and contact information for emergency assistance, including embassies and consulates and relevant civil society organisations in countries of employment.⁴



Good Practice Example

The International Organisation for Migration ('IOM') recommends that all pre-departure training include:⁵

- An introduction to the culture of the destination country;
- Language training;
- Information about migrant workers' rights and responsibilities;
- Clear information about working conditions in the destination country; and
- Emergency contact numbers and information about proper procedures to follow in case of an emergency.

³ Office of the United Nations High Commissioner for Human Rights, [Committee on Migrant Workers - Frequently Asked Questions](#) (2012).

⁴ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011). See, in particular, [9], [28]–[30].

⁵ International Organisation for Migration ('IOM'), [Labour Migration from Indonesia](#) (2010) 39–40.

It also recommends that such training be provided by the government or by a third party such as an NGO, rather than recruitment agencies.

In addition, the ILO Migration for Employment Recommendation R086 provides some further guidance as to the content of the free training service contemplated by article 2 of the Convention. It recommends that the service advise migrants and their families, in a language they understand, on matters relating to emigration, immigration, employment, living and working conditions in the destination country, and return to the country of origin. It also recommends that such a service be provided either by the public authorities of a country or by a voluntary not-for-profit organisation which has been approved by the public authorities.⁶

Further, the ILO Forced Labour Recommendation R203 suggests that orientation and information provided prior to departure is an effective way to create awareness and a better understanding about the risks of trafficking and forced labour.⁷

2.1.2 The obligation to provide information to women⁸



CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 2

States parties agree to pursue by all appropriate means a policy of eliminating discrimination against women.

Article 3

States parties must take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The CEDAW Committee has considered the application of the fundamental principle of non-discrimination in the particular context of women migrant workers. The Committee recognises that women may face specific vulnerabilities, giving rise to a greater risk of sex- and gender-based discrimination and human rights violations.⁹

⁶ ILO, *R086 Migration for Employment Recommendation (Revised)*, 1949 (No 86), [5].

⁷ ILO, *R203: Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* [4].

⁸ See above for CEDAW and ILO obligations relating to women.

⁹ UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 26 on women migrant workers*, UN Doc CEDAW/C/2009/WP.1E. (5 December 2008)

The CEDAW Committee notes that countries of origin must respect and protect the human rights of their female nationals who migrate for work, including through the delivery or facilitation of free or affordable gender- and rights-based pre-departure information and training programmes. The main purpose of this is to raise awareness amongst prospective women migrant workers of potential exploitation and vulnerabilities that they may encounter at all stages of the migration process.

The CEDAW Committee recommends that such training includes:¹⁰

- Recommended contents of labour contracts;
- Legal rights and entitlements in countries of employment;
- Procedures for invoking formal and informal redress mechanisms;
- Processes by which to obtain information about employers, cultural conditions in countries of destination, stress management, first aid and emergency measures, including emergency telephone numbers of home embassy, and services;
- Information about safety in transit, including airport and airline orientations; and
- Information on general and reproductive health, including HIV/AIDS prevention.

The CEDAW Committee also notes that pre-departure information should include within it a list of authentic, reliable recruitment agencies and further recommends that states create a unified information system on available jobs abroad.¹¹ This could also include information on methods and procedures for women workers who wish to migrate independently of recruitment agencies.¹²

The ILO also encourages states to be particularly attuned to the special vulnerability of women, especially those from rural areas, in providing pre-departure information. This is because women may be less informed about ‘the costs, risks and benefits of migration due to [factors such as] limited access to sources of information [and] lower rates of literacy’.¹³ In this regard, the United Nations Development Fund for Women (‘UNIFEM’) encouraged states to provide ‘rights-based, gender-sensitive pre-departure training’¹⁴ that raises awareness of the migration realities for women and builds the capacity of women migrants to address potential exploitation.

Similarly, a 2013 report of the UN Secretary General recommends that states provide gender-specific training such as public and targeted awareness-raising, information dissemination and education, to reduce the risk of abuse and exploitation and assist women migrant workers in accessing protection and services.¹⁵

¹⁰ Ibid [24(b)(i)].

¹¹ Ibid [24(b)(ii)].

¹² Ibid [24(b)(iii)].

¹³ ILO, *International Labour Standards on Migrant Workers’ Rights: Guide for Policymakers and Practitioners in Asia and the Pacific* (2007) 25.

¹⁴ United Nations Development Fund for Women (UNIFEM), *Policy and Programme Work on International Migration by the United Nations Development Fund for Women (2008)* 6. In 2011, the functions of UNIFEM were incorporated into the new entity, UN Women.

¹⁵ United Nations General Assembly, *Report of the Secretary-General: Violence against women migrant workers*, 23 July 2013, UN Doc A/68/178, [32]–[36].

2.1.3 The role of diplomatic missions



MIGRANT WORKERS CONVENTION

Article 33

All migrant workers – including workers in an irregular status – and members of their families have the right to be informed by their country of origin (and destination) of their rights arising out of the Convention, their conditions of admission to the country of employment, their rights and obligations under the law, and other matters that will help them to comply with the formalities of the country of employment. States must take appropriate measures to disseminate such information, or to ensure that it is provided by relevant third parties. Such information must be adequate, and it must be provided to migrant workers and their families on request, at no cost and, to the extent possible, in a language they understand.¹⁶

Article 65(1)(d)

Countries of origin are required to maintain services to provide information to migrant workers and members of their families regarding requirements and necessary arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the state of employment and on customs, currency, tax and other relevant laws and regulations.¹⁷

The Migrant Workers Convention, CEDAW and other international instruments, oblige states parties to ensure that migrant workers receive the information to which they are entitled prior to their departure. This remains the obligation of the state even if education and training functions are outsourced to recruitment agencies or other private actors.

Diplomatic missions also have a role to play in this process by monitoring and reporting to the government on employment conditions, human rights standards and the relevant domestic laws, institutions and procedures for each destination country. Diplomatic missions are well-placed to provide important content for pre-departure education and training materials, and to ensure that content is accurate and up-to-date. This comprises information specific to each relevant destination country, including:

- Conditions of admission (requirements for entry) into relevant destination countries;¹⁸
- Rights and obligations of migrant workers in the destination country;¹⁹ and
- Anything else that will help the migrant worker to comply with the administrative or other formalities in the destination country. This might include information on conditions of work and life in the destination country, and on customs, currency, tax and other relevant laws and regulations.²⁰

¹⁶ [Migrant Workers Convention](#) article 33.

¹⁷ Ibid article 65(1)(d).

¹⁸ Ibid article 33(1).

¹⁹ Ibid article 33(1).

²⁰ Ibid article 65(1)(d).



Good Practice Example

Section 14 of the Migrant Workers and Overseas Filipinos Act of 1995²¹ requires diplomatic missions to send back information on labour and employment conditions, migration realities and the adherence of particular countries to international standards on human and worker rights, which will adequately prepare individuals to make informed and intelligent decisions about overseas employment. The Philippines Overseas Employment Agency (POEA) then disseminates this information by publishing it in a newspaper of general circulation at least three times every quarter.

Diplomatic missions are also well-placed to provide gender-specific pre-departure information, as recommended by the CEDAW Committee (as discussed above). This includes information on:

- Legal rights and entitlements in countries of employment;
- Procedures for invoking formal and informal redress mechanisms within the destination country;
- Cultural conditions in countries of destination; and
- First aid and emergency measures, including emergency telephone numbers of the home embassy.

²¹ Republic Act No.8042, *Migrant Workers and Overseas Filipinos Act 1995* article 14.

2.2 CONTRACT ISSUES AND OVERSIGHT

Many of the harms suffered by migrant workers in the destination country are contract-related. The most common contractual problems relate to non-payment of wages, with some migrant workers going months or even years without being paid.²² Contracts are often provided to migrant workers just prior to departure, giving them limited opportunity to review the agreements. Contracts are also often written in a language not spoken by the migrant worker, making comprehension difficult for migrant workers. Moreover, migrant workers frequently encounter ‘contract substitution’, where they are required to sign an alternate contract on arrival in the destination country with lower wages or different working conditions.

2.2.1 Obligations regarding contract oversight

MIGRANT WORKERS CONVENTION



Article 25

Migrant workers are entitled to be treated equally with nationals of the destination country in respect of remuneration and terms of employment (such as overtime, working hours, holidays, safety, health, termination of employment, minimum age of employment and restrictions on work). It is not lawful to derogate in private contracts from this principle of equality of treatment.

Article 82

It is not possible to derogate by contract any right recognised in the Convention.

[See section 4.4, ‘Work rights’, for a more extensive consideration of the rights of migrant workers that should be reflected in employment contracts].

The IOM recommends states ensure that all departing labour migrants hold valid employment contracts, signed pre-departure, that clearly stipulate conditions including wages and working hours, so that potential labour migrants can *easily understand* their rights and obligations.²³ Furthermore, states should ensure that employment contracts are drafted in a language that prospective migrant workers can easily understand and that workers have sufficient time to review and properly understand such contracts before signing them.²⁴

In order for states to comply with their obligations under the Migrant Workers Convention and CEDAW, both the placement agreement and the employment agreement should reflect the worker’s rights and entitlements under those instruments and should not violate established migrant worker rights recognised under international law – for example, contracts should not stipulate commitments from the worker not to marry, become pregnant or join a trade union.

²² Bassina Farbenblum, Eleanor Taylor-Nicholson and Sarah Paoletti, [Migrant Workers’ Access to Justice at Home: Indonesia](#) (Open Society Foundations, 2013).

²³ International Organisation for Migration, [Labour Migration from Indonesia](#) (2010) 82.

²⁴ Ibid.

The ILO Multilateral Framework on Labour Migration suggests various practices which may assist states in ensuring that the process for entering into employment contracts, and the content of employment contracts, adequately protect migrant workers' rights.²⁵

- Ensure migrant workers receive understandable and enforceable employment contracts;
- Implement remedies for migrant workers if their employment contracts are breached;
- Promote the establishment of written contracts and implement a system to *register* employment contracts to guard against 'contract substitution', (in which workers are required to sign an alternate contract on arrival in the destination country); and
- Inspect workplaces where migrant workers are employed in order to effectively monitor working conditions and supervise compliance with employment contracts.



Good Practice Example

As a guide, the ILO recommends that employment contracts contain the following information:²⁶

- Full name of the worker, date and place of birth, family status, place of residence, place of recruitment;
- Nature of work, type of work (occupational category) and place of work;
- Remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment;
- Bonuses, indemnities and allowances, if any;
- Conditions under which and extent to which the employer may be authorised to make any deductions from remuneration;
- Conditions regarding food and accommodation if food and accommodation are to be provided by the employer;
- Duration of contract and conditions of renewal and denunciation of contract;
- Conditions under which entry and residence in the territory of immigration are permitted;
- Method of meeting the expenses of the journey of the migrant and the members of his or her family;
- In case of temporary migration, the method of meeting the expenses of return to the country of origin or the territory of migration; and
- Grounds on which the contract may be prematurely terminated.

²⁵ ILO, [Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration](#) (2006).

²⁶ ILO, [R086 Migration for Employment Recommendation \(Revised\), 1949 \(No 86\)](#), article 22.

2.2.2 The obligation to ensure fair contracts for women



CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 2

States agree to pursue by all appropriate means a policy of eliminating discrimination against women.

Article 3

States must take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 11(1)(d)

States must take appropriate measures to ensure that women enjoy equal remuneration and equal treatment for equal work as compared to men.

Article 11(1)(f)

States must take appropriate measures to ensure women the same right to safe and healthy working conditions as men.

Article 15(3)

All contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

Women are especially vulnerable to discrimination and exploitation, with the CEDAW Committee noting that women migrant workers often struggle to obtain binding contracts concerning terms and conditions of work.²⁷ UNIFEM reports that in many instances contracts are concluded between the employer and recruitment agency *alone* and that often the contracts women do sign are later replaced by an inferior version stripped of the worker's protections.²⁸

States should design laws and policies to address these particular vulnerabilities, to ensure the protection of the CEDAW rights set out above. Notably, the CEDAW Committee states that in fulfilling the general obligation of non-discrimination set out in article 2 of CEDAW, states must ensure that there is neither direct nor indirect discrimination against women. States should promote de facto or substantive equality through all appropriate means, including through concrete and effective policies and programmes.²⁹

²⁷ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [14].

²⁸ UNIFEM, [Human Rights Protections Applicable to Women Migrant Workers](#) (2003) 6.

²⁹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No 28](#), 16 December 2010, UN Doc CEDAW/C/GC/28, [16], [20].



3 | REGULATION AND OVERSIGHT OF RECRUITMENT AGENCIES

Many migrant workers are recruited and placed overseas by private recruitment agencies ('PRAs'), whose responsibilities may include recruitment, document management, education and training, temporary accommodation, departure preparations, departure to the destination country and the return of migrant workers.³⁰

International law provides that states should regulate and monitor PRAs to ensure that they respect the rights of migrant workers. The Migrant Worker Convention and ILO Conventions contain a number of regulatory obligations concerning the licensing and supervision of PRAs, as well as provisions preventing PRAs from confiscating migrant workers' travel and identity documentation.

Regulation of PRAs is primarily conducted through licensing, monitoring and the imposition of sanctions and penalties. In many countries, government departments are responsible for the oversight of recruiters at national levels, with foreign affairs ministries responsible for overseas branches of an agency through diplomatic missions in destination countries.³¹ Diplomatic missions also have unique access to information about recruitment agency misconduct that they obtain through migrant worker complaints, which can contribute to fulfilment of states' oversight obligations regarding PRAs.

³⁰ See, eg, International Organisation for Migration, [Labour Migration from Indonesia](#) (2010) Executive Summary, 23.

³¹ See, eg, *Law 39/2004* (Indonesia).

3.1 PRIVATE RECRUITMENT AGENCIES

3.1.1 The obligation to regulate and monitor recruitment agencies



MIGRANT WORKERS CONVENTION

Article 66

Private Recruitment Agencies are subject to authorisations, approvals and supervision that have been established by the public authorities of the States concerned.

ILO Convention No. 181 on Private Employment Agencies

Article 8(1)

Supervision and regulation of private employment agencies (which includes PRAs) should include the imposition of penalties, including prohibition, on agencies which engage in fraudulent practices and abuses.

In its General Comment on migrant domestic workers, the Committee on Migrant Workers states that under article 66 of the Migrant Worker Convention, states have an obligation to 'effectively regulate and monitor' private agencies to ensure that they respect the rights of migrant workers.³² Further, it provides that PRAs engaging with domestic workers must be subject to 'authorization, approval and supervision' by the state.³³ This implies that simply enacting regulations is not enough; states must supervise and monitor private actors involved in the recruitment and migration process. The Committee also highlights the need for formal, regular and transparent oversight mechanisms regarding.³⁴

- Licensing, possibly involving processes of accreditation and periodic renewal;
- Monitoring, inspection and evaluation;
- Sanctions and penalties;
- Systems of recording and reporting, including web based formats that are widely and easily accessible to the public, with particular attention to instances of complaints and conflicts involving workers.

The Committee also considers that states should establish specific criteria relating to domestic workers' rights and ensure that only those agencies observing the criteria continue to operate.³⁵ It also encourages states to adopt a code of conduct for the recruitment of migrant domestic workers including specific rules governing fees and salary deductions, and providing appropriate penalties and sanctions to enforce them.³⁶

³² [UN Committee on Migrant Workers, General Comment No.1 on Migrant Domestic Workers, UN Doc CMW/C/GC/1 \(23 February 2011\) \[33\].](#)

³³ Ibid [33]

³⁴ Ibid [34].

³⁵ Ibid [35].

³⁶ Ibid [36].

The Committee on Migrant Workers recommends that states ban recruitment fees charged to migrant domestic workers, including those charged through salary deductions.³⁷ The International Labor Recruitment Working Group ('ILRWG') defines recruitment fees as 'any and all fees, charges, costs, assessments or other financial obligations associated with the recruiting process regardless of the manner or timing of their imposition or collection, including fees, charges, costs, assessments or other financial obligations assessed against workers in sending, receiving or transit countries.'³⁸ Recruitment fees include payments for things such as: labour broker services, pre-departure or post-arrival skills testing or training, covering the cost of advertising, pre-employment medical examinations, work permits, visas, insurance and bribes.³⁹



Good Practice Example

In its Concluding Observations on the second periodic report of the Philippines the Committee outlined the following good practice measures that it recommended the state party undertake in monitoring PRA activities:⁴⁰

- Reinforcing and strengthening the existing licensing system for recruitment agencies;
- Enhancing recruitment monitoring and inspections to prevent PRAs from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters;
- Ensuring that PRAs provide complete information to prospective migrant workers and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;
- Investigating and punishing illegal practices by recruiters, with a view to exposing errant practices; and
- Adopting a 'no placement fees' policy for persons intending to work abroad.

In 2014, the ILO Protocol of 2014 to the Forced Labour Convention (PO29) and the associated Forced Labour (Supplementary Measures) Recommendation (R203) came into force. Both instruments recognise the fundamental connection between forced labour and recruitment practices. Though relatively few states have ratified the Protocol, state obligations regarding recruitment oversight under the Protocol are relevant to the obligation to prevent forced labour under the underlying Forced Labour Convention (PO29) to which many states are party.

³⁷ Ibid.

³⁸ International Labour Recruitment Working Group, [Submission Regarding the Definition of Recruitment Fees](#) (2015).

³⁹ Ibid.

⁴⁰ UN Committee on Migrant Workers, [Concluding Observations on the Second Periodic Report: Philippines](#), 2 May 2014, UN Doc CMW/C/PHL/CO/2, [42].

Article 2 of the Forced Labour Protocol requires states to protect persons from possible abusive and fraudulent practices during the recruitment and placement process in order to prevent forced labour. The Forced Labour Recommendation (R203) sets out measures that member states ought to take to eliminate abuses and fraudulent practices by recruitment agencies, including:⁴¹

1. Eliminating the charging of recruitment fees to workers;
2. Requiring transparent contracts that clearly explain terms of employment and conditions of work;
3. Establishing adequate and accessible complaint mechanisms against PRAs;
4. Imposing adequate penalties; and
5. Regulating or licensing these services.

3.1.2 | The obligation to ensure workers retain their documentation

MIGRANT WORKERS CONVENTION

Article 21

It is unlawful for PRAs, employers and others to confiscate, destroy or attempt to destroy migrant workers' documents. This includes a worker's identity documents, visa or work permit. Such action may only be taken by a public official duly authorized by law, and if this occurs, a detailed receipt must be provided. However it is not permitted in any case to destroy a passport or equivalent document.



The Special Rapporteur on the Human Rights of Migrants, in his 2014 report, notes that many migrants have their passport or other identity documents confiscated by their employers. He states that this practice 'reinforces isolation and dependence and restricts freedom of movement of the migrant out of the place of work and residence, as well as out of the country.'⁴²

The Working Group on Contemporary Forms of Slavery⁴³ has urged states 'to take the necessary measures to prohibit and punish those who confiscate passports belonging to migrant workers, in particular migrant domestic workers.'⁴⁴

⁴¹ ILO, *R203: Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* [8].

⁴² Special Rapporteur on the human rights of migrants, *Labour Exploitation of Migrants*, 3 April 2014, UN Doc A/HRC/26/35.

⁴³ The Working Group no longer exists, and has now been replaced with the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

⁴⁴ Working Group on Contemporary Forms of Slavery, *Specific Human Rights Issues: Contemporary Forms of Slavery*, 27 June 2003, UN Doc E/CN.4/Sub.2/2003/31.

Article 2(1) of the ILO Forced Labour Convention 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.’⁴⁵ The ILO identifies the confiscation of workers’ identity documents or other valuable personal possessions as an element of forced labour, if workers are unable to access these items on demand.⁴⁶

3.1.3 The obligation to prevent gender discrimination by private recruitment agencies



CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 2

State parties are required to pursue by all appropriate means a policy of eliminating discrimination against women, including discrimination by any person, organisation or enterprise (Article 2(e)).

Article 3

State parties are required to take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 14.1

States parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

The CEDAW Committee has critiqued several common practices of recruitment agencies, including the detention of women during pre-departure training, the charging of exploitative fees and the failure to provide women with sufficient education, training and information on migration.⁴⁷

Articles 2 and 3 of CEDAW offer a substantive equality guarantee that envisages both equality of access to opportunity *and* equality of result. To comply with articles 2 and 3, states must actively address any law, policy or issue that has a disproportionately negative impact on women rather than simply ensuring ‘formal’ equality under the law.

⁴⁵ ILO, [CO29 Forced Labour Convention, 1930 \(No 29\)](#), article 2.

⁴⁶ ILO Helpdesk for Business on International Labour Standards, [Q&As on Business and Forced Labour](#), ILO, 2015.

⁴⁷ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [10].

According to the CEDAW Committee, ensuring substantive equality for women in the context of recruitment includes:

- Requiring recruitment agencies to participate in awareness raising and training programs to sensitise recruitment agencies on the rights of women migrant workers, the forms of sex- and gender-based discrimination, the exploitation women can experience and the responsibilities of agencies towards the women;⁴⁸
- Providing a list of reliable recruitment agencies, and implementing strict accreditation programs to ensure good practices among recruitment agencies;⁴⁹
- Providing information on methods and procedures for migrating to work for women workers who wish to migrate independently of recruitment agencies;⁵⁰ and
- Strengthening the inspection and regulation of recruitment agencies and training centres with a view to monitoring human rights abuses, imposing substantial penalties on companies that fail to respect the rights of the employees they recruit, and prosecuting persons 'engaged in illegal recruitment processes, including traffickers of migrant women for forced labour and sexual exploitation'.⁵¹

3.1.4 | The obligations of diplomatic missions

MIGRANT WORKERS CONVENTION

Article 23

Migrant workers and their families have the right to protection and assistance from consular or diplomatic authorities in the state of employment when their rights under the Migrant Workers Convention are impaired, including by PRAs or employers.



As discussed in section 3.1.1 above, under international law the state is responsible for the regulation and oversight of PRAs.

Diplomatic missions may be specifically responsible for:

- Assessing the quality of employers and partner recruitment agencies in the destination country who are seeking workers from their country of origin, and accrediting partner agencies; and
- Periodically compiling and publishing a list of problematic recruitment agencies.⁵²

⁴⁸ Ibid [24(b)(iv)].

⁴⁹ Ibid [24(b)(i)-(vi)].

⁵⁰ Ibid [24(b)(iii)].

⁵¹ UN Committee on the [Elimination of Discrimination against Women. Concluding Observations: Indonesia](#), 27 July 2012, UN Doc CEDAW/C/IDN/CO/6-7, [44(e)].

⁵² See, eg, *Law 39/2004* (Indonesia), article 25(3)-(4).



4 | RIGHTS IN DESTINATION COUNTRY: MIGRANT WORKER SOCIAL, CIVIL, POLITICAL, CULTURAL and ECONOMIC RIGHTS

In many respects, the enforcement of obligations in relation to the welfare of migrant workers living and working abroad rests primarily with the destination country. Nevertheless, international obligations of countries of origin to protect the social, civil, political, cultural and economic rights of their migrant workers do not cease when the migrant worker leaves the country. Countries of origin should seek to protect the human rights of their migrant workers in the destination country through all available means. This includes seeking to protect these rights within the daily activities of diplomatic missions on behalf of migrant workers, as well as in the negotiation of bilateral agreements and advocacy for systemic reforms within the laws, policies and practices of the destination country to better protect migrant workers.

State-to-state cooperation is required for the fulfilment of migrant workers' human rights under various international instruments.⁵³ Such cooperation could occur, for example, through memoranda of understanding and bilateral agreements.⁵⁴

Many of the harms experienced by migrant workers abroad stem from a lack of transparency and accountability in the regulation of private recruitment agencies and a failure to provide adequate information to migrant workers before they depart about their rights in the destination country.⁵⁵ The under-regulated nature of the employment sectors in which migrants work also creates further vulnerability to rights violations such as unsafe working conditions, fundamental changes in the nature of work or pay, inadequate rest, confiscation of identity documents, and physical abuse. Without a proactive approach by diplomatic missions, these rights violations may be difficult to detect and address.

⁵³ [Migrant Workers Convention](#) article 64 provides that: 'States parties shall consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with the international migration of workers and members of their families. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.'

⁵⁴ UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [40(a)].

⁵⁵ Bassina Farbenblum, Eleanor Taylor-Nicholson and Sarah Paoletti, [Migrant Workers' Access to Justice at Home: Indonesia](#) (Open Society Foundations, 2013) 16.

This section outlines key social, civil, political, cultural and economic rights of migrant workers while they are in the destination country under the main international instruments that some countries of employment have ratified, or that establish key international norms. Where relevant, the section identifies core rights that are held by all migrant workers, which includes those in an irregular ('illegal') immigration status who are especially vulnerable to rights abuses and face significant barriers to seeking assistance when their rights are violated in the destination country.

4.1 Human rights of all migrant workers

States are required to ensure protection of the following fundamental rights held by all migrant workers:

- The right to life (ICCPR article 6; Migrant Workers Convention article 9)
- Freedom from discrimination (ICCPR articles 2 and 26)
- Freedom from torture and from cruel, inhuman or degrading treatment or punishment (ICCPR article 7; Migrant Workers Convention article 10)
- Recognition as a person before the law (ICCPR article 16; Migrant Workers Convention article 24)
- Freedom from slavery and servitude and compulsory labour (ICCPR article 8; Migrant Workers Convention article 11; ILO Forced Labor Convention; ILO Abolition of Forced Labor Convention)
- The right to liberty and security of person (ICCPR article 9(1); Migrant Workers Convention article 16(1))
- The right to health (ICESCR article 12; CERD article 5(e)(iv); CEDAW articles 12 and 14(b); CRC articles 24 and 25; Migrant Workers Convention article 28 (which refers to the specific right to receive urgent medical care))
- The right to education (ICESCR articles 13 and 14; CRC articles 28 and 29; ICERD article 5(e)(v); Migrant Workers Convention article 30)
- The right to adequate housing (ICESCR article 11; CEDAW article 14(2); CRC articles 16(1) and 27(3); ICERD article 5(e)(iii))
- The right to adequate food and water (ICESCR article 11; CRC article 24(2)(c); CEDAW article 14(2))
- Freedom of thought, conscience and religion and expression (ICCPR articles 18 and 19; Migrant Workers Convention article 12(1))
- Freedom of movement (Migrant Workers Convention article 8; ICCPR article 12)
- The right to privacy (ICCPR article 17; Migrant Workers Convention article 14)
- The right to not be arbitrarily deprived of property (Migrant Workers Convention article 15)

The Committee on Migrant Workers stresses that migrant workers should never be deprived of these basic rights and freedoms by virtue of their irregular situation, whatever the modalities of their stay.⁵⁶

⁵⁶ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [5].

Part III of the Migrant Workers Convention incorporates the fundamental human rights contained in the International Convention on Civil and Political Rights ('ICCPR'), International Convention on Economic, Social and Cultural Rights ('ICESCR') and other human rights treaties and applies them to migrant workers and their families. It does not aim to create new rights beyond the existing core human rights treaties but gives content to those rights in the context of labour migration.

4.2 The principle of non-discrimination

Several international instruments prohibit discrimination on the basis of grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁷ Migrant workers are vulnerable to discrimination on one or more of these grounds across a range of areas.

Article 7 of the Migrant Workers Convention goes beyond the scope of the non-discrimination provisions in the ICCPR and ICESCR as it explicitly adds non-religious convictions, ethnic origin, nationality, age, economic position and marital status to the enumerated grounds of discrimination. The inclusion of ethnic origin and nationality in article 7 is of particular significance in the context of labour migration as the Convention aims to extend protection to foreign nationals.⁵⁸ The Committee on Migrant Workers has indicated that article 7 prohibits both de jure and de facto discrimination⁵⁹ and encompasses direct and indirect forms of discrimination.⁶⁰

In addition to guaranteeing the fundamental human rights listed above, the Migrant Workers Convention requires that migrant workers be afforded equal treatment with nationals in a number of specific situations, including:

- Before the courts and tribunals;⁶¹
- Access to social security;⁶²
- Access of children to education;⁶³
- Access to services (for regular migrant workers);⁶⁴
- In relation to remuneration and other conditions of work.⁶⁵

⁵⁷ See [ICCPR](#) articles 2(1), 26; [ICESCR](#) article 2(2); [Migrant Workers Convention](#) article 7; [ILO C111 Discrimination \(Employment and Occupation\) Convention, 1958 \(No 111\)](#) articles 1, 2.

⁵⁸ Notably, both the ICCPR and ICESCR Committees have indicated their view that both Conventions apply to nationals and non-nationals alike, if they are within the territory and subject to the jurisdiction of the state party: See Human Rights Committee, *General Comment No. 15 The position of aliens under the Covenant*, 30 September 1986, UN Doc HRI/GEN/1/Rev.9; Human Rights Committee, *General Comment No. 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, [10]; and Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, [30].

⁵⁹ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [19].

⁶⁰ *Ibid* [20].

⁶¹ [Migrant Workers Convention](#) article 18(1).

⁶² *Ibid* article 27.

⁶³ *Ibid* article 30.

⁶⁴ *Ibid* article 43.

⁶⁵ See *ibid* article 25. See also articles 54, 55 and 70 (for regular migrant workers).

4.2.1 Non-discrimination between migrant workers and nationals in employment



MIGRANT WORKERS CONVENTION

Article 25(1)

Migrant workers shall enjoy equal treatment with nationals in respect of remuneration, other conditions of work and terms of employment.

In order to combat discrimination against migrant workers, the UN Committee on Migrant Workers has encouraged states to carry out campaigns to raise awareness among migration officials and the general public of discrimination against migrant workers, and to include the media in such activities.⁶⁶



Good Practice Example

The principle of non-discrimination has been incorporated into several domestic pieces of legislation in order to address discrimination against migrant workers. In the US, for example, it is unlawful for an employer to favour national workers over migrant workers under the Civil Rights Act 1964 (US).

It is also unlawful for an employer to report a migrant worker to immigration authorities in retaliation for the migrant worker seeking remedies for violations of labour laws.⁶⁷

4.2.2 Non-discrimination against women



CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Article 2

States agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

Article 3

States parties must take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

⁶⁶ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [24]

⁶⁷ ILO, [Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration](#) (2006) 62.

Given the prevalence of gender-based discrimination, women often experience inequalities in relation to employment, access to health services (particularly reproductive health services) and protection from violence. The CEDAW Committee notes that ‘discrimination may be especially acute in relation to pregnancy’.⁶⁸ Women migrant workers may face dismissal upon detection of pregnancy and be subjected to mandatory pregnancy tests followed by deportation if found to be pregnant.

International law accords equal rights to women and men in the enjoyment of the human rights contained in treaty and convention provisions.⁶⁹ The text of CEDAW and the jurisprudence of the CEDAW Committee support a substantive equality interpretation of the Convention. This means that states have an obligation to address any law or policy that in practice has a disproportionately negative impact on women, even if the language of the law does not appear to discriminate against women.⁷⁰

To comply with article 2 of CEDAW, destination countries should ‘take all appropriate measures to ensure non-discrimination and equal rights of women migrant workers.’⁷¹ (For further discussion of migrant women’s rights against discrimination in employment, see section 4.4.3, ‘**Work rights for women migrant workers**’, below.)

4.3 The rights of migrant workers in an irregular (‘illegal’) status

Migrant workers fall into an irregular status when they are in the destination country without valid immigration authorisation, or when they are working outside the terms of their visa or working without a valid visa. These migrant workers are sometimes referred to as ‘undocumented’, ‘unlawful’ or ‘illegal’ workers.

Migrant workers may be in an irregular status through no fault of their own. For example, they may enter the country of employment using false documents prepared by the recruitment agency without their knowledge, or they may enter with a valid visa but lose their immigration status if they leave an abusive employer (a common situation for domestic workers in the Middle East where the worker’s valid visa status is tied to the employer and ends when the worker leaves the employer).

Migrant workers in an irregular status are especially vulnerable to exploitation and generally less able to access assistance or remedies when they are exploited. This is because employers can take advantage of undocumented workers’ fear of being detected, detained and deported if they report their unfair working conditions or if their employer reports them to police or immigration authorities.⁷² Indeed workers in an irregular status are more likely to be victims of trafficking or forced labour (see Chapter 8 on ‘**Forced Labour and Human Trafficking**’).

The fact that a migrant is in an irregular situation does not deprive him or her of human rights protection.⁷³ Nor does it release him or her from the obligation to comply with the laws and regulations of his or her destination country⁷⁴.

⁶⁸ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [18].

⁶⁹ See [ICCPR](#) articles 2(1), 26; [ICESCR](#) article 2(2); [Migrant Workers Convention](#) article 7.

⁷⁰ See in particular, CEDAW article 2; UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 28](#), 19 October 2010, UN Doc CEDAW/C/2010/47/GC.2, [16], [20].

⁷¹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [26].

⁷² Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants](#), 3 April 2014, UN Doc A/HRC/26/35, 14; [Migrant Workers Convention](#), preambled.

⁷³ Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants](#), 3 April 2014, UN Doc A/HRC/26/35, 14.

⁷⁴ Article 34 of the Migrant Workers Convention emphasises that nothing in the Convention releases migrants in an irregular status from the obligation to comply with the laws and regulations of their state of employment.

International law recognises that migrant workers in an irregular status should not be deprived of certain fundamental rights by virtue of the irregularity of their stay. These fundamental rights are primarily found in Part III of the Migrant Workers' Convention.

The following obligations that states have towards migrant workers apply equally to undocumented migrants, including migrants who do not migrate through official channels and those who migrate in breach of a moratorium:

- Right to life (article 9);
- Freedom from discrimination (article 1);
- Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 10)
- Freedom from slavery or servitude or forced compulsory labour (article 11);
- Right to liberty and freedom from arbitrary arrest or detention (article 16);
- Freedom from imprisonment over failure to fulfil a contractual obligation (article 20);
- Equality before courts and tribunals (article 18);
- Freedom of thought, conscience and religion and the right to hold opinions without interference (articles 12, 13);
- Equal treatment provisions relating to remuneration and conditions of work (article 25);
- Access to emergency health care (article 28);
- Access to social security benefits on equal terms with nationals, provided they fulfil the requirements of the destination state (article 27).⁷⁵

Further, the ICESCR Committee, in its General Comment No. 20, noted that ICESCR rights apply to everyone including non-nationals, such as migrant workers, regardless of legal status and documentation.⁷⁶ The ICCPR Committee also confirmed in its General Comment No. 31 that the ICCPR applies to *all* individuals, regardless of nationality or statelessness, who find themselves in the territory or subject to the jurisdiction of the state party.⁷⁷ The UN Declaration on the Human Rights of individuals who are not nationals of the country in which they live⁷⁸ reinforces the human rights and fundamental freedoms of non-citizens.

Part IV of the Migrant Workers Convention affords certain rights to migrant workers in a regular

⁷⁵ See 'The legal sources of protection for work rights for list of further rights' at section 4.1.

⁷⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, [30].

⁷⁷ Human Rights Committee, *General Comment No. 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, [10]. See also Human Rights Committee, *General Comment No. 15 The position of aliens under the Covenant*, 30 September 1986, UN Doc HRI/GEN/1/Rev.9.

⁷⁸ *Declaration on the human rights of individuals who are not nationals of the country in which they live*, GA Res 40/144, UN GAOR, 116th plen mtg, UN Doc A/RES/40/144 (13 December 1985). It contains a number of key exceptions for non-citizens in an irregular migration status.

status that are not extended to migrant workers in an irregular situation. These include:

- Certain rights relating to conditions of work and remuneration, including: temporary absence from work, the right to choose employment, equal protection against dismissal, unemployment benefits, access to claims mechanisms for breach of employment contract, and equality of treatment with nationals working in the same job in respect of performance of the work;⁷⁹
- Freedom of movement within the country of employment;⁸⁰
- The right to form trade unions;⁸¹
- Participation in public affairs and political life of their country of origin and representation in local communities and relevant institutions;⁸²
- Equal access (including for family members) to services, including those relating to education, vocational training and social support and health;⁸³
- Certain tax exemptions;⁸⁴ and
- Protection of family unity, facilitation of family reunification and work rights for family members in certain circumstances.⁸⁵

The ILO Forced Labour Convention and the ILO Forced Labour Protocol apply to all workers, including those in an irregular status. Though relatively few states have ratified the Protocol, it is nonetheless relevant to states' obligation to prevent forced labour under the underlying ILO Forced Labour Convention. For more information on obligations under the Forced Labour Protocol see Chapter 8 on '**Forced Labour and Human Trafficking**' in this guide.

Similarly, irregular status does not deprive a migrant worker of protection under the seven other ILO Fundamental Conventions:⁸⁶

- C87 Freedom of Association and Protection of the Right to Organise, 1948;
- C98 Right to Organise and Collective Bargaining Convention, 1949;
- C100 Equal Remuneration Convention, 1951;
- C105 Abolition of Forced Labour Convention, 1957;
- C111 Discrimination (Employment and Occupation) Convention, 1958;
- C138 Minimum Age Convention, 1973;
- C182 Worst Forms of Child Labour Convention, 1999.⁸⁷

⁷⁹ [Migrant Workers Convention](#), articles 38, 52, 54, 55.

⁸⁰ Ibid article 39.

⁸¹ Ibid article 40.

⁸² Ibid articles 41, 42.

⁸³ Ibid articles 43, 45.

⁸⁴ Ibid articles 46, 48.

⁸⁵ Ibid articles 44, 50, 53.

⁸⁶ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [12].

⁸⁷ ILO, [List of ILO Core Conventions](#) (28 July 2010).

4.3.1 Consular obligations to workers in an irregular status

Countries of origin have an obligation to protect the rights of migrants in an irregular status, which have been outlined above. Migrants in an irregular status have the right under article 23 of the Migrant Workers Convention to have recourse to consular or diplomatic assistance, and under article 33, these migrants have the right to be informed by their origin country of their rights arising out of the Convention.

For further details on states' obligations to migrant workers in an irregular status, refer to 'Consular protection for migrant workers in an irregular situation' at 5.1.4.

4.3.2 Regularisation of migrant workers



MIGRANT WORKERS CONVENTION

Article 68

State parties, including states of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. States of employment shall also take all adequate and effective measures to eliminate irregular employment situations, including, whenever appropriate, sanctions on employers of such workers.

Article 69

State parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist, in accordance with national legislation and bilateral or multilateral agreements.

The Migrant Workers Convention acknowledges that 'human problems involved in migration are even more serious in the case of irregular migration.'⁸⁸ Articles 68 and 69 place a positive obligation on states parties to take measures to ensure irregular situations do not persist.

The Committee on Migrant Workers recognises that regularisation is the most effective means of addressing the extreme vulnerability of migrant workers and members of their families in an irregular situation.⁸⁹ This could be done through, for example, promoting regular, safe migration under decent conditions as part of a strategy to combat trafficking in persons and the implementing of a comprehensive migrant regularisation policy that is available to all migrant workers and members of their families in an irregular situation.⁹⁰ The Committee has recommended that any regularisation mechanism be both 'accessible and expeditious'⁹¹ and satisfy the principle of non-discrimination.⁹²

⁸⁸ [Migrant Workers Convention](#), preamble.

⁸⁹ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [16].

⁹⁰ See, eg, UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [50(f)], [54].

⁹¹ UN Committee on Migrant Workers, [Concluding Observations: Senegal](#), 10 December 2010, UN Doc CMW/C/SEN/CO [23].

⁹² UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [54].

4.3.3 Under-age (child) migrant workers in an irregular status



MIGRANT WORKERS CONVENTION

Article 25(1)(b)

Migrant workers are subject to the same minimum age of employment and as nationals of that state.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 10(3)

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

CONVENTION ON THE RIGHTS OF THE CHILD

Article 32

1. States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, states parties shall in particular:
 - a) Provide for a minimum age or minimum ages for admission to employment;
 - b) Provide for appropriate regulation of the hours and conditions of employment;
 - c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Although the minimum age of employment should be applied equally to nationals and migrant workers in the destination country,⁹³ underage child migrant workers do work in countries of employment, generally in irregular situations. Children are at particular risk of exploitation and generally are less able to access legal protections and consular assistance as a result of a lack of awareness on the part of embassy staff of their presence in destination countries and the reduced capacity of children to seek help through these channels.

⁹³-[Migrant Workers Convention](#) article 25.

In the context of considering the rights of domestic migrant workers, the Committee on Migrant Workers recommends that states ensure that children are not employed in work that is harmful to their morals or health, dangerous or likely to hinder their normal development, including hazardous domestic work.⁹⁴

States parties must ensure protection for child migrant workers from violence and ensure their rights to education, leisure and occupational health.⁹⁵ In taking such measures the principle of non-discrimination must be applied: all children, regardless of their status, must be protected from social and economic exploitation in accordance with article 10(3) of ICESCR.

The Committee on Migrant Workers recommends that states increase labour inspections and prosecute, punish and sanction persons or groups exploiting child migrant workers or subjecting them to forced labour and abuse, especially in the informal economy.

4.4 Work rights of migrant workers

4.4.1 The legal sources of protection for work rights

Both ICESCR and the Migrant Workers Convention establish a right to just and favourable conditions of work, which is also reflected in a number of ILO instruments.

4.4.1.1 State obligations as members of the ILO

All states that are members of the ILO have obligations regarding all workers as a result of their membership in the ILO, independent of their ILO convention ratification history. These obligations are set in out in the ILO's constitution, and in the eight core ILO conventions. The Annex to the Constitution, the Declaration of Philadelphia,⁹⁶ outlines the fundamental aims and purposes of the ILO and the principles that should inspire the policy of its members. These core aims include the freedom of expression and of association,⁹⁷ an equal right to pursue material well-being and spiritual development,⁹⁸ policies that ensure that all workers receive at least a minimum living wage,⁹⁹ and protection of the life and health of all workers.¹⁰⁰

⁹⁴ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [56].

⁹⁵ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [61].

⁹⁶ [ILO Constitution](#), 'Annex - Declaration concerning the aims and purposes of the International Labour (Declaration of Philadelphia)', adopted in 1944.

⁹⁷ *Ibid* I(b).

⁹⁸ *Ibid* II(a).

⁹⁹ *Ibid* III(d).

¹⁰⁰ *Ibid* III(g).

Under these conventions, states are obliged to:

- Ensure workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation;¹⁰¹
- Ensure adequate protection against acts of anti-union discrimination in respect of their employment;¹⁰²
- Suppress the use of forced or compulsory labour in all its forms within the shortest possible period;¹⁰³
- Suppress and not to make use of any form of forced or compulsory labour;¹⁰⁴
- Ensure the effective abolition of child labour and raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons;¹⁰⁵
- Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency;¹⁰⁶
- Ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value;¹⁰⁷ and
- Promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.¹⁰⁸

There are also obligations specific to migrant workers set out in the Migration for Employment Convention (C097) and the Migrant Workers (Supplementary Provisions) Convention (C0143), which many origin and destination countries are yet to ratify. A detailed analysis of the obligations owed by members of the ILO is beyond the scope of this guidebook, but it should be noted that origin and destination countries that are ILO members are subject to the obligations under the ILO Conventions which they have ratified, in addition to their obligations under UN Conventions, outlined here.

¹⁰¹ ILO, [C087 Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No 87\)](#), article 2.

¹⁰² ILO, [C098 Right to Organise and Collective Bargaining Convention, 1949 \(No 98\)](#), article 1.

¹⁰³ ILO, [C029 Forced Labour Convention, 1930 \(No 29\)](#), article 1.

¹⁰⁴ ILO, [C105 Abolition of Forced Labour Convention, 1957 \(No 105\)](#), article 1.

¹⁰⁵ ILO, [C138 Minimum Age Convention, 1973 \(No 138\)](#), article 1.

¹⁰⁶ ILO, [C182 Worst Forms of Child Labour Convention, 1999 \(No 182\)](#), article 1.

¹⁰⁷ ILO, [C100 Equal Remuneration Convention, 1951 \(No 100\)](#), article 2.

¹⁰⁸ ILO, [C111 Discrimination \(Employment and Occupation\) Convention, 1958 \(No 111\)](#), article 2.

Obligations to migrant workers in a regular or irregular status**MIGRANT WORKERS CONVENTION****Article 25**

States must treat migrant workers equally to nationals in respect of pay, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and other related work conditions. States must also provide equal treatment in respect of minimum age of employment, restrictions on work and other terms of employment.

Article 64

States shall consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with the international migration of workers and members of their families. This includes not only to labour needs and resources, but also the social, economic, cultural and other needs of migrant workers and member of their families involved, as well as to the consequences of such migration for the communities concerned.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**Article 6(1)**

States shall recognize the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right.

Article 6(2)

To achieve full realization of the right to work state parties must take steps including technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

States recognize the right of everyone to the enjoyment of just and favourable conditions of work.¹⁰⁹

Obligations restricted to migrant workers in a regular status



MIGRANT WORKERS CONVENTION

Article 51

States must protect the right of residence of regular migrant workers in the event of loss of employment prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity.

Article 52

Migrant workers have the right to freely choose their remunerated activity, subject to certain conditions and restrictions. For example, states retain the right to restrict access to categories of employment in certain circumstances, and to restrict choice of work within the first two years (and five years if done pursuant to a policy of granting priority to nationals).

Article 54

States must protect the right of regular migrant workers to equality of treatment with nationals in respect of protection against dismissal, unemployment benefits and access to alternative employment.

Article 55

States must afford regular migrant workers equal treatment in the exercise of employed activity.

Article 70

States shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

4.4.2 Work rights guaranteed for all workers

The ICESCR Committee, in its General Comment No. 20, stated that ICESCR rights apply to everyone, including non-nationals such as migrant workers, regardless of legal status and documentation.¹¹⁰ On this basis, articles 6 and 7 outlined above should apply to both regular and irregular migrant workers.

A number of significant work rights in the Migrant Workers Convention are guaranteed for all workers regardless of status. These rights are contained in Part III. The key provision is article 25 which ensures equality of treatment in respect of basic working conditions (as outlined in more detail above). Notably article 25(3) explicitly states that states must take all appropriate measures to ensure that migrant workers are not deprived of these basic rights by reason of any irregularity in their stay or employment.

¹¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, [30].

4.4.2.1. Contracts of employment

Both the Committee on Migrant Workers and the ILO have indicated that states should ensure that migrant workers have explicit, written terms of employment in a language they can understand, outlining their specific duties, hours, remuneration, days of rest and other conditions of work, in contracts that are free, fair and fully consented to.¹¹¹ The Committee on Migrant Workers has also suggested that states consider developing model or standard provisions in this regard, and that states should provide for monitoring mechanisms of the working conditions of migrant domestic workers in national legislation.¹¹²

Given the fact that contracts may be provided to workers by recruitment agencies and employers, states should seek to detect unscrupulous contractual arrangements which may be authorised by these non-state actors acting within their jurisdiction.¹¹³ Notably, the Migrant Workers Convention recognises the role non-state actors play in the migration of workers and thus places an onus on states to ensure employers and PRAs are fulfilling their responsibilities (see section 3.1.1, ‘**The obligation to regulate and monitor recruitment agencies**’, for further discussion). In order to comply with its international obligations, both origin and destination countries should ensure that contracts do not result in migrant workers being treated unfavourably relative to nationals. (See section 2.2, ‘**Contract issues and oversight**’).

4.4.2.2 Conditions of work and terms of employment

The Committee on Migrant Workers provides examples of the types of abusive conditions that domestic migrant workers may be subject to:¹¹⁴

- Partial or total restriction on movement outside the house and on communication with individuals outside the house, including with family members in the country of origin;
- Excessive and often undefined working hours;
- Insufficient rest and leisure time, with many migrant workers having no agreed leave day at all or being denied holiday pay;
- Restrictions on ability to travel;
- Low salaries and late payment or non-payment of salaries;
- Lack of social security protection, including sickness and family benefits and building pension rights;
- Psychological, physical and sexual abuse and harassment from their employers as well as from recruitment agents or intermediaries; and
- Inadequate, unsanitary and degrading living accommodations.

¹¹¹ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [40]; UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [63]; *ILO Forced Labour Recommendation*, 2014 (No.23).

¹¹² UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [40]–[41]; UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [63].

¹¹³ Ryszard Cholewinski, *Migrant Workers in International Human Rights Law*, (Oxford University Press, 1997) 161.

¹¹⁴ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [13].

Many of these conditions are common to migrant workers across industries. These problems apply to irregular as well as to regular migrants.¹¹⁵ In accordance with ICESCR and the Migrant Workers Convention, *all* migrant workers should be afforded protection and treated equally to nationals in these areas.¹¹⁶

A number of additional work rights are explicitly given to migrant workers in a regular status. These rights arise from provisions in Part IV of the Migrant Workers Convention. These include:

- Protection from losing their permission to reside in the country of employment: if a regular migrant worker loses their job this does not mean they can be treated as a worker in an irregular situation. They have the right to seek alternative employment, to participate in public work schemes and to retrain during the remaining period of their authorisation to work. The exception to this will be if the authorisation of their residence is expressly dependent upon the specific remunerated activity for which they were admitted to the receiving country (article 51);
- Equality of treatment to nationals with respect to protection against dismissal; unemployment benefits; access to public work schemes intended to combat unemployment; and access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 (which allows states of employment to restrict the categories of employment in which migrant workers may work) (article 54);
- Equal treatment with nationals in the exercise of remunerated activity permitted by the country of employment (article 55);
- Equal treatment with nationals in respect of measures taken by states to ensure that working and living conditions of migrant workers and their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity (article 70).

4.4.3 Work rights for women migrant workers

The CEDAW Committee notes that women are often excluded from certain employment industries or denied job opportunities due to gendered notions of appropriate work for women. It is common for women to be denied payment of wages or receive lower remuneration than men as a consequence of sex discrimination. Given industries in which women are most frequently employed may not fall within the legal definition of work, they often encounter difficulties obtaining binding contracts and cannot benefit from legal protections concerning terms and conditions of work as a result.¹¹⁷

The Committee on Migrant Workers recommends that states incorporate a gender perspective in policies that regulate labour migration in order to address the gender-based discrimination that women face in the context of employment.¹¹⁸

¹¹⁵ [Migrant Workers Convention](#) article 25(1).

¹¹⁶ *Ibid* article 25(1). Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, [30]

¹¹⁷ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [13]–[14].

¹¹⁸ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [60]. See, eg, 'Overly restrictive immigration laws may lead to higher numbers of migrant domestic workers who are non-documented or in an irregular situation, and thus particularly vulnerable to human rights violations': at [21].

For destination countries this includes: repealing sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status;¹¹⁹ addressing gaps in protection of women domestic workers; and ensuring that complaint mechanisms against employers are accessible, including for example, through the creation of a designated domestic workers' ombudsperson.¹²⁰

The equal treatment principle contained in article 25(1) of the Migrant Workers Convention covers maternity protection if it is considered a working condition or term of employment according to national law and practice.¹²¹

The Committee on Migrant Workers has also recommended that the labour protections in national law should be extended to apply equally to domestic workers, including provisions relating to minimum wages, hours of work, days of rest, freedom of association and social security protection with respect to maternity, pension rights and health insurance.¹²²

Further, in terms of equal pay for women migrant workers, the ILO Equal Remuneration Recommendation recommends that to facilitate the application of the principle of equal remuneration for men and women for equal work, states should implement the following measures in order to advance the professional skills of women workers:

- Ensure that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training, and for placement;
- Take appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training, and for placement (see section 2.1.2, **'The obligation to provide information for women'**);
- Provide welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and
- Promote equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.¹²³

¹¹⁹ Ibid [21], [61]. See also UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(a)].

¹²⁰ Ibid [49]–[50].

¹²¹ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [62].

¹²² UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [38].

¹²³ ILO, [RO90 Equal Remuneration Recommendation, 1951 \(No 90\)](#), article 6(a)–(d).

Lastly, CEDAW General Recommendation 26¹²⁴ addresses the situation of women migrant workers facing violations of their human rights both in countries of origin, countries of transit and countries of destination.¹²⁵ It makes a number of recommendations to states parties, including:

- Countries of both origin and destination must formulate policies that promote safe migration and ensure the protection of the rights of women migrant workers ([23](a));
- Women migrant workers and relevant NGOs should be involved in this policy-making process ([23](b));
- Countries of origin should lift discriminatory bans on migration, and instead focus on better protections for women who choose to migrate for employment ([24(a)]);
- Countries of origin should promote education, awareness-raising and training [24(b)];
- Countries of origin should effectively regulate and monitor PRAs;
- Countries of origin should ensure availability of legal assistance in connection with migration for work;
- Countries of origin should facilitate the right to return and provide appropriate services upon such return;
- Countries of origin should properly train and supervise their diplomatic and consular staff to ensure that they fulfil their role in protecting the rights of women migrant workers abroad;
- Countries of origin should establish measures to assist women in accessing formal financial institutions and encourage them to participate in savings schemes;
- Destination countries should lift discriminatory bans or restrictions on immigration;
- Destination countries should provide legal protection for the rights of women migrant workers and provide access to remedies;
- Destination countries should provide legal protection for freedom of movement; and
- Destination countries should provide access to fundamental services.¹²⁶

¹²⁴ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008).

¹²⁵ *Ibid* [9].

¹²⁶ *Ibid* [24]–[26].



MIGRANT WORKERS CONVENTION

While there are no specific provisions for migrant women workers, article 7 of the Convention (explained above in section 4.2 'Principle of non-discrimination'), requires states to apply the rights of migrant workers without distinction, including on the basis of sex or marital status.

ILO Equal Remuneration Convention

Article 1(b)

The term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

Article 2(1)

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

There is no specific provision in CEDAW on migration. However, the CEDAW Committee has confirmed that all categories of women migrants fall within the scope CEDAW and are entitled to protection from discrimination on the basis of the Convention.¹²⁷

Article 11.1

States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

¹²⁷ Ibid [4]-[7].

4.4.4 Migrant workers' right to free choice of employment

ICESCR provides the right to freely choose employment to *all* migrant workers. This means that states must protect the right of all migrant workers to freely choose the work that they do and place no restrictions on the exercise of that choice.

In contrast to ICESCR, the Migrant Workers Convention provides the right to freely choose employment only to migrant workers in a regular status. It also places some restrictions on this right. (See section 4.4.1, '**Restrictions on free choice of employment**', below).

The right to freely choose work set out in ICESCR suggests that countries of origin must refrain from interfering with the employment choices of its own citizens who wish to migrate for work.¹²⁸ (See section 4.4.3, '**Work rights for women migrant workers**', above).

Under the Migrant Workers Convention, countries of origin (and transit and destination, as applicable) are obliged to inform their populations of their rights under the Convention, through pre-departure education and training.¹²⁹ This would include the rights of prospective (regular) migrant workers to freely choose work, in the circumstances contemplated by the Convention. (See section 2.1.1, '**The obligation to provide pre-departure information**', which outlines country of origin responsibilities to inform migrant workers about their work related and other rights).

4.4.4.1. Restrictions on free choice of employment

For migrant workers whose permission to work is limited to a particular time period and who have been in the destination country for less than two years, destination countries are entitled to restrict the areas of employment they can work in. If such a restriction is pursuant to a policy which grants priority to nationals, then the allowable period to limit the areas of employment for regular migrant workers is five years. After five years, these migrant workers have an unencumbered right to freely choose their employment and states are not permitted to place any restrictions on this right.¹³⁰

The Migrant Workers Convention stipulates that countries of origin must respect the right of destination countries to restrict the access of migrant workers 'to limited categories of employment ... where this is necessary' in the interests of the state concerned and 'provided for by national legislation.'¹³¹ This restriction is primarily concerned with protecting public service positions in the country of employment for a state's own nationals. However, the language of the provision may be interpreted more broadly to restrict migrant workers employment in other categories of work.

Countries of employment are allowed to restrict the employment of migrant workers if they have not acquired skills in the country and have only had their qualifications recognised externally. However, states must also endeavour to provide for recognition of such qualifications.¹³²

4.4.4.2 Possibilities for exploitation and abuse of free choice of employment

¹²⁸ [ICESCR](#) article 6(1).

¹²⁹ [Migrant Workers Convention](#) article 33.

¹³⁰ *Ibid* article 52(3).

¹³¹ *Ibid* article 52(2)(a).

¹³² *Ibid* article 52(2)(b).

Countries of origin should be aware that the restrictions on the right to freely choose work under the Migrant Workers Convention necessitate vigilance and monitoring by diplomatic missions to ensure that they are not being used by PRAs and employers to justify exploitative working conditions.

The Migrant Workers Convention allows states to restrict the employment of migrant workers to particular sectors but it does not authorise restrictions that confine migrant workers to particular employers. Forcing a migrant worker to work for a specific employer creates vulnerability to exploitation and is not authorised by the Migrant Workers Convention.

Many destination countries restrict migrant workers' choice of employment by tying a worker's immigration status to employment by a specific employer. Employers may exploit workers' lack of freedom to work in other sectors, mistreating them based on the knowledge that the migrant worker has very few options apart from working for that employer or related employers in a specific industry or sector as set out in the national law of the country of employment.

The UN Special Rapporteur on the right to food has reported that where working permits are linked with specific employers in states of employment, it makes 'the ability of migrant workers to complain about human rights abuses, even through legal means, precarious, as termination of employment results in the cancellation of working permits, depriving migrants the right to stay and work lawfully ... The fear of retaliation by their employers has a chilling effect on migrant workers reporting human rights abuses to the authorities, and as a result employers are able to continually abuse migrant workers without any sanctions.'¹³³

4.4.4.3 Role for diplomatic missions to protect right to free choice of employment

Countries of origin may make use of their diplomatic presence in the destination countries to monitor the relationships between migrant workers and their employers to ensure no exploitation is occurring.

Countries of origin may use bilateral relations to discuss immigration and labour policies which affect migrant workers in states of employment. Notably, when considering the Philippines, the Committee on Migrant Workers considered the *Kafalah* system in place in various countries in the Middle East, which ties migrant workers to a sponsoring employer and establishes a range of immigration and employment restrictions.

The Committee recommended that this issue be raised with the receiving governments, with a view towards abolishing the system. It also recommended concluding specific bilateral agreements with the countries receiving migrant workers (with the involvement of civil society actors) to enhance the protection of categories of workers, in particular women, against exploitation and abuse.¹³⁴

The Committee also recommended 'offering adequate information to migrant workers and members of their families travelling to countries with the *Kafalah* system' during pre-departure training.¹³⁵ In addition, it recommended providing direct support to migrant workers through diplomatic missions, which included strengthening consular staffing and 'enhanc[ing] the assistance provided ... to migrant workers who are victims of the *Kafalah*

¹³³ Olivier De Schutter, Special Rapporteur on the right to food, [End-of-Mission Statement: Malaysia](#), 18 December 2013.

¹³⁴ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014).

¹³⁵ *Ibid.*

(sponsorship) system, particularly in the Gulf countries, so that all exploitation and abuses can be effectively reported, investigated and punished.¹³⁶

Countries of origin could use their diplomatic personnel to engage and inform migrant worker communities in the destination country about their right to choose employment. The responsibility to cooperate in the protection of migrant workers' rights¹³⁷ could be advanced by actively sharing information and coordinating monitoring and regulation efforts with destination country authorities to detect any coercive practices impeding workers' employment choices. (See Chapter 3 '**Regulation and Oversight of Recruitment Agencies**').

4.5 Living conditions

4.5.1 Right to an adequate standard of living

Migrants often experience very poor living conditions, such as 'housing which lacks basic infrastructure and services including sanitation, electricity, potable water and adequate health-care services.'¹³⁸



INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 11(1)

States shall recognize the right of everyone to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions. States shall take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

States are obligated to take steps to progressively realise the right of migrant workers to an adequate standard of living including adequate food, clothing and housing.¹³⁹ The Special Rapporteur on the human rights of migrants has reported on the difficulties faced by migrants in obtaining social resources and emphasised the importance of housing to integration in the society of destination countries.¹⁴⁰

Migrant workers face a number of barriers to obtaining adequate housing which include 'difficulties in obtaining bank loans, the need to have permanent residence in order to obtain access to state-subsidized housing or abuses by owners: excessive prices, discrimination on grounds of origin' and 'rental of housing lacking minimum standards of inhabitability.'¹⁴¹

To respond to these challenges, the Special Rapporteur on the human rights of migrants recommends implementation of 'active policies to encourage rental of subsidized housing for migrants, offering guarantees to owners, and initiating awareness campaigns against

¹³⁶ Ibid.

¹³⁷ [Migrant Workers Convention](#) article 64.

¹³⁸ Human Rights Council, [Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants](#), 3 April 2014, UN Doc A/HRC/26/35, [43]

¹³⁹ [ICESCR](#) articles 2(1), 11(1).

¹⁴⁰ Commission on Human Rights, Economic and Social Council, [Special Rapporteur Report on Visit to Spain](#), 14 January 2004, UN Doc E/CN.4/2004/76/Add.2, [71].

¹⁴¹ 94 Ibid.

racism and xenophobia.¹⁴² The Special Rapporteur on housing has also highlighted that both authorities and private contractors should take measures to improve the housing and living conditions of international migrants.¹⁴³

Countries of origin can take steps to reduce and detect violations of migrant workers' right to an adequate living standard. These include:

- Engaging with migrant worker communities in states of employment to identify problematic living conditions;
- Requesting authorities in the country of employment to respond to particular cases of poor living conditions and to continuously improve living conditions for migrant workers, including systematic monitoring and enforcement; and
- Regulating the role of PRAs to ensure they are fulfilling their responsibilities to migrant workers in respect of living conditions, and to ensure they are prohibited and punished for knowingly sending a worker to an employment situation with an inadequate standard of living.

4.5.2 Right to be free from hunger

Preventing migrant workers from experiencing hunger is a critical aspect of fulfilling the right to an adequate standard of living.

For example, after witnessing the working and living conditions of migrant workers in Malaysia, the UN Special Rapporteur on the right to food expressed concern about 'the legal situation and working conditions of documented and undocumented migrant workers ... and the impact that these have on the rights of migrant workers to have an adequate standard of living, including access to adequate food.'¹⁴⁴

The Special Rapporteur noted that implementing minimum wage protections is a positive step towards remedying the situation of poverty and hunger experienced by migrant workers in states of employment.¹⁴⁵

Countries of origin can take measures to identify communities vulnerable to hunger in states of employment and inform and/or co-ordinate responses to remedy conditions of hunger amongst migrant workers in co-operation with destination country authorities and other local organisations and NGOs. As part of their obligations to monitor PRAs, destination countries and countries of origin can also ensure that migrant workers are receiving adequate payment for their work as contractually agreed with their employers and recruitment agencies, which is also critical to ensuring access to adequate food.

¹⁴² Ibid [86].

¹⁴³ Human Rights Council, [Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik – Addendum – Mission to Maldives](#), 11 January 2010, UN Doc A/HRC/13/20/Add.3, [85].

¹⁴⁴ Olivier De Schutter, Special Rapporteur on the right to food, [End-of-Mission Statement: Malaysia](#), 18 December 2013.

¹⁴⁵ Ibid.

4.6 The obligation to protect the physical and emotional security of migrant workers

4.6.1 Physical and mental health



MIGRANT WORKERS CONVENTION

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the state concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 12

States recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by states to achieve the full realization of this right shall include those necessary for:

- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- The improvement of all aspects of environmental and industrial hygiene;
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Ensuring that all migrant workers have access to vital health services is a critical aspect of fulfilling the right to an adequate standard of living. States must also maintain adequate standards of industrial hygiene. The ILO Protection of Workers Health Recommendation recommends that states establish laws and regulations to prevent, reduce or eliminate health risks in places of employment.¹⁴⁶

The ILO Labour Inspection Recommendation recommends the implementation of a system of inspection to ensure the enforcement of laws and regulations relating to the conditions of work and the protection of the workers.¹⁴⁷ Countries of origin could confer with labour inspectors in destination countries in order to monitor employers' compliance with the law regarding the standard of conditions affecting the health and safety of migrant workers (see Chapter 5, '**Consular Protection Services**', for further explanation of the collaboration between consular and embassy staff and labour welfare officers/inspectors).

¹⁴⁶ ILO, [R097 Protection of Workers' Health Recommendation, 1953 \(No 97\)](#), article 1.

¹⁴⁷ ILO, [R020 Labour Inspection Recommendation, 1923 \(No 20\)](#).

The Committee on Migrant Workers has noted that particular attention should be given to the vulnerability of pregnant women migrant workers as they are often reluctant to contact public health services as a consequence of fears relating to deportation.¹⁴⁸

Often employers subject women to pregnancy tests which may be followed by deportation or forced abortion.¹⁴⁹ Therefore, women may lack access to safe reproductive health and abortion services including obstetric care which results in serious health risks.

The Committee has also stated that state parties should not use health care as a discriminatory method of immigration control.¹⁵⁰ The Committee on Migrant Workers notes that states ought to take measures to avoid discrimination against migrant workers on the basis of one's health situation, including HIV status or pregnancy.¹⁵¹

While responsibility for the delivery of healthcare to migrant workers while working in the destination country lies with the country of employment authorities, a country of origin's diplomatic missions can play a role in facilitating access to healthcare. Countries of origin can raise awareness of these rights to health in the migrant worker communities and take steps to ensure their health needs are being met by the country of employment. Diplomatic missions may also provide services or contact information for service providers where possible, to assist in the promotion and protection of migrant workers' health.

4.6.2 Protection from violence



MIGRANT WORKERS CONVENTION

Article 16(2)

Migrant workers and members of their families shall be entitled to effective protection by the state against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

INTERNATIONAL COVENANT ON CIVIL, AND POLITICAL RIGHTS

Article 20(1)

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Migrant workers are at risk of physical and/or emotional abuse at the hands of their employer

¹⁴⁸ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [43].

¹⁴⁹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [18].

¹⁵⁰ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [74].

¹⁵¹ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [61]; UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [11].

and, in some cases, by state officials. This kind of ill-treatment is in violation of migrant workers' right to security of person and protection from inhumane treatment.¹⁵²

The Committee on Migrant Workers elaborates on the content of the obligation to protect migrant workers from violence, hostility and intimidation in General Comment No. 2, instructing states to:

- Adopt and implement legislation prohibiting such acts;
- Effectively investigate cases of abuse and violence;
- Prosecute and punish those responsible;
- Provide adequate reparation to victims and members of their families;
- Provide human rights training for public officials; and
- Effectively monitor the conduct of state agents, and regulate that of private persons and entities, with a view to preventing such acts.¹⁵³

States are also obligated to combat 'all manifestations of racism, xenophobia or related intolerance against migrant workers and members of their families ... such as hate crimes, incitement to hatred and hate speech.'¹⁵⁴

4.6.2.1. Violence against women

The CEDAW Committee has determined that gender-based violence is discrimination within the meaning of article 1 of CEDAW – a further imperative for states parties to take measures to combat violence against women. According to the CEDAW Committee, gender-based violence includes acts inflicting physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.¹⁵⁵

The Committee on Migrant Workers acknowledges the increased risk of ill-treatment and violence, particularly of a sexual nature, faced by women migrant workers.¹⁵⁶ The Committee has also recommended that particular attention should be paid to ensuring access to justice for women migrants who have been victims of sexual assault.¹⁵⁷

¹⁵² See [Migrant Workers Convention](#) articles 16, 10; [ICCPR](#) articles 7, 20.

¹⁵³ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [21].

¹⁵⁴ *Ibid* [22].

¹⁵⁵ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 19: Violence against women](#), 1992, [6].

¹⁵⁶ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [21].

¹⁵⁷ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [26].

4.7 Access to destination country services and economic rights

4.7.1 Obligation to ensure equal access to services



MIGRANT WORKERS CONVENTION

Article 43(1)

Regular migrant workers shall enjoy equality of treatment with nationals of the state of employment in relation to access to services.

The services contemplated by article 43(1) include:¹⁵⁸

- Educational institutions, subject to admission requirements and regulations;
- Vocational guidance, training and placement services;
- Housing, including social housing schemes, and protection against exploitation in respect of rents;
- Social and health services, provided that the requirements for participation in the respective schemes are met;
- Co-operatives and self-managed enterprises; and
- Services related to participation in cultural life.

4.7.2 Obligation to provide social security



MIGRANT WORKERS CONVENTION

Article 27(1)

With respect to social security, migrant workers and members of their families shall enjoy in the state of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that state and the applicable bilateral and multilateral treaties. The competent authorities of the state of origin and the state of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 9

States recognize the right of everyone to social security, including social insurance.

¹⁵⁸ [Migrant Workers Convention](#) article 43(a)-(g).

Under article 9 of ICESCR, all states parties must take practical steps to progressively realize the right to social security – an economic safety net – for their own nationals and migrant workers in an equal manner. This applies equally to migrant workers in a regular and irregular status.¹⁵⁹ The former UN Special Rapporteur on the human rights of migrants has highlighted the special vulnerability of migrant workers as a group in relation to accessing social security, particularly female migrants in the domestic sector and migrants in an irregular status.¹⁶⁰

Furthermore, the Committee on Migrant Workers recommends that states co-operate to implement social security mechanisms which may be facilitated through bilateral and multilateral treaties on social security coverage and provision of benefits, and that include the portability of migrant workers social security entitlements across countries.¹⁶¹

The ILO suggests that member states without legislation in respect of unemployment or family benefits should collaborate with other member states ‘to conclude between themselves appropriate arrangements to compensate equitably¹⁶² people who are entitled to social security payments owed to them by states which they are no longer living in. In the case of migrant workers, this may be the country of origin when a migrant worker moves to the country of employment or vice versa when the migrant worker returns to the country of origin.¹⁶³

4.7.3 Obligation to provide social security support to migrant worker mothers



INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 10(2)

States must provide special protection to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

4.7.4 Obligation to ensure compensation for accidents at work



ILO Equality of Treatment (Accident Compensation) Convention (C019)

Article 1

Each Member of the ILO which ratifies this Convention undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of worker's compensation as it grants to its own nationals.

¹⁵⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, UN Doc E/C.12/GC/20, where the Committee recognised that ICESCR rights apply to everyone including non-nationals, such as migrant workers, regardless of legal status and documentation: at [30].

¹⁶⁰ Commission on Human Rights, Economic and Social Council, *Special Rapporteur Report on Visit to Spain*, 14 January 2004, UN Doc E/CN.4/2004/76/Add.2, [64].

¹⁶¹ UN Committee on Migrant Workers, *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, UN Doc CMW/C/GC/2 (28 August 2013) [68].

¹⁶² ILO, *R167 Maintenance of Social Security Rights Recommendation, 1983 (No 167)*, [4].

¹⁶³ Ibid.

States parties to the ILO Convention C019 must ensure migrant workers and their dependents are entitled to receive the same access as nationals in terms of social security and workers' compensation schemes for personal injuries at work in any country of employment that is also a party to C019.¹⁶⁴ For states without a system to provide compensation to migrant workers when accidents occur at work, the ILO recommends that foreign workers be permitted to benefit from social security laws in their origin country.¹⁶⁵

4.7.5 Obligations regarding taxation



MIGRANT WORKERS CONVENTION

Article 46

Subject to the applicable legislation of the states concerned as well as relevant international agreements, migrant workers in a regular status are exempt from import and export duties and taxes in respect of their personal and household effects as well as the equipment they need for their work in the state of employment. This exemption shall apply upon initial departure from the state of origin/ admission to the state of employment and final departure from the state of employment/ return to the state of origin.

Article 48

Without prejudice to applicable double taxation agreements, states shall apply the same taxation measures to regular migrant workers (and members of their families) as they treat their own nationals. This equal treatment applies to taxes, duties or charges, and tax deductions, exemptions or allowances. States shall also endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and their families.

Diplomatic missions may engage in bilateral discussions to ensure that migrant workers are not subject to taxation on entering and leaving the country of employment.

If states have entered into bilateral agreements or have national legislation which provides more favourable treatment this will not be prejudiced by anything in the articles.¹⁶⁶

¹⁶⁴ ILO, [C019 Equality of Treatment \(Accident Compensation\) Convention, 1925 \(No 19\)](#).

¹⁶⁵ ILO, [R025 Equality of Treatment \(Accident Compensation\) Recommendation, 1925 \(No 25\)](#).

¹⁶⁶ Ibid articles 46, 48.

4.8 Obligations to protect migrant workers' political rights

4.8.1 The obligation to ensure migrant workers' right to vote in country of origin elections



MIGRANT WORKERS CONVENTION

Article 41

States must facilitate the right of migrant workers and members of their families 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. States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 25

States must ensure the right and opportunity of their citizens to vote and participate in elections.

Article 25 of the ICCPR guarantees to citizens of states the right to vote in elections. Migrant workers do not lose this right when they migrate overseas. Article 41 of the Migrant Workers Convention protects the right to vote of all migrant workers regardless of status and obliges states to facilitate the exercise of this right. Diplomatic missions should note the observation made by the Committee on Migrant Workers that the right to vote cannot be exercised effectively without mechanisms in place in countries of origin to facilitate the ability of nationals residing and working abroad to vote in elections.¹⁶⁷

4.8.2 The obligation to protect migrant workers' right to freedom of association including participation in trade unions



MIGRANT WORKERS CONVENTION

Article 26(1)

All migrant workers and members of their families shall have the right to join freely and take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned.

Article 40

Migrant workers and members of their families in a regular status have the right to form associations and trade unions in the state of employment for the promotion and protection of their economic, social, cultural and other interests. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

¹⁶⁷ UN Committee on Migrant Workers, [Concluding observations: Uganda](#), UN Doc CMW/C/UGA/CO/R.1 (22 May 2015) [44]-[45].



INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 8(1)

States must ensure the right of everyone to form trade unions and join the trade union of their choice, subject only to the rules of the organization concerned, for the promotion and protection of their economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection the rights and freedoms of others. State parties must also ensure the right to strike, provided that it is exercised in conformity with the laws of the particular country.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 22

States must uphold the right of everyone to freedom of association with others including the right to form and join trade unions for the protection of their interests.

ILO Freedom of Association Convention

Article 2

States must respect the right of workers and employers, without distinction whatsoever, to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

ILO Right to Organise and Collective Bargaining Convention

Article 1

States must ensure the right of workers to enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

Aside from general protection against any acts of anti-union discrimination, states must specifically protect workers from acts including prohibitions on union participation as a condition of employment and dismissing or otherwise acting prejudicially in respect of a worker because of their participation in union activity.

4.8.2.1. The obligation to protect migrant workers' right to join and participate in trade unions

The right to *join and participate* in trade unions in the countries of origin and employment is guaranteed to all migrant workers regardless of status under article 22(1) of ICCPR, article 8(1) of ICESCR and article 26(1)(a) of the Migrant Workers Convention.

The right to *form* trade unions is guaranteed to all migrant workers, regardless of status under article 22(1) of ICCPR, article 8(1) of ICESCR and ILO Freedom of Association Convention. Indeed, the ILO Committee on Freedom of Association has specifically noted that migrant workers in an irregular situation shall not be denied the right to organise, recalling that *all* workers are covered by the ILO Freedom of Association Convention.¹⁶⁸ Under article 40 of the Migrant Workers Convention, however, the right to form trade unions is protected only for migrant workers in a regular status. Any migrant worker has the right to join a union established by migrant workers in a regular status once it has been formed.¹⁶⁹

The Committee on Migrant Workers has recommended that states take 'all necessary measures, including legislative amendments, to guarantee to migrant workers in an irregular situation the right to take part in trade union activities and to freely join trade unions in accordance with article 26.'¹⁷⁰ The Committee has also specifically noted its concern over laws prohibiting foreigners from forming part of the leadership of trade unions, and has recommended that this right be guaranteed in legislation, pursuant to article 40.¹⁷¹

Though trade union participation in states of employment is ultimately a matter for the authorities of that state, countries of origin can use diplomatic channels to press for protection of the rights of their citizens to organise and freely associate through trade unions and to ensure that they are not impeded by threats or actual reprisals by employers, recruitment agencies or state authorities.

4.8.2.2 The obligation to protect migrant workers from anti-union discrimination

Under article 1(1) of the ILO Right to Organise and Collective Bargaining Convention, states must protect migrant workers from anti-union discrimination. In addition to this general protection, article 1(2) sets out the actions states have a responsibility to protect migrant workers from. These include:

- Prohibitions on union participation as a condition of employment;
- Dismissing a migrant worker because of their participation in union activity; and
- Undertaking any other act that is prejudicial in respect of a worker because of their participation in union activity.

In respect of these obligations, legislative protection is not enough; states **must guarantee**

¹⁶⁸ Freedom of Association Committee, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006, 5th ed, International Labour Office) [214]. See also ILO, *Effect given to the recommendations of the committee and the Governing Body - Report No 362* (November 2011).

¹⁶⁹ Migrant Workers Convention article 26(1)(a).

¹⁷⁰ UN Committee on Migrant Workers, *Concluding observations: Uganda*, UN Doc CMW/C/UGA/CO/R.1 (22 May 2015) [7].

¹⁷¹ UN Committee on Migrant Workers, *Concluding observations: Mexico*, UN Doc CMW/C/MEX/CO/2 (3 May 2011) [45]–[46].

'both in law and in practice' the right to join trade unions or other associations.¹⁷² This means ensuring that there are no risks of negative repercussions to migrant workers from authorities, employers or recruitment agencies if they organise to protect their economic and other interests¹⁷³ and enforcing penalties and providing compensation where their right to do so is infringed.¹⁷⁴ More generally, the ILO Committee on Freedom of Association has declared that all migrant workers are entitled to a remedy if their right to freely associate has been infringed.¹⁷⁵

4.8.2.3. The obligation to protect migrant workers' right to strike

Article 8(1) of ICESCR guarantees migrant workers the right to strike for the promotion and protection of their economic and social interests. According to article 8(1), states must not impede the right of migrant workers to strike, if the striking activity is carried out in a lawful manner. ICESCR therefore assumes that some right to strike should exist in domestic law. Legislating to remove the right to strike would contravene this international legal obligation if there was a blanket prohibition on all striking and/or no provision of a lawful means to do so. The same would be true of a contractual provision that prohibits a worker from exercising his or her right to strike.

4.8.3 The obligation to protect migrant workers' right to form community associations

MIGRANT WORKERS CONVENTION

Article 42(1)

States shall establish procedures and institutions through which account may be taken both in states of origin and states of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall enable migrant workers to have their freely chosen representatives in those institutions.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 22(1)

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.

Article 42(1) of the Migrant Workers Convention protects the right to have associations and bodies which enable migrant workers to meet and promote special needs and aspirations which may go beyond their employment interests and include other areas of economic, social and cultural need. Diplomatic missions can support the fulfilment of this right by encouraging self-organisation among migrant workers and providing them with information about relevant associations within migrant worker communities.



¹⁷² UN Committee on Migrant Workers, [Concluding observations: Uganda](#), UN Doc CMW/C/UGA/CO/R.1 (22 May 2015) [42].

¹⁷³ ILO, [C098 Right to Organise and Collective Bargaining Convention, 1949 \(No 98\)](#), article 1.

¹⁷⁴ ILO, [Effect given to the recommendations of the committee and the Governing Body - Report No 362](#) (November 2011).

¹⁷⁵ Ibid.

4.8.4 The obligation to consult migrant workers in administration decisions about their communities

MIGRANT WORKERS CONVENTION

Article 42(2)

States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers or members of their families in decisions concerning the life and administration of local communities.



4.8.5 Enjoyment of political rights in states of employment

MIGRANT WORKERS CONVENTION

Article 42(3)

Migrant workers may enjoy political rights in the state of employment, if that state, in the exercise of its sovereignty, grants them such rights.



4.8.6 Expulsion

MIGRANT WORKERS CONVENTION

Article 20(2)

No migrant worker or member of his family shall be deprived of his or her authorisation of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorisation or permit.

Article 22

Prohibits collective expulsion and provides procedural safeguards in individual expulsion proceedings with respect to both regular and irregular migrant workers and members of their families.

Article 56 (see also article 13 ICCPR)

Migrant workers and members of their families may not be expelled from a state of employment, except for reasons defined in the national legislation of that state, and subject to certain procedural safeguards.



The Migrant Workers Convention outlines the conditions that states of employment must abide by if they wish to expel migrant workers. These obligations effectively provide migrant workers with protections against unlawful expulsion. These include:

- States may only expel migrant workers in compliance with a decision issued by a competent authority in accordance with the applicable law.¹⁷⁶
- States must protect migrant workers from expulsion on the grounds of failing to fulfil a contractual obligation.¹⁷⁷
- States should ensure that migrant workers understand decisions related to expulsion and, in non-judicial decisions relating to expulsion, provide the person concerned with a right to review and submissions as to why they should not be expelled. Pending review, the person shall have the right to seek a stay of the expulsion decision.¹⁷⁸
- States must examine and determine expulsion decisions on an individual basis and are prohibited from making collective expulsion decisions.¹⁷⁹
- States must ensure migrant workers who are subject to expulsion are able to seek entry into states other than the country of origin if they wish.¹⁸⁰
- States must ensure the costs of expulsion are not borne by a migrant worker who is being expelled. However, the migrant worker may be responsible for travel costs.¹⁸¹
- States must prevent expulsion that has the purpose of depriving *regular* migrant workers of rights arising out of authorised residency and work permits.¹⁸²
- States should ensure that migrant workers in a regular situation who are allowed to freely choose their remunerated activity have the ability to stay in a country of employment if they lose their employment prematurely (before the full term of their contract).¹⁸³

The Committee on Migrant Workers states that where expulsion would constitute arbitrary interference with the right to family and private life, migrant workers and members of their families should be protected.¹⁸⁴

Article 22 of the Migrant Workers Convention reflects article 13 of the ICCPR, however, it broadens the scope of operation to protect migrant workers in irregular situations. Article 13, on the other hand, is only applicable to individuals that are lawfully within the country of employment.

¹⁷⁶ [Migrant Workers Convention](#) articles 22, 56; [ICCPR](#) article 13.

¹⁷⁷ [Migrant Workers Convention](#) article 20(2).

¹⁷⁸ *Ibid* articles 22(3), 22(4).

¹⁷⁹ *Ibid* article 22(1).

¹⁸⁰ *Ibid* article 22(7).

¹⁸¹ *Ibid* article 22(8).

¹⁸² *Ibid* article 56(2).

¹⁸³ *Ibid* article 49(2).

¹⁸⁴ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [50].

Migrant workers have the right to seek compensation for an expulsion decision that has been executed but is subsequently annulled.¹⁸⁵ Embassy and consular staff can offer assistance in pursuing claims for compensation or claims for unpaid wages and other entitlements by persons affected by an expulsion decision.

In accordance with article 23, migrant workers and their families who are the subject of an expulsion decision have the right to be informed without delay, in a language they understand, of their right to have recourse to the protection and assistance of the consular or diplomatic authorities of their country of origin. Further, the expelling state should facilitate the exercise of this right.¹⁸⁶ (See Chapter 5, 'Consular Protection Services', for further explanation of obligations to assist in situations involving expulsion).

4.9 Obligation to protect cultural rights

MIGRANT WORKERS CONVENTION

Article 31

States shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their state of origin. States may take appropriate measures to assist and encourage efforts in this respect.



INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 27

States must recognise the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 15

States shall recognise the right of everyone to take part in cultural life.

CONVENTION ON THE RIGHT OF THE CHILD

Article 29(1)(c)

The education of the child shall be directed to development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

¹⁸⁵ [Migrant Workers Convention](#) article 22(5).

¹⁸⁶ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [59].

While separated from their homelands, migrant workers may find it difficult to stay connected to their culture. Under article 31 of the Migrant Workers Convention, states must not interfere with migrant workers' efforts to maintain their culture whilst living and working abroad.



Good Practice Example

In the compulsory education provided to migrant children, Italy promotes the culture and language of their countries of origin.¹⁸⁷ This affirms the recommendation of the United Nations High Commissioner for Human Rights that 'all migrant children should be able to preserve their cultural identity, including through the teaching of their mother tongue and culture where possible'.¹⁸⁸

To combat racism and xenophobia that undermine migrants' enjoyment of their culture, states have a responsibility to refrain from any remarks that may foster fear of foreigners and should conduct campaigns that disseminate information on the situation of migrants and their contribution to the economy, culture and development of countries of employment.¹⁸⁹

Countries of origin can protect the cultural rights of its migrant workers by, for example:

- Informing migrant workers during pre-departure training of their right to maintain their culture;¹⁹⁰
- Raising awareness among migrant worker communities in countries of employment of the right to enjoy culture, religious practices and languages, by communicating with migrant workers directly or through civil society groups; and
- Pressing countries of employment to respect the rights of migrant workers to maintain their culture.

¹⁸⁷ United Nations Office of the High Commissioner for Human Rights, [The Economic, Social and Cultural Rights of Migrants in an Irregular Situation](#) (United Nations, 2014) 88.

¹⁸⁸ Ibid 95.

¹⁸⁹ Commission on Human Rights, Economic and Social Council, [Special Rapporteur Report on Visit to Spain](#), 14 January 2004, UN Doc E/CN.4/2004/76/Add.2, [86(g)].

¹⁹⁰ See 'Obligation to provide pre-departure information', at section 2.1.1.

4.10 Family and children

4.10.1 Special vulnerabilities of children of migrant workers



MIGRANT WORKERS CONVENTION

Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 10(3)

The states parties to the present Covenant recognize that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 24

Every child shall have, without discrimination on prohibited grounds, the right to such measures of protection as are required by his status as a minor. Children shall be registered immediately after birth and they shall have the right to acquire a nationality.

4.10.2 Registration of children

The Committee on Migrant Workers has noted that legal identity is often a prerequisite for access to a number of fundamental rights. It has confirmed that states parties are obliged to ensure that children of migrant workers are registered soon after birth, irrespective of the migration status of their parents, and provided with birth certificates and other identity documents, pursuant to the obligation in article 29.¹⁹¹

4.10.3 Unaccompanied minors

States are required to address the situation of unaccompanied migrant children in a number of respects. Unaccompanied minors include migrant worker children who are in the destination country without their parents (see section 4.3.3, '**Under-age (child) migrant workers in an irregular status**', for further explanation of the obligations of countries of origin in respect of underage migrant workers), and children whose parents are either deceased or have been detained.

The Committee on Migrant Workers has noted with concern the extreme vulnerability of

¹⁹¹ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [79].

unaccompanied migrant children. It has recommended that states pay adequate attention to their situation and respect the principle of the best interests of the child.¹⁹²

In this regard, the Committee on Migrant Workers has recommended that States should:¹⁹³

- Strengthen the training given to state officials who work with or enter into contact with unaccompanied migrant children;
- Ensure that the detention of migrant children and adolescents is carried out in accordance with the law and only as a last resort and for the shortest possible time;
- Strengthen the implementation of procedures that provide for the early identification of children and adolescents who have been the victims of crime;
- Ensure that unaccompanied migrant children who have been victims of crime receive adequate protection and specialised care that is geared to their particular needs in each case;
- Ensure that the repatriation and/or deportation of unaccompanied minors to their countries of origin takes place only in those cases in which it is in the best interests of the child and after ensuring the definite existence of secure conditions for their care and safekeeping when they return to their country of origin; and
- Apply a proper legal framework for the protection and guardianship of unaccompanied minors.

4.10.4 Access to education

MIGRANT WORKERS CONVENTION

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the state concerned regardless of status.

Regular Migrant Workers

Articles 43(1)(a); 45(1)(a)

Children have the right to access educational institutions and services on an equal footing to nationals, subject to the admission requirements and other regulations of the institutions and services concerned.

Article 45(2)

States of employment should pursue a policy aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language and culture.



¹⁹² UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [55].

¹⁹³ Ibid [56].

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 13

Everyone has the right to education including free compulsory primary education and equal access to all further levels of study.

CONVENTION ON THE RIGHT OF THE CHILD

Articles 28 and 29

States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, shall provide compulsory primary education and equal access to higher education. States parties shall also promote and encourage international cooperation in matters relating to education.

CONVENTION ON THE ELIMINATION OF ALL FORM OF RACIAL DISCRIMINATION

Article 5 (e)(v)

Without distinction as to race, colour, or national or ethnic origin every person has the right to education and training.

ICESCR, CRC and ICERD recognise the right of every child to education. Although article 30 of the Migrant Workers Convention provides the basic right to education to children of migrant workers in a regular and irregular situation, articles 43 and 45 afford a greater level of access to children of migrant workers with regular status.

The Committee on Migrant Workers has stated its view that, in accordance with article 13 of ICESCR, states parties must provide free and compulsory primary education for all, including children of migrant workers, irrespective of their immigration status. States also have an obligation to eliminate all direct costs of schooling and alleviate the adverse impact of indirect costs, such as expenses for school materials and uniforms.¹⁹⁴

The UN Special Rapporteur from the Commission on Human Rights reports that unaccompanied minors and children of migrants in an irregular status have difficulties integrating due to marginalisation and stigmatisation in educational institutions owing to their irregular status in the country of employment.¹⁹⁵ The Committee on Migrant Workers has focused on the need for practical and effective measures, such as specific programmes to guarantee access to education for migrant workers and members of their families, especially those who are in an irregular situation.¹⁹⁶

¹⁹⁴ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [75].

¹⁹⁵ Commission on Human Rights, Economic and Social Council, [Special Rapporteur Report on Visit to Spain](#), 14 January 2004, UN Doc E/CN.4/2004/76/Add.2, [72].

¹⁹⁶ UN Committee on Migrant Workers, [Concluding Observations: Kyrgyzstan](#), UN Doc CMW/C/KGZ/CO/1 (22 May 2015) [32]-[33].

4.10.5 Vulnerabilities of juvenile migrants in criminal detention

The ICCPR and Migrant Workers Convention both specifically address the particular vulnerability of juvenile persons in detention in articles 14(4) and 17(4) respectively, dictating that the criminal procedure shall take account of their age and the desirability of promoting their rehabilitation. Children (particularly unaccompanied or separated children) should never be detained solely for immigration purposes.¹⁹⁷ The ICCPR and Migrant Workers Convention¹⁹⁸ also emphasise the need to segregate juvenile offenders and accused juvenile persons from adults when detained.

4.10.6 Specific rights afforded to family members



MIGRANT WORKERS CONVENTION

Article 17(6)

States have a responsibility to consider the implications for members of a migrant worker's family – in particular for spouses and minor children – whenever a migrant worker is deprived of his or her liberty.

Article 44

States shall take appropriate measures to ensure the protection of the unity of the families of migrant workers including reunification of migrant workers with their spouses/de facto partners as well as with their minor dependent unmarried children. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment to other family members of migrant workers.

Article 50

States are obliged to consider favourable treatment such as granting rights of residence to the members of a migrant worker's family if the migrant worker dies or there is a dissolution of marriage and/or providing a reasonable period of time in order to enable family members to settle their affairs in the state of employment before departure.

Article 53

Members of the family of a migrant worker who possess authorisations of residence without limit of time (or automatically renewable) shall be permitted freely to choose their remunerated activity under the same conditions as applicable to the migrant worker under the Convention. For those members who do not have such authorisations states shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the state of employment, subject to applicable bilateral and multilateral agreements.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 10(1)

States must accord the widest possible protection and assistance to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

¹⁹⁷ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [33].

¹⁹⁸ [ICCPR](#) articles 10(2)(b), 10(3); [Migrant Workers Convention](#) articles 17(2), 17(4).

In recognition of the fact that migration can be problematic for families, particularly in its disruption to family unity,¹⁹⁹ states should pay particular attention to protecting not only individual migrant workers but also their entire family unit.

Members of a family includes spouses and partners of migrant workers (in situations which, according to applicable law, produces effects equivalent to marriage) as well as dependent children and other dependent persons who may be recognised as family members by applicable legislation or bilateral/multilateral agreements between states.²⁰⁰

Countries of origin should use diplomatic channels to encourage the creation of bilateral and multilateral agreements which support the enforcement of the protections listed above. In countries of employment, diplomatic missions may be able to support families by identifying their needs through community consultation and providing support services or contact information for relevant available family support services in the country of employment.

4.11 Due process

MIGRANT WORKERS CONVENTION

Articles 16, 18, 19, 22, 24

Articles 16, 18, 19, 20, 22, 24 set out a number of rights related to due process, including for example, article 18(1), which provides that states should ensure equal treatment of migrant workers with nationals before the courts and tribunals.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Articles 9–10 and 13–16

Articles 9, 10 and 13–16 set out a number of rights related to due process.



The Migrant Workers Convention and ICCPR set out a number of rights related to due process. Article 9 of the ICCPR and article 16 of the Migrant Workers Convention provide for the right to be free from arbitrary arrest or detention, to be informed of the reasons for arrest, to have proceedings heard before a court within a reasonable time and an enforceable right to compensation for rights violations. Article 14 of the ICCPR and article 18 of the Migrant Workers Convention emphasise migrant workers' rights to: equal treatment to nationals before courts and tribunals; a fair trial; to be presumed innocent until proven guilty; and to a variety of additional minimum guarantees throughout the criminal process.

Importantly, article 20 of the Migrant Workers Convention establishes that migrant workers and members of their family may not be imprisoned,²⁰¹ or deprived of their authorisation or work permit merely on the ground of failure to fulfil a contractual obligation.

¹⁹⁹ [Migrant Workers Convention](#) preamble.

²⁰⁰ Ibid article 4.

²⁰¹ See also [ICCPR](#) article 11.

4.11.1 Migrant workers in detention



MIGRANT WORKERS CONVENTION

Article 16(4)

Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

Article 16(7)

Migrant workers have the right to communicate with consular or embassy officials if arrested or detained.

Article 17

States shall ensure the right of migrant workers to a variety of minimum rights and standards when deprived of their liberty, including the right to be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

The Committee on Migrant Workers has recommended that origin countries co-operate with law enforcement agencies of destination countries to ensure that the situation of migrant workers and members of their families, who are held in detention, is effectively monitored.²⁰²

In line with the Committee on Migrant Workers's recommendations, the protection from inhumane treatment for migration workers deprived of their liberty includes:²⁰³

- Provision of adequate sanitary, bathing and shower facilities;
- Adequate food and drinking water;
- The right to communicate with relatives and friends;
- Access to qualified medical personnel; and
- Adequate opportunities to practice their faith.

²⁰² UN Committee on Migrant Workers, [Concluding Observations: Tajikistan](#), UN Doc CMW/C/TJK/CO/1 (16 May 2012) [24(c)].

²⁰³ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [36].

The Committee has also recommended that the detention of migrant workers in holding centres should be limited to the shortest possible time. This recommendation addresses concerns that migrant workers who lodge appeals relating to their migration status are often kept in these centres for prolonged periods due to the protracted nature of the appeals process.²⁰⁴ Prolonged administrative detention of a migrant must be justified by state authorities in order to avoid being considered arbitrary, and therefore unlawful, under international law. It should also be noted that detention may be considered arbitrary under international law even if it is permissible under domestic law.²⁰⁵ Administrative detention should take place in public establishments as contracting out the detention of persons to private entities makes monitoring difficult.²⁰⁶ Any custodial measure restricting the right to liberty must be exceptional and based on a detailed and individualised assessment.²⁰⁷

Migrant workers in detention must be afforded equal access to services, such as access to health professionals and education, if such rights are afforded to nationals.²⁰⁸ Additionally, detention centres should likewise provide separate facilities for men and women, gender-specific health care and cater to the special needs of pregnant women, breastfeeding mothers and women with young children.²⁰⁹ Special measures should also be taken for migrant workers in vulnerable situations, such as those persons with disabilities and persons living with HIV/AIDS.²¹⁰

(See section 5.3.1, '**Legal assistance regarding criminal charges and rights in detention**', for an explanation of the right to communicate with consular and embassy officials if arrested or detained and the provision of legal assistance.)

4.12 Prevention of forced labour and human trafficking

See Chapter 8 '**Prevention and accountability for forced labour and human trafficking**'.

²⁰⁴ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [36].

²⁰⁵ Human Rights Committee, *Views: Communication No 560/1993*, 59th sess, UN Doc CCPR/C/59/D/560/1993 (30 April 1997) ('*A v Australia*').

²⁰⁶ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [39].

²⁰⁷ *Ibid* [26].

²⁰⁸ *Ibid* [43].

²⁰⁹ *Ibid* [45].

²¹⁰ *Ibid* [46].



5 | CONSULAR PROTECTION SERVICES

Diplomatic missions have broad responsibilities under international law to protect and promote the rights of migrant workers. These responsibilities include the protection of labour migrants from the point of departure through to handling problems while overseas, as well as the provision of services that meet migrants' social, cultural and economic needs. As discussed in other chapters of these materials, diplomatic missions also have a role to play in the pre-departure period, and in ensuring the fulfilment of migrant workers' rights upon their return home.

Diplomatic missions have general obligations to contribute to the protection of the social, civil, political, cultural and economic rights of migrant workers abroad (see Chapter 4, '**Rights in country of employment**', for further explanation of these rights and obligations). They also have specific duties imposed upon them by international law in relation to the provision of consular and diplomatic services.

The Migrant Workers Convention and Vienna Convention on Consular Relations provide specific detail on international obligations relating to consular assistance. The provision of diplomatic protection and consular services is also often covered in various instruments within each country's domestic law.

The ILO has underscored the particular importance of diplomatic representation in the destination country for women migrants who are especially vulnerable to abuse, exploitation and criminalisation if they run away from abusive employers or agents and fall into an irregular status.²¹¹

²¹¹ ILO, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 5: Back Home: Return and Reintegration), 2003, 38–9.

INTERNATIONAL LAW

5.1 General obligations regarding consular assistance and protection



MIGRANT WORKERS CONVENTION

Article 23

Migrant workers shall have the right to have recourse to the protection and assistance of the consular and diplomatic authorities of their state of origin whenever their rights under the Convention are impaired. In expulsion cases, the person shall be informed of this right and the expelling state must facilitate the exercise of this right.

Article 65(2)

States shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

International law imposes a broad obligation on consular and embassy staff to provide protection and assistance to migrant workers abroad.²¹²

The Committee on Migrant Workers has held that embassies and consulates of countries of origin should play an 'active role' in protecting the rights of their nationals.²¹³ It has also recommended that countries strengthen consular staffing so that consular services are better able to protect and promote the rights of migrant workers abroad.²¹⁴ Collaboration of each country's consular services with the relevant bodies and authorities in destination countries is recommended.²¹⁵

5.1.1 Provision of shelter, counselling and other protective services

The Committee on Migrant Workers' General Comment No. 1 provides detailed guidance to states parties on the content of their Convention obligations to migrant domestic workers, though much of the guidance is relevant to all migrant workers. According to the General Comment, embassies and consulates of countries of origin should coordinate with authorities in the country of employment to:

- Provide counselling and facilitate appropriate shelter for migrant domestic workers, especially women and children, fleeing from abusive employment circumstances;
- Cooperate with one another in order to identify abusive recruitment agencies and promote appropriate protection policies; and
- Expedite the processing of temporary travel documents and return tickets to avoid migrant domestic workers in distress being forced to remain in shelters for long periods of time.²¹⁶

²¹² [Migrant Workers Convention](#) article 23; [Vienna Convention on Consular Relations](#) article 5.

²¹³ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [62].

²¹⁴ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [31].

²¹⁵ UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [40(b)].

²¹⁶ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [62]-[63].

The Committee consistently emphasises the timely provision of travel documents by embassies to nationals who are facing expulsion from the country of employment, and has criticised at least two states for systematic failures to do so.²¹⁷ This obligation is also imposed by article 5(d) of the Vienna Convention on Consular Relations.

According to the Committee, countries of origin should systematically inform migrant workers about their right to consular assistance because embassies and consulates act as a key emergency contact for migrant workers who have been exploited or abused abroad.²¹⁸ (See section 2.1.1, '**The obligation to provide pre-departure information**', for further explanation of the obligation to provide information).

5.1.2 Fulfilment of social, cultural and economic needs

Article 65(2) of the Migrant Workers Convention obliges diplomatic missions to cater for the social, cultural and other needs of migrant workers (and their families) abroad. This could include: cooperating with civil society actors in the country of employment to provide education, entrepreneurial training and community welfare programmes, including activities to fulfil the rights of children and families of migrant workers.²¹⁹

²¹⁷ UN Committee on Migrant Workers, [Concluding Observations: Egypt](#), UN Doc CMW/C/EGY/CO/1 (25 May 2007) [46]–[47]; UN Committee on Migrant Workers, [Concluding Observations: Bolivia](#), UN Doc CMW/C/BOL/CO/1 (2 May 2008) [27]–[28].

²¹⁸ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [43]–[44].

²¹⁹ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [45(b)].

5.1.3 Consular services and protection for women



CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 2

States agree to pursue by all appropriate means a policy of eliminating discrimination against women.

Article 3

States shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The CEDAW Committee notes that once migrant worker women reach their destination country, they may encounter multiple forms of 'de jure and de facto discrimination'.²²⁰ This may include host governments that impose restrictions or bans on women's employment in particular sectors, gender insensitive environments that do not allow the mobility of women, gendered notions of appropriate work for women that limit their opportunities to certain occupations, and the exclusion of such occupations from legal definitions of work which subsequently deprives women of legal protections.²²¹

The CEDAW Committee notes that where states have specific obligations under customary international law or treaties such as the Vienna Convention on Consular Relations, those obligations must be carried out in full in relation to women migrant workers.²²² States must also properly train and supervise their diplomatic and consular staff to ensure that they protect the rights of women migrant workers abroad. Effective protection requires the provision of quality support services to women migrants, including timely provision of interpreters, medical care, counselling, legal aid and shelter when needed.²²³

The CEDAW Committee has also noted that articles 2 and 3 of CEDAW envision cooperation between states parties to ensure that women migrant workers' rights are protected and fulfilled. Such co-operation can occur, for example, through bilateral and regional agreements, the sharing of best practices and relevant information and the mutual provision of information on perpetrators of violations of the rights of women migrant workers.²²⁴

²²⁰ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [13].

²²¹ Ibid [13]–[14].

²²² Ibid [24(j)]; [CEDAW](#) article 3.

²²³ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(j)].

²²⁴ Ibid [27]; [CEDAW](#) articles 2, 3.

5.1.4 Consular protection for migrant workers in an irregular situation

Migrant workers in an irregular situation are particularly vulnerable to labour exploitation and other types of abuse, as their fear of detection and deportation limits their access to justice and exercise of fundamental human rights.²²⁵ Although the Migrant Workers Convention provides additional rights and protections to regular migrant workers in some defined situations, this does not take away from the fact that all migrant workers are entitled to a minimum level of protection. The ILO underscores that ‘the right of migrant workers to be informed of the right to consular assistance should not be linked to their regular or irregular situation.’²²⁶

Diplomatic missions should be mindful of the need to make consular services available to irregular workers. The Committee on Migrant Workers has recommended ensuring that migrant workers and members of their families in an irregular situation have equal opportunities to file complaints and have access to information about other available remedies.²²⁷

5.1.5 Women migrant workers in an irregular situation

Women in an irregular status face particular protection challenges and challenges in accessing assistance. The ILO has noted that policies in place to restrict women’s migration to particular countries may lead to increased vulnerability as they may drive women to migrate through irregular channels. As a result, ‘[s]ince [women irregular workers] have no legal status in the destination country, they have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance. Even when they are “rescued” by the authorities, they are often treated as criminals.’²²⁸

5.2 Training for consular and embassy staff

The Committee on Migrant Workers and CEDAW Committee have recommended that states properly train and supervise their diplomatic and consular staff in a systematic way to ensure that they fulfil their role in protecting the rights of migrant workers abroad.²²⁹ This can be achieved by ensuring the allocation of sufficient material resources and foreign service, labour and welfare personnel in the destination country, and also ensuring regular capacity-building and skills enhancement for such personnel.²³⁰

²²⁵ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [2].

²²⁶ ILO, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 5: Back Home: Return and Reintegration), 2003, 38.

²²⁷ UN Committee on Migrant Workers, [Concluding Observations: Tajikistan](#), UN Doc CMW/C/TJK/CO/1 (16 May 2012) [24(d)].

²²⁸ ILO, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 1: Introduction: Why the focus on women international migrant workers), 2003, 17.

²²⁹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(j)]; CEDAW article 3; see also UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [44].

²³⁰ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [25(c)].

In a number of Concluding Observations, the Committee on Migrant Workers has indicated that instituting ongoing training programmes for consular officials on the Migrant Workers Convention and other human rights treaties is one of the necessary steps that a country of origin must take in order to effectively protect the rights of its workers overseas.²³¹ The Committee also places specific emphasis on the provision of regular training to ensure that labour welfare personnel stationed overseas are knowledgeable about labour laws of the host country.²³²

Further, the CEDAW Committee notes the importance of training and supervising diplomatic and consular staff in order to specifically protect the rights of women migrant workers abroad.²³³ This may include for example, the provision of gender sensitisation training for legal and consular staff.²³⁴

Article 10 of the [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) ('UN Trafficking Protocol') points to an obligation to provide or strengthen training for all relevant officials involved in the prevention of trafficking in persons. Such training should take into account the need to consider human rights and child- and gender-sensitive issues.

5.3 Access to legal services

MIGRANT WORKERS CONVENTION

Article 16(7)

Migrant workers have the right to communicate with consular or embassy officials if arrested or detained.

Article 18(3)(d)

In regard to any criminal charges, migrant workers and their families shall be entitled to be tried in person and to defend themselves in person or through a lawyer of their choosing. They also have the right to have legal assistance assigned to them, without payment, in any case where the interests of justice require and if they do not have sufficient means to pay.

Article 23

Migrant workers have the right to have recourse to the protection and assistance of the consular and diplomatic authorities of their state of origin.



²³¹ UN Committee on Migrant Workers, [Concluding Observations: El Salvador](#), UN Doc CMW/C/SLV/CO/2 (2 May 2014) [27]; UN Committee on Migrant Workers, [Concluding Observations: Mali](#), UN Doc CMW/C/MLI/CO/2 (1 May 2014) [17].

²³² UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [29]–[30].

²³³ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(j)].

²³⁴ UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [28(b)].

5.3.1 Legal assistance regarding criminal charges and rights in detention

Read together, articles 16(7) and 23 require embassy staff to proactively contact nationals in prison or other detention facilities. This is confirmed by the Committee in its recommendation that states arrange visits by the relevant consular officials to migrant workers in detention in consultation with the country of employment.²³⁵ The ILO has drawn attention to the increasingly important role played by labour attachés in consulates or embassies in negotiating for the release of migrants in an irregular status who are detained, or other migrants in jail.²³⁶ In line with article 16(7) of the Migrant Workers Convention, diplomatic missions from the country of origin should also help facilitate access to legal aid in the country of employment when nationals are facing criminal charges.

The Committee on Migrant Workers considers that states should take effective measures to ensure that migrant workers held in detention centres are informed, in a language they speak and without delay, about their rights. In particular, they should be informed of their right to consular assistance, to challenge the lawfulness of their detention, to seek remedies concerning their migration status, and, in the case of trafficked persons, to receive information about possible protection measures.²³⁷ This also applies to migrant workers opting for voluntary repatriation (see section 7.1.1, '**Obligations to ensure migrant workers can leave their country of employment and return to their country of origin at any time**', for further explanation of origin countries' responsibilities in relation to repatriation of migrant workers). Such information could be provided, for example, through the preparation of standard notification forms containing information on available rights and remedies.

5.3.2 Legal assistance to pursue employment-related and other claims

The CEDAW and Committee on Migrant Workers and the ILO recommend that states parties ensure the availability of legal assistance in relation to migration work, in accordance with national law and practice.²³⁸ This may require embassy officials to facilitate access to legal aid in the destination country if the migrant worker wishes to pursue a complaint using the destination country's legal mechanisms.

²³⁵ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [64].

²³⁶ ILO, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 5: Back Home: Return and Reintegration), 2003, 38.

²³⁷ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [34]; UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [42].

²³⁸ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(f)]; CEDAW articles 3, 11); UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [44]; ILO, [Multilateral Framework on Labour Migration](#) (2006) 19–20.

Within its Multilateral Framework on Labour Migration, the ILO recommends that states provide:

- effective remedies to all migrant workers for violation of their rights, and creat[e]
- effective and accessible channels for all migrant workers to lodge complaints and
- seek remedy without discrimination, intimidation or retaliation.²³⁹

A practical example of the ways in which embassies can provide legal assistance include the establishment of legal assistance desks in embassy and consulate offices managed by host country lawyers.²⁴⁰

The Committee on Migrant Workers considers that states should inform migrant workers about the available judicial remedies and guarantee their equal access to complaints procedures, legal assistance and redress from the courts when their rights under the Convention have been violated.²⁴¹ The Committee specifically stresses the importance of providing assistance through embassies and consulates to migrant workers who are subject to the *Kafalah* (sponsorship) system (predominantly in the Gulf countries) to ensure that exploitation and abuses can be reported, investigated and punished.²⁴²

The Committee on Migrant Workers also emphasises the importance of providing legal assistance to migrant workers who are the subject of expulsion orders²⁴³ (see section 7.1.4, ‘Obligations regarding the expulsion of migrant workers by the country of employment’, and Chapter 4, ‘Rights in country of employment’, for further information on obligations relating to expulsion.

5.3.3 Access to legal services for women

Article 3 of CEDAW links the full development and advancement of women with the exercise and enjoyment of their human rights. The Committee has specifically noted that equal access to justice, which is inherently linked with the fulfilment of article 3, requires accessible legal aid and procedures for dealing with complaints of gender-based discrimination for women.²⁴⁴

The CEDAW Committee indicates that states should ensure the availability of legal assistance at all stages of migration to assist women migrant workers who suffer from harms associated with the migration process.²⁴⁵

²³⁹ ILO, [Multilateral Framework on Labour Migration](#) (2006) 20.

²⁴⁰ UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [29-30].

²⁴¹ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [25(b)].

²⁴² *Ibid* [31].

²⁴³ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [53]; UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [34].

²⁴⁴ UN Committee on the Elimination of Discrimination against Women, [Questions to Gambia](#), UN Doc CEDAW/PSWG/2005/II/CRP.1/Add.4 (9 February 2005) article 3(3).

²⁴⁵ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(f)].

The CEDAW Committee recommended in its 2012 Concluding Observations on Indonesia that countries of origin provide assistance to migrant women who are seeking redress²⁴⁶ for violations of their rights during their period of employment in the destination country. More generally, it has stated that legal reviews should be available to ensure that work contracts are valid and protect women's rights on the basis of equality.²⁴⁷ This would support compliance with articles 3 and 11.

Practical barriers that may operate to prevent women from accessing available remedies include:²⁴⁸

- Women migrant workers may lack mobility because they may be confined by employers to their work or living sites, prohibited from using telephones or banned from joining groups or cultural associations;
- Women often lack knowledge of their embassies or of services available, due to their dependence on employers or spouses for such information. For example, it is very difficult for women migrant domestic workers who are scarcely ever out of sight of their employers to even register with their embassies or file complaints;
- Many do not know the language of the country and do not know their rights; and
- Women migrant workers may not be eligible for free government legal aid, and there may be other impediments, such as unresponsive and hostile officials and, at times, collusion between officials and the perpetrator.

(See section 7.3, 'Access to justice', for further explanation of the country of origin's role in facilitating access to legal remedies and complaint mechanisms).

5.4 Non-legal assistance in relation to employment

The ILO provides guidance on actions that diplomatic missions ought to take in order to prevent discrimination, exploitation or abuse of their nationals working overseas. While this guidance is issued in the specific context of women migrant workers, it is equally applicable to all migrant workers:²⁴⁹

- Monitor compliance with any labour agreements;
- Be alert to developments in the destination country, which affect the interests of nationals;
- Keep an updated register of all nationals in the country, and keep in regular contact with the workers;
- Keep a labour attaché in the country who is sensitised to female migrant worker issues;
- Check on the credentials of employment agencies and employers and verify employment contracts;
- Provide advice and counselling;

²⁴⁶ UN Committee on the Elimination of Discrimination against Women, [Concluding Observations: Indonesia](#), UN Doc CEDAW/C/IDN/CO/6-7 (27 July 2012) [44(c)].

²⁴⁷ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(f)].

²⁴⁸ Ibid [21].

²⁴⁹ ILO Gender Promotion Programme, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 4: Working and living abroad), 2003, 57-9.

- Assist migrant workers in forming migrant associations;
- In cases of contractual disputes or criminal matters, represent nationals and assist in negotiations with agents, employers, the police and law courts;
- Provide representation and special assistance to domestic workers who have fled an abusive employer; and
- Arrange for the repatriation of nationals who are stranded in the destination country.

5.4.1 Information dissemination



MIGRANT WORKERS CONVENTION

Article 33

All migrant workers – including workers in an irregular status – and members of their families have the right to be informed by their country of origin (and destination) of their rights arising out of the Convention, their conditions of admission to the country of employment, their rights and obligations under the law, and other matters that will help them to comply with the formalities of the country of employment. States must take appropriate measures to disseminate such information, or to ensure that it is provided by relevant third parties. Such information must be adequate, and it must be provided to migrant workers and their families on request, at no cost and, to the extent possible, in a language they understand.

Article 65(1)

States shall maintain appropriate services to deal with questions concerning international migration of workers.

Diplomatic missions have a role to play in the provision of information, both in the pre-departure stage, as well as throughout the migration cycle. This includes information on the conditions of admission, the rights and obligations of migrant workers in the country of employment, and other information that will help them comply with the administrative or other formalities in the destination country.

Embassies and consulates are similarly well placed to provide women with information that contributes to the prevention of abuse and exploitation in relation to accessing redress mechanisms and legal rights and entitlements abroad.²⁵⁰ (See section 2.1, '**Pre-Departure Education & Training**', for further explanation of the obligations of countries of origin in relation to the provision of pre-departure information). The provision of information regarding the available legal remedies in the destination country is particularly important in situations involving rights violations, detention of migrant workers and expulsion decisions.

²⁵⁰ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(b)(i)].

Equally important is the provision of information on accessing legal remedies at home. A study investigating migrant workers' access to justice in countries of origin found that two of the greatest barriers to migrant workers making claims against recruitment agencies or claiming insurance on their return home are that they are unaware of their rights and the claims process, and they have returned home without the evidence they need to make a claim – evidence, such as receipts or statements verifying their loss, which they should have obtained in the destination country.²⁵¹

Diplomatic missions play a critical role in providing information regarding insurance claims and other mechanisms and channels available in the country of origin for pursuing claims, and in enabling migrant workers to collect necessary evidence before they depart as well as once they have returned home.

5.4.2 Data collection

In order to be able to understand and address the challenges migrant workers face in exercising their rights, the collection of data is essential. In General Comment No. 1, the Committee on Migrant Workers recommends that embassies and consulates should 'receive, record and report information' regarding actual country and employment conditions of migrant workers. It also specifically encourages embassies to consider data relating to the experience of migrant domestic workers, including travel and arrival, migration-related fees and debt, the effects on family, workplace conflicts, issues of rights and access to justice.²⁵²

Diplomatic missions should collect data on incidents of abuse of migrant workers and their families in order to address ill-treatment at the hands of public authorities, particularly in relation to migration controls and inspections. This information can be fed back to the government of the country of origin in order to inform licensing decisions regarding PRAs²⁵³ (see Chapter 3, '**Regulation and Oversight of Recruitment Agencies**', for more information on licensing of PRAs).

The Committee on Migrant Workers has suggested that states seek to compile information and statistics in order to evaluate and better promote effective implementation of the Migrant Workers Convention. To the extent possible, such data should be disaggregated by factors such as sex, age and nationality and by reason for entry in the country, transit or departure.²⁵⁴ The Committee also specifically cited the potential for countries' embassies and consulates to collaborate in the compilation of such data.²⁵⁵

²⁵¹ Bassina Farbenblum, Eleanor Taylor-Nicholson and Sarah Paoletti, [Migrant Workers' Access to Justice at Home: Indonesia](#) (Open Society Foundations, 2013) 107–8.

²⁵² UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [62(d)].

²⁵³ *Ibid* [34].

²⁵⁴ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [18]; UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [18]–[19].

²⁵⁵ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [19].



6 | REMITTANCES

With migrant worker protections in place, remittances can contribute to increased employment, economic growth, development and the alleviation of poverty. Despite the contribution of remittances to origin countries' economy and foreign exchange earnings, migrant workers continue to experience problems including high transaction costs, complex procedures, a lack of information about the remittance process and language barriers.

To ensure that the benefits of labour migration are 'recognized and maximized for the benefit of both origin and destination countries,'²⁵⁶ the ILO and others have recommended that states ensure that adequate and effective remittance systems are in place to facilitate the transfer of migrant worker earnings back to their country of origin. States are also obliged to do so under international law.

²⁵⁶ ILO, *ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (2006) 29.

6.1 The right to transfer earnings

The Migrant Workers Convention imposes different obligations on states parties regarding the transfer of remittances by workers in a regular status and workers in an irregular status. Under article 47, states must ensure that migrant workers in a *regular situation* have the means to transfer their earnings at all stages of the migration process. Under article 32, all migrant workers must be able to transfer remittances upon the completion of their period of employment abroad. This provision applies to migrant workers in both a regular *and* irregular status.



MIGRANT WORKERS CONVENTION

Article 32

All states are required to ensure *all* migrant workers (including those of an *irregular* status) can transfer remittances upon completion of their time in the destination state.

Article 47

Migrant workers in regular situations shall have the right to transfer their earnings and savings from the state of employment to their state of origin or any other state. The states concerned shall take appropriate measures to facilitate such transfers.

The Committee on Migrant Workers recommends that states establish formal channels to facilitate the transfer of remittances and to minimise transaction costs.²⁵⁷ The Committee also recommends that states create links between banks, financial institutions, non-governmental institutions and microfinance institutions, thereby increasing the range of mechanisms through which migrant workers can transfer their savings and earnings.²⁵⁸

In addition, the ILO recommends states adopt certain initiatives to maximise the transfer of migrant worker remittances for the benefit of both origin and destination countries. The ILO recommends that states promote a reduction in transfer fees, provide tax incentives and emphasise greater competition between financial institutions.²⁵⁹ States should also provide 'incentives to promote the productive investment of remittances in the country of origin.'²⁶⁰ Such measures should facilitate the accessibility of financial services for migrant workers, as well as promote employment, economic growth and development.²⁶¹

Diplomatic missions can work with destination countries towards these goals, while assisting migrant workers by providing information on safe and effective existing remittance transfer options.

²⁵⁷ UN Committee on Migrant Workers, [Concluding Observations: Sri Lanka](#), UN Doc CMW/C/LKA/CO/1 (14 December 2009) [36].

²⁵⁸ Ibid.

²⁵⁹ ILO, [ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-Based Approach to Labour Migration](#) (2006) [15.6].

²⁶⁰ Ibid [15.5].

²⁶¹ Ibid [15].

6.2 The obligation not to restrict the transfer of earnings

States are under an obligation to not restrict or obstruct the transfer of migrant earnings.²⁶² Migrant workers must have the freedom to remit as much or as little of their earnings as they wish. The Committee on Migrant Workers has found that domestic laws which require migrant workers to remit a certain percentage of their income contravenes article 47 of the Migrant Workers Convention.²⁶³

This obligation on states not to restrict the transfer of remittances is also reaffirmed by the ILO under the Migration for Employment Convention.²⁶⁴ Article 9 provides that states parties are to permit the transfer of earnings or savings of the migrant worker for employment as they desire, subject to limits allowed by national laws and regulations concerning the export and import of currency.

6.3 Women migrant workers



CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Article 2

States agree to pursue by all appropriate means a policy of eliminating discrimination against women.

Article 3

States shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 11

States shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women.

Article 13

States shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights.

The CEDAW Committee recommends that states parties establish measures to safeguard the remittances of women migrant workers. This should include the provision of information and assistance to allow women to easily access formal financial institutions to send money home and to encourage them to participate in savings schemes.²⁶⁵

²⁶² *Migrant Workers Convention* article 47; UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [41].

²⁶³ *Ibid* [40]–[41].

²⁶⁴ ILO, [CO97 Migration for Employment Convention \(Revised\), 1949 \(No 97\)](#).

²⁶⁵ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(g)]; [CEDAW](#) articles 3, 11; see also UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [29(d)].

The CEDAW Committee notes that women migrant workers may be unable to save or transmit savings safely through regular channels. This may be due to isolation (for domestic workers), high transaction costs, complex procedures and language barriers.²⁶⁶ To ensure the equal rights of women, the United Nations Development Fund for Women have advised states to establish safe, simple, accessible and affordable remittance channels, which should be made available to both women and men migrant workers.²⁶⁷

This is particularly important given that women's remittances are 'normally invested in family wellbeing, food, shelter, healthcare, education, small businesses and coping with crises.'²⁶⁸ Facilitating the effective transfer of remittances also centrally contributes to fulfilment of a range of basic social and economic rights of migrant workers and their families. In addition, the CEDAW Committee has found that women may face familial obligations to remit all their earnings to their families to a greater degree than men.²⁶⁹

²⁶⁶ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [16].

²⁶⁷ United Nations Development Fund for Women, [Policy and Programme Work on International Migration by the United Nations Development Fund for Women](#), 6.

²⁶⁸ United Nations General Assembly, [Report of the Secretary-General: Violence against women migrant workers](#), UN Doc A/68/178 (23 July 2013) [5].

²⁶⁹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [16]; United Nations General Assembly, [Report of the Secretary-General: Violence against women migrant workers](#), UN Doc A/68/178 (23 July 2013) [5].



7 | RETURN

Repatriation and Access to Remedies in the Country of Origin

States have international obligations to ensure that migrant workers can leave their country of employment and return home. States are also required to provide a broad range of reintegration services to workers upon their return, and to ensure workers can access remedies for harms that they encountered in their country of origin and abroad. In many cases, these obligations are integral to ensuring fulfilment of migrant workers' human rights and labour rights.

This section examines migrant workers' rights and access to remedies upon returning to their country of origin, their rights with respect to reintegration, and the role that diplomatic missions play in enabling migrant workers to fulfill those rights.

7.1 Destination country departure, repatriation and return

7.1.1 Obligations to ensure migrant workers can leave their country of employment and can return to their country of origin at any time



MIGRANT WORKERS CONVENTION

Article 8

(1) Migrant workers and members of their families shall be free to leave any state, including their state of origin. This right 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 recognised in the present part of the Convention.

(2) Migrant workers and members of their families shall have the right at any time to enter and remain in their state of origin.

Article 67(1)

States must cooperate to adopt measures for the orderly return of migrant workers and their families when they decide to return (or when their employment authorisation runs out or when they are in an irregular situation).

Every person, regardless of immigration status, has a right to leave any country. This right is enshrined in article 13(2) of the Universal Declaration of Human Rights and article 12(2) of the ICCPR.

Article 8 of the Migrant Workers Convention requires states parties to ensure that migrant workers are able to leave their country of employment and to return to their country of origin at any time. This provision applies to all migrant workers and members of their families,²⁷⁰ including those in an irregular migration status.²⁷¹

Under the Migrant Workers Convention, states are further obliged to adopt proactive measures to enable migrant workers to return home whenever they wish, regardless of whether they have completed their employment contract. Diplomatic missions play an important role in facilitating this process, particularly with respect to overcoming problems with identity and travel documents. These problems may include the withholding of passports by employers,²⁷² which makes return especially difficult for migrant workers fleeing an abusive or exploitative employer.

In order to fulfil migrant workers' rights to return home from their country of employment, diplomatic missions must provide temporary travel documents to migrant workers whose documents have been lost or withheld.²⁷³ The Committee on Migrant Workers recommends that diplomatic missions expedite the processing of such documents and return tickets in order to prevent migrant workers being trapped in a country of employment for lengthy periods – potentially in an irregular immigration status if they have fled their employer.²⁷⁴

²⁷⁰ [Migrant Workers Convention](#) article 1.

²⁷¹ It also applies without distinction, including on the basis of 'sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status': [Migrant Workers Convention](#) article 1(1).

²⁷² UN Committee on Migrant Workers: [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [12].

²⁷³ *Ibid* [62(c)].

²⁷⁴ *Ibid*.

Diplomatic missions must also inform all migrant workers who are in immigration detention of their right to opt for voluntary repatriation and provide assistance to enable this process if chosen.²⁷⁵ Diplomatic missions should also assist workers to overcome other obstacles to departure, such as the requirement in some Gulf States for a migrant to obtain employer consent in order to obtain an exit permit to leave the country, which presents particular challenges to workers in exploitative work relationships.

The Committee on Migrant Workers takes the position that overstaying a permit of stay, or crossing the border of a country in an unauthorised manner or without proper documentation (for instance when departing the country of employment), should not constitute a crime under domestic law.²⁷⁶ The Committee further considers that the criminalisation of such offences leads to ‘unnecessary detention’²⁷⁷, which is arguably contradictory to the facilitation of the ‘orderly return’ of migrant workers.

Should a migrant worker die in their country of employment, states must facilitate the repatriation of the body of the deceased or members of their families back to the country of origin.²⁷⁸

7.1.2 The rights of women to leave the country of employment



CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Article 15(4)

States shall grant men and women the same rights relating to the movement of persons and the freedom to choose their residence and domicile.

The CEDAW Committee has stated that countries of origin must ensure women who wish to return home are able to do so free of coercion and abuse.²⁷⁹ Diplomatic missions play an important role in facilitating the return of women migrant workers, particularly through the provision of accessible diplomatic and consular services.²⁸⁰ These services must respond to the unique vulnerabilities faced by women and ensure they provide remedial mechanisms to redress experiences of coercion and abuse. Furthermore, the facilitation of return is to be done on the basis of equality with men,²⁸¹ empowering women to be able to voluntarily leave the country of employment. Article 11(c) of CEDAW also requires states to guarantee every woman’s right to freely choose her profession and employment, which includes a right to voluntarily leave any position of employment.

²⁷⁵ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [34].

²⁷⁶ Ibid [24].

²⁷⁷ Ibid.

²⁷⁸ [Migrant Workers Convention](#) article 71.

²⁷⁹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(h)].

²⁸⁰ Ibid [24(j)].

²⁸¹ [CEDAW](#) article 3.

7.1.3 Family reunification



MIGRANT WORKERS CONVENTION

Article 44(1)

States must take appropriate measures to ensure the protection of the unity of the families of migrant workers, recognising that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.²⁸²

This provision applies only to workers in a regular situation.

The Committee on Migrant Workers recognises that migrant domestic workers' prolonged absence from their country of origin negatively affects family unity.²⁸³ For example, extended periods away can significantly impact on the social and psychological wellbeing of family members who remain at home, particularly children.²⁸⁴

To ensure the wellbeing and protection of the family unit at all stages of the migration process, migrant workers should have 'reasonable opportunities for family contact and family-related mobility'.²⁸⁵ Migrant workers should have the option of returning home to participate in essential family matters.

The Committee has recommended that states facilitate the resettlement and reintegration of migrant workers upon their return, including the facilitation of their reunification with children who remained in the country of origin.²⁸⁶

7.1.4 Obligations regarding the expulsion of migrant workers by the destination country



MIGRANT WORKERS CONVENTION

Article 22 (1)–(4)

Migrant workers and their family members may only be expelled from the state of employment if their case has been examined and decided individually by a competent state authority in accordance with law. The decision must be communicated to the person in a language they understand, in writing (upon request), including reasons for the decision unless they are related to national security concerns. The person must be informed of these rights before or at the time of the decision. He or she must have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless the decision is pronounced by a judicial authority or on national security grounds. While awaiting the review, the person must be able to seek a stay of the expulsion decision.

²⁸² The right of a family to be protected by the state is also affirmed in [ICCPR](#) article 23.

²⁸³ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [15].

²⁸⁴ Ibid.

²⁸⁵ Ibid [54].

²⁸⁶ UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [45]; [Migrant Workers Convention](#) article 44(1); UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [55].

Article 22(5)

If a decision of expulsion is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the state concerned.

Article 22(8)

Migrant workers and members of their families should not bear the costs of their expulsion, though the person concerned may be required to pay his or her own travel costs.

Article 23

Migrant workers and members of their families must be able to access protection and assistance of the consular or diplomatic authorities when their Convention rights are impaired. In case of expulsion, the expelling state must inform them of this right without delay and facilitate access to consular assistance.

Migrant workers in an irregular situation not of their own making (such as redundancy before the expiry of a contract or a failure of an employer to complete the necessary formalities) should not be responsible for the cost of expulsion.²⁸⁷ Migrant workers who are in this situation are particularly vulnerable to exploitation as they may lack the financial and physical means to return to their country of origin.

Article 69 of the Migrant Workers Convention prescribes that when a migrant worker is in an irregular situation in the territory of a state, that state must take appropriate measures to ensure that this situation does not persist.

Diplomatic missions can take measures to prevent exploitation and seek to fulfil migrant workers' rights under these circumstances. The Committee on Migrant Workers recommends that states parties should consider policies, including regularisation programs, to avoid or resolve situations where migrant workers may be vulnerable to falling into an irregular status.²⁸⁸ Additional measures that could be taken include:

- Addressing issues of exploitation and vulnerability through bilateral agreements;
- Regulating and enforcing responsibilities of private recruitment agencies in countries of origin and employment;²⁸⁹ and
- Providing necessary services to support migrant workers in this situation.

²⁸⁷ [Migrant Workers Convention](#) article 22(8).

²⁸⁸ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [52].

²⁸⁹ *Ibid* [31].

7.2 Provision of services in the country of origin

7.2.1 Reintegration and provision of services to returned migrant workers

Migrant workers may encounter difficulties in reintegrating into the labour market and society in their countries of origin upon return.²⁹⁰ The ILO has found that a significant proportion of returnees remain unemployed or underemployed and also face difficulties in readjusting to their social and cultural environments, both at a family and community level.²⁹¹



MIGRANT WORKERS CONVENTION

Article 67(2)

States parties shall co-operate as appropriate to promote adequate economic conditions for the resettlement of returning migrant workers. This involves facilitating their durable social and cultural reintegration in the state of origin.

This provision concerns migrant workers and members of their families in a regular situation.

Under ICESCR, CEDAW and other international instruments, states parties have obligations to fulfil the social, economic and cultural rights of those within their jurisdiction, including returned migrant workers and their families. (See section 4.1, ‘**Human rights of all migrant workers**’). Under article 67(2) of the Migrant Workers Convention, states also have particular obligations to take measures to promote the social, economic and cultural wellbeing of returned migrant workers who were in a regular status, and their families.

The ILO has determined that there is an ‘urgent need’ for states to promote and facilitate sustainable policies for the effective reintegration of migrant workers.²⁹² The ILO recommends that countries of origin enhance local employment services to provide employment opportunities that support a migrant worker’s economic return and reintegration.²⁹³ This should include facilitating job matching with local services and should be available to a migrant worker regardless of whether they are skilled or unskilled.²⁹⁴ Furthermore, this process should be coordinated through a simple, accessible and streamlined institutional structure.

The ILO also recommends that states create a registration system and database for returning workers.²⁹⁵ This should be used to document migrants’ overseas employment, return and skills development.²⁹⁶

²⁹⁰ Ibid [16]

²⁹¹ ILO Country Office for Sri Lanka and the Maldives, [Reintegration with Home Community: Perspectives of Returnee Migrant Workers in Sri Lanka](#) (ILO, July 2013) [59]

²⁹² ILO and UN Women, [Regional Workshop on Effective Social and Economic Reintegration of Women Migrant Workers](#) (19–21 August 2014, Kathmandu, Nepal).

²⁹³ Ibid Recommendation 4.2; UN Committee on Migrant Workers, [Concluding Observations: Tajikistan](#), UN Doc CMW/C/TJK/CO/1 (16 May 2012) [12]; UN Committee on Migrant Workers, [Concluding observations: The Philippines](#), UN Doc CMW/C/PHL/CO/2 (2 May 2014) [8].

²⁹⁴ ILO Country Office for Sri Lanka and the Maldives, [Reintegration with Home Community: Perspectives of Returnee Migrant Workers in Sri Lanka](#) (ILO, July 2013) 4.

²⁹⁵ ILO and UN Women, [Regional Workshop on Effective Social and Economic Reintegration of Women Migrant Workers](#) (19–21 August 2014, Kathmandu, Nepal) recommendation 4.3.

²⁹⁶ Ibid recommendation 4.6.

Diplomatic missions play a key role in promoting the reintegration process as they can provide mediation support between the migrant worker and relevant government agencies. This will improve a migrant worker's access and awareness of such services before they return and ensure that states adhere to their obligations to protect the social and economic rights of returning citizens.

7.2.2 Services for returning victims of forced or compulsory labour

The Committee on Migrant Workers recommends that states afford protection and assistance to all victims of human trafficking to assist in their reintegration.²⁹⁷ The Committee has held that this involves providing shelters, medical care, psychosocial support and other measures.²⁹⁸

7.2.3 Services for returning women

States have an obligation to take all appropriate measures to eliminate discrimination against women when they have returned to their country of origin. This is affirmed in article 13 of CEDAW which obliges states to eliminate discrimination in all areas of economic and social life. To adhere to these obligations, the ILO and UN Women have recommended states ensure reintegration services are gender responsive.²⁹⁹ This involves the creation and provision of alternative livelihood opportunities for women returnees in order to promote their reintegration.³⁰⁰

According to the CEDAW Committee, states parties should design and oversee the implementation of comprehensive socio-economic, psychological and legal services available to women.³⁰¹ These should be aimed at facilitating the reintegration of returned women migrant workers, and this obligation applies regardless of whether the woman migrant worker has travelled in a regular or irregular migration status. It is the responsibility of states to monitor these service providers to ensure that they do not take advantage of the vulnerable position of women returning from work abroad.³⁰² Complaint mechanisms should also be available to women to protect them against reprisals by recruiters, employers or former spouses.³⁰³

Women migrant workers should also be provided with assistance from the state when seeking redress for human rights contraventions.³⁰⁴ The ILO recommends that governments of countries of origin improve access to social security for returning women migrant workers.³⁰⁵ This is particularly important as 'generally women migrant workers have less access to social security than their male counterparts.'³⁰⁶

²⁹⁷ UN Committee on Migrant Workers, [Concluding observations: Uganda](#), UN Doc CMW/C/UGA/CO/R.1 (22 May 2015) [53(d)].

²⁹⁸ Ibid.

²⁹⁹ ILO and UN Women, [Regional Workshop on Effective Social and Economic Reintegration of Women Migrant Workers](#) (19–21 August 2014, Kathmandu, Nepal) recommendation 1.3.

³⁰⁰ UN Committee on the Elimination of Discrimination against Women, [Concluding Observations: Nepal](#), UN Doc CEDAW/C/NPL/CO/4-5 (29 July 2011) [34(f)]; [CEDAW](#) article 11.

³⁰¹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(i)].

³⁰² Ibid.

³⁰³ Ibid; [CEDAW](#) arts 2, 3.

³⁰⁴ UN Committee on the Elimination of Discrimination against Women, [Concluding Observations: Nepal](#), UN Doc CEDAW/C/NPL/CO/4-5 (29 July 2011) [34(e)]; [CEDAW](#) article 2(c)

³⁰⁵ ILO, [Preventing Discrimination Exploitation and Abuse of Women Migrant Workers](#) (Booklet 5: Back Home: Return and Reintegration), 2003, 28.

³⁰⁶ Ibid.

7.3 Access to justice

7.3.1 Migrant workers' access to an effective remedy



MIGRANT WORKERS CONVENTION

Article 83

Destination and origin states must ensure that any person whose Convention rights or freedoms are violated shall have his or her claim reviewed and decided by a competent authority provided for by the legal system of the state, have access to an effective remedy, and have any such remedy enforced by competent authorities.

Countries of origin are obligated under article 83 of the Migrant Workers Convention to ensure that migrant workers have access to effective remedies for breaches of their Convention rights that occur pre-departure, while abroad, and upon return.

The UN Special Rapporteur on the human rights of migrants recommends that states remove barriers to access to justice, ensuring that migrants can effectively – and not simply on paper – access a legal remedy for violations of their rights in the context of recruitment practices and labour migration.³⁰⁷ This includes making easily available all the services necessary for ensuring effective access to justice for all migrant workers, such as legal aid, interpretation and translation services, information about rights and available remedies, as well as humanitarian visas to return to destination countries to testify and otherwise pursue justice.³⁰⁸ Bilateral agreements between countries of origin and destination should address the provision of such services.³⁰⁹

This section addresses obligations on the country of origin to ensure that appropriate remedies are accessible to migrant workers and enforceable for harms at all stages of the migration process. This includes direct remedies against recruitment agencies and sub-agents, as well as insurance coverage and/or state-based remedies.

(See Chapter 5, '**Consular Protection Services**' for obligations to provide consular assistance in order to access redress mechanisms in a destination country).

³⁰⁷ [Report of the UN Special Rapporteur on the human rights of migrants](#), UN GAOR, 70th sess, Item 73(b), UN Doc A/70/310 (11 August 2015) 22.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

7.3.2 Migrant workers' access to remedies in destination country once worker has returned to their country of origin



MIGRANT WORKERS CONVENTION

Article 22(6)

A person who has been expelled shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

Article 22(9)

The rights that a migrant worker or a member of his or her family has acquired under the law of the state of employment, including the right to receive wages and other entitlements due to him or her, should not be affected by his or her expulsion.

As the Committee on Migrant Workers has observed, '[m]any migrants are unable to seek remedies for violations of their rights by employers because they are not entitled to stay in the country of employment once the employment relation has been terminated.'³¹⁰ It is often difficult (if not virtually impossible) for migrant workers to pursue legal claims in the country of employment after they have returned to their origin country.³¹¹

To address this challenge, article 22(6) of the Migrant Workers Convention provides that a worker's employment rights, including the right to receive wages and other entitlements owed to him or her, are not affected by an expulsion decision, and the worker maintains those rights after he or she has returned home. Furthermore, under article 22(9) the expelling state must give the worker a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

Diplomatic missions should support migrant workers' access to justice by facilitating access to compensatory remedies in the country of employment, even after the worker has returned to the country of origin. This includes providing legal assistance to migrant workers to pursue legal/administrative proceedings for violations of their rights.³¹² The Committee on Migrant Workers also recommends states conclude bilateral agreements to allow returning migrant workers to file complaints about abuse and claim unpaid wages in the country of employment.³¹³

With regards to workers' compensation, destination countries are obligated to ensure equal treatment of nationals and foreign workers and their dependents.³¹⁴ If a migrant worker seeks to make a workers' compensation claim and they reside in a different country (for example, if the migrant worker has returned to their country of origin), the ILO recommends 'facilities' should be 'afforded for taking proceedings in the competent courts of law in such territory without requiring the attendance of the person concerned.'³¹⁵

³¹⁰ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [17].

³¹¹ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [55].

³¹² UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [44].

³¹³ UN Committee on Migrant Workers, [General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families](#), UN Doc CMW/C/GC/2 (28 August 2013) [55].

³¹⁴ ILO, [CO19 Equality of Treatment \(Accident Compensation\) Convention, 1925 \(No 19\)](#) article 1; see also *Migrant Workers Convention* article 18(1), regarding right to equality before courts and tribunals.

³¹⁵ ILO, [RO25 Equality of Treatment \(Accident Compensation\) Recommendation, 1925 \(No 25\)](#) I(b).

Where a migrant worker has returned to their country of origin, the country of destination remains obligated to provide the worker with avenues to claim workers' compensation. This provides migrant workers with a means of redress for unpaid wages, mistreatment and accident compensation.

Diplomatic missions can provide crucial support to migrant workers making compensation claims from a country of origin. They can provide information and advice on the procedures for seeking redress before the migrant worker leaves the country of employment. They can also provide assistance in facilitating claims and monitoring their outcomes to ensure awarded compensation decisions are enforced.

The Committee on Migrant Workers recommends that countries of origin take adequate measures to provide legal assistance to migrant workers who are seeking to file such claims.³¹⁶ It also recommends states provide a systematic training programme for foreign service officials to enable them to deliver adequate support to migrant workers as prescribed by the Convention.³¹⁷

7.3.3 Migrant workers' access to remedies in their country of origin

Article 83 of the Migrant Workers Convention obligates countries of origin to provide access to justice for migrant workers whose Convention rights have been violated. To improve migrant workers' access to justice the Committee on Migrant Workers recommends that states establish a labour ombudsperson to deal with complaints associated with migration.³¹⁸

Additionally, the Committee reasserts the importance of thoroughly investigating cases of corruption involving officials who work with migrant workers, recommending that appropriate sanctions be imposed in such cases.³¹⁹

If there is a compensation matter or claim relating to the death of a migrant worker or family member, states must provide assistance.³²⁰ This should be done efficiently, in accordance with national laws and bilateral or multilateral agreements.³²¹

7.3.4 Access to justice for victims of forced labour

The Protocol of 2014 to the Forced Labour Convention 1930 requires states to take effective measures to prevent and eliminate the use of forced or compulsory labour.³²² States are to 'provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators.'³²³ Accompanying the Protocol, ILO recommendation 203 specifies that all victims of forced or compulsory labour should have access to justice.³²⁴

Prescribing supplementary measures to be taken by member states, the recommendation requires:

³¹⁶ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [44].

³¹⁷ Ibid.

³¹⁸ UN Committee on Migrant Workers, [General Comment No.1 on Migrant Domestic Workers](#), UN Doc CMW/C/GC/1 (23 February 2011) [49].

³¹⁹ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [28].

³²⁰ [Migrant Workers Convention](#) article 71(2).

³²¹ Ibid.

³²² ILO, [P029 Protocol of 2014 to the Forced Labour Convention, 1930](#).

³²³ Ibid article 1.

³²⁴ ILO, [R203: Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No 203\)](#) [12(a)].



ILO Recommendation R203

Article 12

- Victims of forced or compulsory labour must have effective access to courts, tribunals and other resolution mechanisms to pursue remedies such as compensation and damages.³²⁵ This includes the payment of unpaid wages, the right to statutory contributions for social security benefits and access to appropriate and existing compensations schemes.³²⁶
- States must provide information and advice regarding victim's legal rights and the services available. This should be in a language that a victim can understand and legal assistance should be available, preferably free of charge.³²⁷
- Victims of forced or compulsory labour should be able to pursue administrative, civil and criminal remedies regardless of their legal status or presence in a state. Such services must be available to both nationals and non-nationals and in order to enhance their access to justice the procedural requirements for seeking such remedies should be simplified where appropriate.³²⁸

7.3.5 Access to justice for women

The CEDAW Committee highlights that access to justice for women migrant workers is limited in some countries. This is often due to restrictions imposed on women and structural inequalities and barriers that may prevent their use of the legal system to obtain remedies. Such restrictions or barriers may be due to discriminatory labour standards, employment discrimination or gender-based violence.³²⁹ (See section 5.3.3, 'Access to legal services for women', which identifies the practical barriers that may operate to prevent women from accessing available remedies in destination countries.) There are also often a range of barriers preventing women from accessing remedies in their origin country, including the centralisation of justice mechanisms in the capital, far from where many women migrant workers live.



CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Article 2(c)

States parties are to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

The CEDAW Committee has found that effective legal protection from discrimination, required by article 2(c), requires states provide both a legally binding remedy for a violation of rights and a practically available one.³³⁰ This could include an order for compensation or the provision of services to assist in the rehabilitation of women who are victims of abuse and/or exploitation.

³²⁵ Ibid.

³²⁶ Ibid [12(b)-(c)].

³²⁷ Ibid [12(d)].

³²⁸ Ibid [12(e)].

³²⁹

³³⁰ UN Committee on the Elimination of Discrimination against Women, *Views: Communication No 28/2010*, 51st sess, UN Doc CEDAW/C/51/D/28/2010 (13 April 2012) ('*RKB v Turkey*') annex ('*Individual opinion of Committee member Ms Pramila Patten*') 15; UN Committee on the Elimination of Discrimination against Women, [Concluding Observations: Burundi](#), UN Doc CEDAW/C/BDI/CO/4 (1 February 2008) [16]; Report of the Committee on the Elimination of Discrimination against Women, A/60/38, 32nd session (2005) *Concluding Observations: Gabon* [229]–[30] and *Concluding Observations: Algeria* [145]–[146].

States parties must take active measures to prevent, prosecute and punish all migration-related human rights violations that occur within their jurisdiction, whether perpetrated by public authorities or private actors.³³¹ A key component of this obligation involves ensuring that women migrant workers have the ability to access remedies when their human rights are violated.³³²

To enhance women's access to justice, the CEDAW Committee recommends complaint mechanisms be established to protect women against reprisals by recruiters, employers or former spouses.³³³ Failure to provide such services may deter women from making complaints about infringements of their rights and abusive treatment. The Committee on Migrant Workers has also held that particular attention should be paid to ensuring access to justice for women migrants who have been victims of sexual assault.³³⁴

7.3.6 The role of diplomatic missions in ensuring access to justice for women

The CEDAW Committee reiterates the importance of providing services for women migrant workers upon return in order to enhance their rights and options for redress and facilitating their reintegration.³³⁵ Reintegration is hampered by the challenges women migrant workers can face when trying to claim their rights in courts or social assistance offices upon their return home. For those who have been trafficked, many report being humiliated through engaging in a process of seeking support and/or redress. These difficulties highlight the stigma that surrounds female migrant workers and misconceptions about the nature of their work in the country of employment, to which government services must be sensitive.³³⁶

Mechanisms should be developed to assist migrant women to obtain compensation from recruitment agencies and to hold local recruitment sub-agents accountable for harms caused at any stage of the migration process.³³⁷

States parties must take appropriate measures to eliminate discrimination against women in the field of employment.³³⁸ In giving effect to the rights that arise under article 11 of CEDAW, the CEDAW Committee has called upon states to ensure women's access to courts and tribunals, which can give effective remedies for the violations of these employment rights.³³⁹ Women must be treated equally at all stages of the procedure when pursuing a claim in a court or tribunal³⁴⁰ including access to legal aid and assistance.

³³¹ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [25(b)]. This comment was made in the context of transit countries but is capable of general application to all relevant countries.

³³² *Ibid* [26(c)].

³³³ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(i)]; [CEDAW](#) articles 2(c), 3.

³³⁴ UN Committee on Migrant Workers, [Concluding Observations: Mexico](#), UN Doc CMW/C/MEX/CO/2 (3 May 2011) [26].

³³⁵ UN Committee on the Elimination of Discrimination against Women, [General Recommendation No. 26 on women migrant workers](#), UN Doc CEDAW/C/2009/WP.1E. (5 December 2008) [24(i)].

³³⁶ UNFPA and IOM, [Female Migrants: Bridging the Gaps throughout the Life Cycle: Selected Papers of the UNFPA-IOM Expert Group Meeting](#) (May 2006) 107-108.

³³⁷ [Report of the UN Special Rapporteur on the human rights of migrants](#), UN GAOR, 70th sess., Item 73(b), UN Doc A/70/310 (11 August 2015) 22.

³³⁸ [CEDAW](#) article 11.

³³⁹ UN Committee on the Elimination of Discrimination against Women, [Concluding Observations: Bosnia-Herzegovina](#), UN Doc CEDAW/C/BIH/CO/3 (2 June 2006) [14]; UN Committee on the Elimination of Discrimination against Women, [Report of the Committee on the Elimination of Discrimination against Women – Concluding Observations: Switzerland](#), UN Doc A/58/38 (2003) [107].

³⁴⁰ [CEDAW](#) article 15(2).



8 | PREVENTION AND ACCOUNTABILITY FOR FORCED LABOUR AND HUMAN TRAFFICKING

While the most visible perpetrators of forced labour and trafficking of migrant workers may be employers or placement agencies abroad, migrants' vulnerability to these offences often begins at home. Common recruitment practices in countries of origin render migrant workers especially susceptible to exploitation abroad, and may directly give rise to situations of forced labour and trafficking. These practices include illegal recruitment fees that cause workers to take on significant high-interest debt, deception of workers by recruitment agencies regarding salary and other terms of their contract, recruiters' falsification of workers' documents without workers' knowledge, recruiters' retention of workers' identity documents, recruitment of workers into unsafe positions, and intimidation and abuse by recruitment agencies.

States have obligations to facilitate the safe migration of workers and to prevent exploitative processes in migrant worker recruitment and employment that can give rise to forced labour or trafficking. This includes the integration of law enforcement with long-term prevention and empowerment strategies.³⁴¹ States must ensure they prioritise protecting the rights of migrant workers in addition to punishment of perpetrators.³⁴² This reduces the risk of forced labour and trafficking being recast as primarily an immigration, crime or public order issue which may diminish the effectiveness of prevention and protection initiatives in the labour migration context.³⁴³

This section addresses the obligations of countries of origin concerning prevention, identification and responses to forced labour and human trafficking in the labour migration context. It provides an overview of the definitions and indicators of forced labour and trafficking and explains how the two overlap. It should be noted that human trafficking occurs in other contexts such as organ trafficking and sex trafficking, however these are beyond the scope of this Guide.

³⁴¹ Beate Andrees, 'Invest in Long-Term Prevention of Forced Labour to Truly End Slavery,' *The Guardian* (online), 2 April 2013 <<https://www.theguardian.com/global-development-professionals-network/2013/apr/03/slavery-forced-labour-law>>.

³⁴² Office of the High Commissioner of Human Rights, *Human Rights and Human Trafficking* (Fact Sheet No 36, United Nations, 2014) 7-8.

³⁴³ *Ibid.*

8.1 Forced Labour

8.1.1 Definition of Forced Labour

ILO Forced Labour Convention

Article 2

For the purposes of this Convention the term forced or compulsory labour shall mean 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.



Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means of coercion such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.³⁴⁴ Forced labour can occur in any type of employment and regardless of whether the worker has an established right to work in the country of employment.³⁴⁵

Lack of consent is the pathway into forced labour and occurs where, for example:

- Initial voluntary consent to employment becomes involuntary when a worker was subjected to fraud or deception in the recruitment process;³⁴⁶ or
- Workers voluntarily enter into employment arrangements but after a period of time they are unable to leave due to physical, legal, psychological or other forms of coercion by employers or third parties, including the withholding of passports and travel documents.³⁴⁷

Penalties that an employer or recruiter may impose or threaten to impose in order to keep someone in forced labour can include:³⁴⁸

- A loss of rights and privileges;
- Financial penalties – such as non-payment or loss of wages from the employer, and high-interest recruitment debts that must be satisfied through wages paid by the employer;
- Dismissal if workers refuse to comply with employer demands such as working overtime or under harmful conditions;
- Psychological penalties – threats to report workers to the police or immigration particularly where workers are in an irregular status;
- Physical violence and death threats to the victim or relatives; or
- Restrictions on freedom of movement such as confinement of domestic workers to the home.

³⁴⁴ ILO, [‘The meanings of Forced Labour’](#) (10 March 2014).

³⁴⁵ International Labour Office, [Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children](#) (ILO, 2012) 13[1.2.1].

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ International Labour Office, [A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work 2005](#) (ILO, 2005) 5–6.

The following are typical examples of common forms of forced labour in the labour migration context:

(1) Debt bondage

Migrant workers are compelled to undertake particular work as a result of a debt they owe to the employer, recruitment agency or a loan agent at home. Such debts can be imposed on a migrant worker without their consent and include costs for travel, accommodation, tools and living expenses.

Debt bondage can also include the payment of high recruitment fees which have to be repaid over a number of months or even years. During this period, migrant workers become highly dependent on their employer for day-to-day living provisions including food and housing and are 'bonded' to them for the period where the debt is being repaid.

Common example of debt bondage

A migrant worker takes a loan from a prospective employer to enable them to move overseas to commence work, promising their labour for repayment. Upon commencing their new job overseas, the migrant worker discovers that the terms of the loan are very restrictive and coercive, for example through very high interest rates. The migrant worker is then in a situation where they are under the control of the employer without any realistic way of repaying the loan other than by continuing to work for the employer without payment. A similar situation may occur in relation to high-interest debts owed to recruitment agencies or money-lenders at home.

(2) Withholding wages

Employers may systematically and deliberately withhold a migrant worker's wages to compel the worker to remain and deny them the opportunity to change employer.

Common example of withholding wages

Initially when a migrant worker commences work for their new employer abroad they are paid the promised wage. However after one month, the employer begins to withhold the worker's pay and says it will come at a later date. When the migrant worker confronts their employer, they threaten the migrant worker and tell her that if she leaves she will not receive the money owing to her.

(3) Deception and false promises

Recruiters or employers use deception and false promises to get a migrant worker to 'voluntarily' participate in employment.

Common example of deception and false promises

Before moving abroad, a recruitment agency tells the worker the salary, nature of work and standards of living they are going to receive overseas. When the migrant worker arrives, they find that they are going to be paid less or that the standards of living or working conditions are not what the recruitment agency or employer described. The migrant worker wants to return home but is prevented from returning for reasons such as the cost or their outstanding debt (see debt bondage above), the employer withholding their passport or the requirement in some countries that migrant workers cannot leave without employer permission.³⁴⁹

Forced labour and trafficking are particularly common in domestic work.³⁵⁰ The vulnerability of migrant domestic workers to forced labour is largely attributed to two main factors:³⁵¹

1. The hidden nature of their work – being housed and working in their employer’s home.
2. The lack of legal protection abroad for domestic workers.

The unique characteristics of forced labour in domestic employment include employers forbidding the migrant worker from leaving the home or restricting their ability to communicate with their family and the wider community.³⁵²

8.1.2 Identifying Forced Labour

Forced labour is often difficult to detect as a significant proportion of it takes place in the private economy in industries such as agriculture, manufacturing and, as noted above, domestic work. Migrant workers often do not realise that they are in a forced labour situation and this requires their home state to take a proactive approach.³⁵³ The ILO has identified a number of vulnerable groups that are particularly susceptible to forced labour. These include women, low-wage migrant workers, children and those belonging to a minority religious group.³⁵⁴ Migrant workers who are categorised as ‘self-employed’ are also especially vulnerable to forced labour. Recruiters and employers may oblige a migrant worker to adopt the status of ‘self-employed’ in order to disguise the employment relationship and to avoid the responsibility of paying social benefits or minimum wages.³⁵⁵

8.2 Human Trafficking

8.2.1 Defining Trafficking

Protocol to Prevent, Suppress and Punish Trafficking in Persons (‘UN Trafficking Protocol’)³⁵⁶

Article 3

Human trafficking is ‘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.’³⁵⁷



³⁵⁰ Beate Andrees, Alix Nasri and Peter Siniarski, [Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities](#) (ILO, 2015) 27.

³⁵¹ ILO, [Protection of Migrant Domestic Workers in Destination Countries: ILO Human Rights Training Manual for Consular Officials and Labour Attaches](#) (March 2006) 19.

³⁵² Anti-Slavery, [Domestic Work and Slavery](#).

³⁵³ International Trade Union Confederation, [Forced Labour](#) (Mini Action Guide, ILO, 2008) 27.

³⁵⁴ Special Action Programme to Combat Forced Labour, [Indicators of Forced Labour](#) (International Labour Office, October 2012); Programme for the Promotion of the Declaration of Fundamental Principles and Rights at Work, [Stopping forced labour and slavery-like practices: The ILO Strategy](#) (International Labour Office, September 2012).

³⁵⁵ International Labour Office, [Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children](#) (2012) 13–14.

³⁵⁶ United Nations Treaty Collection, [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) (20 October 2015).

³⁵⁷ [UN Trafficking Protocol](#) article 3. The Protocol does not define exploitation, but gives a non-exhaustive list of forms of exploitation: 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. The term exploitation has been separately defined as ‘using for one’s own profit or for selfish purposes’: Action for the Rights of Children, [Critical Issues: Abuse and Exploitation](#) (2009) 3.

The trafficking definition includes all persons. As the diagram below illustrates, trafficking has three core elements:³⁵⁸

1. **The act:** recruitment, transportation, transfer, harbouring or receipt of persons.
2. **The means:** includes threat of or use of force, deception, fraud, coercion, abuse of power or position of vulnerability.
3. **The purpose:** exploitation, including forced labour, slavery or practices similar to slavery, and servitude.

Diagram: The UN Trafficking Protocol Definition³⁵⁹

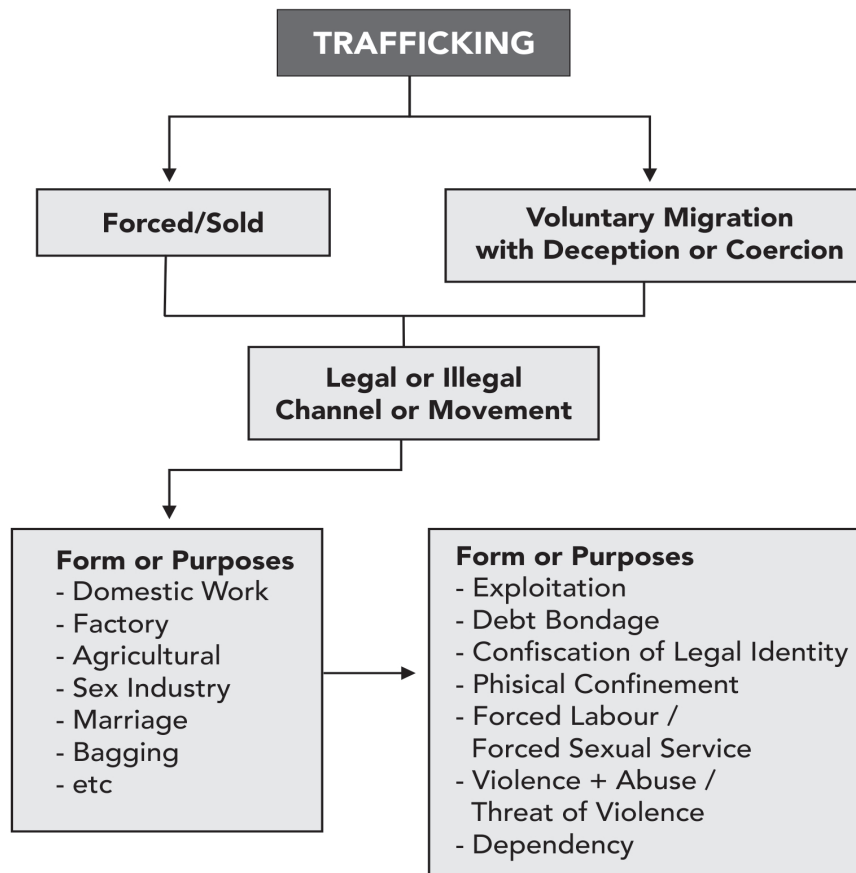
Trafficking in person is:	+ by means of	+ for the purpose of exploitation Exploitation =
<ul style="list-style-type: none"> • Recruitment or • transportation or • transfer or • harbouring or • receipt 	<ul style="list-style-type: none"> • the threat or • use of force or other forms of coercion, or • of abduction, or • of fraud, or • of deception, or • of the abuse of power or • of a position of vulnerability or • of the giving or receiving of or • payments or benefits to achieve the consent of a person having control over another person, 	<ul style="list-style-type: none"> • the exploitation of the prostitution of others or • other forms of sexual exploitation, or • forced labour or services, or • slavery or • practices similar to slavery or • servitude or • the removal of organs
<ul style="list-style-type: none"> • For trafficking in adults (i.e. 18 years+) you need one element from each column (column 1 plus column 2 plus column 3) • For children (for under 18s) you need only one element from column 1 and 3 to constitute trafficking; • The consent of a victim of trafficking in person to the intended exploitation (column 3) is irrelevant where any of the means column 2 have been used (i.e. where an aspect of column 2 is present, column 3 is irrelevant). 		

³⁵⁸ UN Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (United Nations, 2009) 2.

³⁵⁹ ILO, *Training on the Protection of Migrant Workers Abroad: Protecting Human Rights* (March 2006) 59.

The following diagram depicts the elements of trafficking and how it works in practice.

I



8.2.2 Identifying Trafficking

The most frequently detected types of exploitation are sexual exploitation and labour exploitation, specifically forced labour.³⁶¹ Forced labour occurs in a range of industries, including manufacturing, cleaning, construction, textile production and catering, as well as in domestic work.³⁶² High interest debt, deception as to salary rates, the recruiters' provision of false documents and other common recruitment practices in countries of origin can force migrant workers into forced labour situations by a variety of perpetrators, as illustrated in the table below.³⁶³ Workers' vulnerability to trafficking is worsened by the failure of existing labour laws to articulate the responsibility of recruitment agencies and employers to prevent labour exploitation.³⁶⁴

³⁶⁰ Ibid 60

³⁶¹ UN Office on Drugs and Crime, *Global Report on Trafficking in Persons* (United Nations, 2014) 33. Trafficking has additionally been reported for organ removal, commissions of crime, begging, pornography, forced marriages, benefit fraud, baby selling, illegal adoption, armed combat and rituals: at 34.

³⁶² Ibid 33.

³⁶³ Beate Andrees, Alix Nasri and Peter Siniarski, *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (ILO, 2015) 2. Indeed, '[a] disturbing number of reports have emerged about the exploitation and abuse of workers, especially, migrant workers, by unscrupulous labour recruiters and fraudulent and abusive employment agencies': at 2.

³⁶⁴ Ibid.

Examples: Trafficking and Exploitative Practices within the Indonesian Labour Export System³⁶⁵

Table 4.1 Trafficking and exploitative practices within the Indonesian labour export system

Stage	Identified Elements of Human Trafficking	Perpetrator
Recruitment	False information about jobs Falsification of official documents (ID card, passport, family permission) Illegal fees/debt bondage	Broker Recruiting agency Village chief Immigration officer
Pre-departure	Restrictions on freedom of movement Sexual harassment and assault Debt bondage	Recruiting agency Centre management Local authorities
In destination country	Work condition or type of employment violates contract and/or verbal agreement with the worker, including placement in brothels Assignment to new employer in the recipient country carried out without worker's consent, and in some cases, through coercion and physical abuse, including for prostitution Physical, psychological and sexual abuse Illegal confinement Withholding of identification and immigration documents Debt bondage Reduced or withheld wages	Employer Placement agency Embassy officer Immigration officer Police
Upon return	Deception, extortion, and sexual harassment upon arrival at airports or other transportation transit areas	Government officer Police Airport authorities Broker Mafia/thugs

Source: Solidaritas Perempuan (2002), reproduced in Misra (2003:54).

³⁶⁵ This table has been taken from Michelle Ford and Lenore Lyons, 'Counter-Trafficking and Migrant Labour Activism in Indonesia's Periphery' in Michelle Ford, Lenore Lyons and Willem van Schendel (eds), *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives* (Routledge, 2012) 75, 85.

8.2.3 Examples of Human Trafficking

Deception as to salary³⁶⁶

An Ethiopian woman migrated to Berlin to work as a cook under a contract promising 200 euros per month. Upon arrival, her employer did not comply with the contract, paying her only 400 euros for 1.5 years of work. The employer also took her passport. As a result, the woman was confined to the restaurant and her employer's home with threats of violence. An anti-trafficking NGO assisted the woman, resulting in the conviction of the employer for human trafficking. The woman was allowed to stay in Germany during court proceedings, and received permanent residence upon their conclusion.

Excessive placement fees and unlawful wage deductions³⁶⁷

Indonesian recruitment agencies and Hong Kong employers make mutually beneficial deals at the expense of the migrant worker, in order to get Indonesian workers placed as domestic workers abroad. High placement fees are not paid by the employer, but by the worker through unlawful deduction of their full salary during the first seven months of employment. These deductions often continue after the placement fees have been recouped.

There are a number of identification challenges for authorities and service providers who may also have preconceptions about how 'victims' should behave.³⁶⁸ Migrant workers may characterise themselves as being in a 'difficult situation', rather than a 'victim' of trafficking for a variety of reasons.³⁶⁹ And as much trafficking discussion focuses on sex trafficking, migrant workers may wish to avoid the unintentional stigmatisation and exclusion that attaches to the 'trafficking' label.³⁷⁰ Close attention must therefore be paid to the individual circumstances of each (potential) trafficking victim and their wishes as to how they would like to address the situation, recognising that some male and female victims do not want to be labelled as victims of trafficking.³⁷¹

Although methods for detecting trafficking and forced labour have generally improved in recent years,³⁷² many trafficked persons, especially for labour exploitation, 'remain unrecognised and are deported as "undocumented migrants"'.³⁷³ This may be due to the tendency of some governments and NGOs to narrow their anti-trafficking focus to sexual exploitation.³⁷⁴ Regardless of whether exploited migrant workers are considered to be in a situation of 'trafficking', 'forced labour' or 'bonded labour', or simply 'of an irregular status', authorities must ensure they are granted assistance,³⁷⁵ including access to remedies.

³⁶⁶ Global Alliance against Traffic in Women, *Beyond Borders: Exploring Links Between Trafficking and Labour* (2010) 9

³⁶⁷ Ibid 7.

³⁶⁸ Anti-Slavery International, *Human Traffic, Human Rights: Redefining Victim Protection* (2002) 33.

³⁶⁹ International Labour Office, *Human Trafficking and Forced Labour Exploitation* (2005) 39.

³⁷⁰ Global Alliance against Traffic in Women, *Beyond Borders: Exploring Links Between Trafficking and Migration* (2010) 7.

³⁷¹ International Labour Office, *Human Trafficking and Forced Labour Exploitation* (2005) 39.

³⁷² UN Office on Drugs and Crime, *Global Report on Trafficking in Persons* (United Nations, 2014).

³⁷³ International Labour Office, *Human Trafficking and Forced Labour Exploitation* (2005) 39.

³⁷⁴ Global Alliance against Traffic in Women, *Beyond Borders: Exploring Links Between Trafficking and Migration* (2010) 6.

³⁷⁵ Ibid.

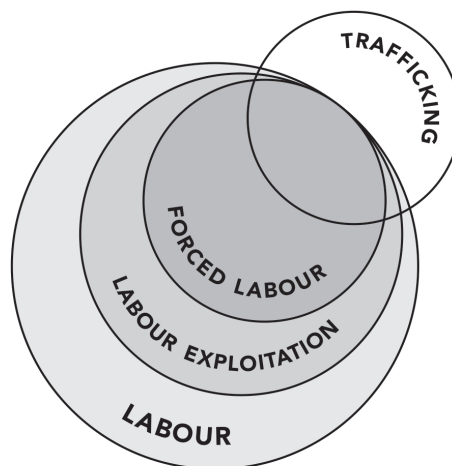
Example of Anti-Trafficking Negatively Affecting Workers

Upon finding out that some workers in a factory are victims of trafficking, a common response of authorities is to 'rescue' all workers by closing down the factory and deporting migrant workers.³⁷⁶ This 'solution' deprives migrant workers of the opportunity to claim unpaid wages.³⁷⁷

8.3 The Overlap between Human Trafficking and Forced Labour

Often described as a 'continuum', there is significant overlap between forced labour and human trafficking in the migrant worker context. The definition of human trafficking includes an action, such as recruitment or transportation of an individual, undertaken with the goal of exploitation.³⁷⁸ One form of exploitation is forced labour. The diagram below illustrates the relationships between trafficking, forced labour and labour migration more broadly.³⁷⁹ Migrant workers can be subject to all of these practices simultaneously.³⁸⁰

Diagram: The Links Between Trafficking and Labour³⁸¹



Both trafficking and forced labour are not only found in extreme cases of exploitation but can also occur when standard recruitment and employment practices become for example, non-consensual and coercive, as discussed in the previous section. These recruitment practices may create conditions that either result in forced labour or make workers more vulnerable to forced labour. Recruitment *for the purpose of* forced labour constitutes trafficking, if deception, coercion or other relevant means are involved. It is important to note that trafficking is distinct from smuggling, which is often consensual, does not necessarily involve exploitation on arrival at the destination country and is also transnational.³⁸²

³⁷⁶ Ibid 10.

³⁷⁷ Ibid.

³⁷⁸ International Trade Union Confederation, [Forced Labour](#) (Mini Action Guide, ILO, 2008) 17.

³⁷⁹ Global Alliance against Traffic in Women, [Beyond Borders: Exploring Links Between Trafficking and Labour](#) (2010) 6.

³⁸⁰ Ibid 5.

³⁸¹ This diagram has been adapted from ibid 6.

³⁸² International Trade Union Confederation, [Forced Labour](#) (Mini Action Guide, ILO, 2008) 19. Smuggling is defined as 'the facilitation of the illegal entry of a person into a state of which the person is not a national or permanent resident ... to obtain ... a financial or other material benefit': at 19.

8.4 Origin Countries' Obligations Regarding Forced Labour and Trafficking

8.4.1 Obligations of the State Regarding Forced Labour

Parties to the Forced Labour Convention 1930 (No. 29), are required to 'suppress the use of forced and compulsory labour in all its forms within the shortest possible period'.³⁸³ Under this Convention, states have an obligation to end practices that lead to forced labour, and to prevent and prosecute its occurrence.³⁸⁴ The Protocol of 2014 to the Forced Labour Convention reaffirms states parties obligations regarding prevention of forced labour, and adds further obligations regarding protection of potential victims of forced labour, including protecting migrant workers during recruitment, and ensuring remedies for victims such as compensation and rehabilitation irrespective of the victim's legal status in the relevant country.³⁸⁵ Although relatively few states have ratified the Protocol, member states of the ILO are nevertheless required to promote and realise the rights that the Protocol contains because it is part of the ILO's fundamental conventions.³⁸⁶

8.4.2 Obligations of the State Regarding Trafficking

The primary instrument on state obligations regarding trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which supplements the UN Convention against Transnational Organised Crime 2000, discussed above. The UN Trafficking Protocol requires states to prevent trafficking and punish perpetrators, and recommends that states take measures to assist and protect the human rights of trafficking victims.

Trafficking is also explicitly addressed within ILO instruments, including the 2014 Protocol to the Forced Labour Convention and the Worst Forms of Child Labour Convention 1999 (No 182) which includes 'trafficking of children' (article 3(a)) among the worst forms of child labour.

A number of human rights treaties also address trafficking, including:

- The Convention on the Elimination of All Forms of Discrimination against Women, which contains provisions regarding trafficking of women generally and exploitation of women prostitutes (article 6).
- The Convention on the Rights of the Child, which obligates states to prevent the trafficking of children (article 35), and addresses child labour (article 32) and sexual exploitation (article 34).
- The Migrant Workers Convention, which addresses illegal and clandestine movements of migrant workers in an irregular situation (article 68(1)).

³⁸³ ILO, [C029 Forced Labour Convention, 1930 \(No 29\)](#), article 1(1).

³⁸⁴ *Ibid* articles 23–25.

³⁸⁵ ILO, [P029 Protocol of 2014 to the Forced Labour Convention, 1930](#).

³⁸⁶ Beate Andrees, Alix Nasri and Peter Siniarski, [Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities](#) (ILO, 2015) 15.

The Committee on Migrant Workers has recommended states parties to the Migrant Workers Convention take certain steps to combat trafficking in persons and assist victims through a variety of means. These include:

- Ensuring *all* migrant workers held in migration detention centres are properly informed of their rights in an appropriate language, and receive information about protection measures available to trafficking victims;³⁸⁷ and
- Ensuring migrant domestic workers have access to regular channels for migration based on specific employer requests for workers.³⁸⁸

State Obligations Regarding Trafficking

The following table provides key examples of state obligations that are specific to forced labour and trafficking, and references other sections of this Guide that highlight relevant obligations regarding migrant workers in general.

Pre-departure Stage	
Obligation	Relevant Provisions
Migrant workers are to be provided with education to prevent them from becoming victims of forced labour. Similarly, employers should also be provided with education to prevent them becoming perpetrators.	Protocol to Forced Labour Convention 2014 articles 2(a) and 2(b)
States should use targeted awareness raising campaigns especially for those who are most at risk of becoming victims of forced labour and to inform them about how to protect themselves against fraudulent recruitment and employment practices, their rights and responsibilities at work and how to access assistance in case of need.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 4(b) (non-binding)
States should provide orientation and information for migrants, before departure and on arrival, so that they can be better prepared to work and live abroad and to raise awareness of trafficking for forced labour situations.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 4(g) (non-binding)

³⁸⁷ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, [General Comment No. 2](#), UN Doc CMW/C/GC/2 (28 August 2013) [34].

³⁸⁸ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, [General Comment No. 1](#) UN Doc CMW/C/GC/1 (23 February 2011) [51].

³⁸⁹ ILO Helpdesk for Business on International [Labour Standards, Q&As on Business and Forced Labour](#), ILO, 2015.

<p>For further information on state obligations to provide pre-departure information, see: 'Pre-departure education and training' at section 2.2.</p>	
Recruitment Stage	
Obligation	Relevant Provisions
States parties have an obligation to regulate, licence and monitor private recruitment agencies to assist the prevention and identification of trafficking and forced labour. ³⁸⁹	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 4(i) (non-binding)
States have an obligation to eliminate the charging of recruitment fees to workers.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 8(a) (non-binding)
States have an obligation to ensure that migrant workers receive transparent employment contracts which clearly explain the terms of employment and conditions of work.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 8(b) (non-binding)
States have an obligation to ensure migrant workers are able to access a complaints service where they can report private recruitment agencies.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 8(c) (non-binding)
People who are involved in illegal recruitment processes, including traffickers of women for forced labour, should be prosecuted.	UN Committee on the Elimination of Discrimination against Women, <i>Concluding Observations: Indonesia, 2012</i> paragraph 44(e)
States should coordinate with other states to prevent trafficking. In conjunction with other states, they could: <ul style="list-style-type: none"> a) coordinate efforts to regulate, license and monitor labour recruiters and employment agencies; and b) eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion. 	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 4(i) (non-binding)
States should provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they will address the risk of forced labour in their operations.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 4(j) (non-binding)

<i>For further information on state obligations in relation to recruitment, see: 'Private recruitment agencies' at section 3.1.</i>	
Access to Remedies	
Obligation	Relevant Provisions
States parties should ensure that all victims of forced labour, regardless of their presence or legal status, are able to access appropriate and effective remedies such as compensation.	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 4(1) Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203) paragraph 12 (non-binding)
States should ensure that all victims of forced labour have access to courts, tribunals and other resolution mechanisms to pursue remedies.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 12(a) (non-binding)
States should ensure that victims of forced labour can pursue compensation and damages from perpetrators including unpaid wages	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 12(b) (non-binding)
States should ensure that victims of forced labour have access to appropriate existing compensation schemes.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 12(c) (non-binding)
States should ensure that victims of forced labour have access to information and advice about their legal rights and are able to access legal assistance in their own language and preferably free of charge.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 12(d) (non-binding)
States should provide all victims of forced or compulsory labour with an opportunity to pursue appropriate administrative, civil and criminal remedies, irrespective of their legal status.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 12(e) (non-binding)
In appropriate cases, states parties should consider adopting measures to allow trafficking victims to remain in their territory (whether temporarily or permanently).	UN Trafficking Protocol, article 7(1).
<i>For further information on access to remedies, see: 'Access to justice for victims of forced labour', at section 7.3.4 'Access to justice for victims of forced labour', at section 7.3.4.</i>	

Maintaining Identity Documents	
Obligation	Relevant Provisions
<p>States parties have an obligation to ensure that identification documents of migrant workers are not confiscated or destroyed by recruitment agencies, employers or others.</p> <p>This practice increases the risk of becoming a victim of forced labour.</p>	Migrant Workers Convention, article 21.
<p>For further information on maintaining identity document see: 'The obligation to regulate and monitor recruitment agencies,' at 3.1.1.</p>	
Criminal Sanctions and Enforcement	
Obligation	Relevant Provisions
States parties should adopt a penal offence for forced labour which has adequate penalties that are strictly enforced.	Forced Labour Convention 1930 No. 29, article 25
States parties should adopt a penal offence for human trafficking. It should include those who act as accomplices and those who organise or direct other persons to commit the trafficking offence.	UN Trafficking Protocol, article 5
States should, in accordance with their legal systems, ensure that 'competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.'	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 4(2) Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 7 (non-binding)
States should strengthen enforcement of national laws, regulations and measures by giving labour inspection services and other relevant authorities, 'the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organisations concerned for the prevention and protection of victims of forced or compulsory labour.'	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 13(a) (non-binding)
States should strengthen enforcement of national laws, regulations and measures by 'providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations.'	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 13(b) (non-binding)
States must ensure that 'legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour' in applying article 25 of the Convention and paragraph 13(b) above.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 13(c) (non-binding)

<i>For further information on state obligations regarding criminalisation of child forced labour, see: 'Under-age (child) migrant workers in an irregular status', at section 4.3.3.</i>	
Victim Support	
Obligation	Relevant Provisions
States parties must identify, release, protect, as well as assist in the recovery and rehabilitation of victims.	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 3
States parties are to ensure that state authorities are entitled not to prosecute or impose penalties on victims of forced labour for their involvement in unlawful activities which they were compelled to undertake whilst in forced labour.	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 4(2) Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 7 (non-binding)
States should provide victims with information on relevant court and administrative proceedings. States parties should also assist victims in expressing their views and concerns in criminal proceedings.	UN Trafficking Protocol, article 6(2)
States must implement measures to provide for the physical, psychological and social recovery of victims. This may include appropriate housing, counselling, medical assistance and employment opportunities.	UN Trafficking Protocol, article 6(3)
States should make targeted efforts to identify and release victims of forced or compulsory labour.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 5(1) (non-binding)
States should provide protective measures to victims of forced or compulsory labour. 'These measures should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings.'	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 5(2) (non-binding)
States may take steps to encourage the cooperation of victims for the identification and punishment of perpetrators.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 5(3) (non-binding)
States should recognise the capacity of workers' organisations other relevant organisations to support and assist victims of forced or compulsory labour.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 6 (non-binding)

States shall take reasonable efforts to protect the safety of victims of forced labour and their families, including protection from intimidation and retaliation for exercising their legal rights.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 9(a) (non-binding)
States should make available adequate and appropriate accommodation for victims of forced labour and trafficking.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 9(b) (non-binding)
States should make health care services available to victims of forced labour including those subject to sexual violence.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 9(c) (non-binding)
States should ensure that material, social and economic assistance is provided to victims of forced labour including education and training programs.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 9(f) (non-binding)
States should ensure that victims of forced labour are able to have a period of recovery to allow them to make an informed decision about whether to participate in legal proceedings, regardless of their legal status.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 11(a) (non-binding)
States should ensure that temporary and permanent permits are given to victims of forced labour, regardless of their legal status.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 11(b) (non-binding)
States should facilitate safe and preferably voluntary repatriation for victims of forced labour, regardless of their legal status.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 11(c) (non-binding); UN Trafficking Protocol, article 8(1) (this is to be done without undue or unreasonable delay)
States should ensure that victims of forced labour have their privacy and identity protected.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 9(e) (non-binding)
States should strengthen efforts to identify victims. This could include developing indicators of forced or compulsory labour for use by 'labour inspectors, law enforcement services, social workers, immigration officers, public prosecutors, employers, employers' and workers' organisations, NGOs and other relevant actors'.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 13(d) (non-binding)
<i>For further information on state obligations regarding victim support, see: 'Legal assistance regarding criminal charges and rights in detention', at section 5.3.1. 'Services for returning victims of forced or compulsory labour', at section 7.2.2.</i>	
General State Obligations	
Obligation	Relevant Provisions
States parties must suppress all forms of forced labour.	Forced Labour Convention 1930 No. 29, article 1(1) Abolition of Forced Labour Convention 1957 No. 105, article 1
States parties should cooperate to ensure the prevention and elimination of forced labour.	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 5
States parties should take protective measures during the recruitment and placement process to prevent forced labour.	Protocol of 2014 to the Forced Labour Convention 1930 No. 29, article 2(d)

States parties shall establish policies, programmes and other measures to prevent and combat trafficking in persons and to protect victims of trafficking in persons from re-victimisation.	UN Trafficking Protocol, articles 9(1)(a) and 9(1)(b)
States parties shall strengthen border controls in order to prevent and detect human trafficking.	UN Trafficking Protocol, article 11(1)
States should consult with employers' and workers' organisations to establish or strengthen national policies and action plans to suppress forced labour through prevention, protection and access to remedies. A gender and child sensitive approach should be adopted.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 1(a) (non-binding)
States should consult with employers' and workers' organisations, labour inspectorates, the judiciary and other relevant organisations to ensure national policies and action plans are implemented, monitored and evaluated.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 1(b) (non-binding)
States 'should regularly collect, analyse and make available reliable, unbiased and detailed information and statistical data'. This data should be 'disaggregated by relevant characteristics such as sex, age and nationality, on the nature and extent of forced or compulsory labour which would allow an assessment of progress made.'	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 2(1) (non-binding)
In complying with their data collection responsibilities in paragraph 2(1), ILO Member States must respect migrant workers' right of privacy in relation to personal data.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 2(2) (non-binding)
States should take preventative measures to respect, promote and realise fundamental rights and principles at work.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 3(a) (non-binding)
States should take preventative measures that include programmes to fight discrimination that increases vulnerability to forced or compulsory labour.	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 3(c) (non-binding)

Appendix

States should strengthen international cooperation between and amongst themselves. States should also strengthen ties between 'relevant international and regional organisations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour.'	Forced Labour (Supplementary Measures) ILO Recommendation 2014 (R203), paragraph 14 (non-binding)
<p><i>For further information on general State obligations, see:</i></p> <p>'Rights in Country of Employment', at Chapter 4.</p> <p>'Training for Consular and Embassy Staff', at section 5.2.</p> <p>'Data Collection', at section 5.4.2.</p> <p>'Access to justice for victims of forced labour', at section 7.3.4.</p>	

Appendix A

Abbreviations for international instruments

Abbreviation	Instrument
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO Abolition of Forced Labour Convention	C105 - Abolition of Forced Labour Convention, 1957 (No. 105)
ILO Child Labour Convention	C182 Worst Forms of Child Labour Convention, 1999
ILO Collective Bargaining Convention	C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
ILO Discrimination Convention	C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
ILO Equal Remuneration Convention	C100 - Equal Remuneration Convention, 1951 (No. 100)
ILO Equal Remuneration Recommendation	R090 - Equal Remuneration Recommendation, 1951 (No. 90)
ILO Equality of Treatment (Accident Compensation) Convention	C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

ILO Equality of Treatment (Accident Compensation) Recommendation	R025 - Equality of Treatment (Accident Compensation) Recommendation, 1925 (No. 25)
ILO Freedom of Association Convention	C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
ILO Forced Labour Convention	C029 - Forced Labour Convention, 1930 (No. 29)
ILO Forced Labour Protocol	P029 - Protocol of 2014 to the Forced Labour Convention, 1930
ILO Forced Labour Recommendation	R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
ILO Labour Inspection Convention	R020 - Labour Inspection Recommendation, 1923 (No. 20)
ILO Migrant Workers Convention	C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
ILO Migration for Employment Convention	C097 - Migration for Employment Convention (Revised), 1949 (No. 97)
ILO Migration for Employment Recommendation	R086 - Migration for Employment Recommendation (Revised), 1949 (No. 86)
ILO Minimum Age Convention	C138 - Minimum Age Convention, 1973 (No. 138)
ILO Protection of Workers Health Recommendation	R097 - Protection of Workers' Health Recommendation, 1953 (No. 97)
ILO Social Security Rights Recommendation	R167 - Maintenance of Social Security Rights Recommendation, 1983 (No. 167)
Migrant Workers Convention	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
UDHR	Universal Declaration of Human Rights
UN Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Vienna Convention	Vienna Convention on Consular Relations 1963
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Appendix B

Ratifications of Key International Instruments. ³⁹⁰

Treaty	Ratifications
Convention on the Elimination of All Forms of Racial Discrimination 1965	Ratification Status
International Covenant on Economic, Social and Cultural Rights 1966	Ratification Status
International Covenant on Civil and Political Rights	Ratification Status
Optional Protocol to the International Covenant on Civil and Political Rights	Ratification Status
Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty	Ratification Status
Convention on the Elimination of All Forms of Discrimination against Women 1979	Ratification Status
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 2000	Ratification Status
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Ratification Status
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006	Ratification Status
Convention on the Rights of the Child, 1990	Ratification Status
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	Ratification Status
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	Ratification Status
International Convention on the Protection of All Migrant Workers and Members of their Families, 1990 in force 2003	Ratification Status
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (a) 2002	Ratification Status

³⁹⁰ For UN instruments status per country see <http://indicators.ohchr.org/>. For ILO instruments status per country see <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO>. Last updated October 2015.

UN Supplementary Convention on the Abolition of Slavery, and Slave Trade, and Institutions and Practices Similar to Slavery, adopted in 1956 entered into force 1957	Ratification Status
The United Nations Convention Against Transnational Organised Crime, 2000	Ratification Status
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Palermo Protocol') 2000	Ratification Status
ILO Convention 14: Weekly Rates (Industry) Convention, 1921	Ratification Status
ILO Convention 29: Concerning Forced Labour Convention, 1930 entered into force 1932	Ratification Status
Protocol of 2014 to the Forced Labour Convention, 1930	Ratification Status
ILO Convention 87: Freedom of Association and Protection of the Right to Organise 1948	Ratification Status
ILO Convention 98: Right to Organise and Collective Bargaining Convention, 1949	Ratification Status
ILO Convention 100: Equal Remuneration Convention, 1951	Ratification Status
ILO Convention 105: Abolition of Forced Labour, 1957	Ratification Status
ILO Convention 111: Discrimination (Employment and Occupation) Convention, 1958	Ratification Status
ILO Convention 131: Minimum Wage Fixing Convention, 1970	Ratification Status
ILO Convention 138: Minimum Age for Admission to Employment Convention, 1976	Ratification Status
ILO Convention 144: Tripartite Consultation (International Labour Standards) Convention, 1976	Ratification Status
ILO Convention 169: Indigenous and Tribal Peoples Convention, 1989	Ratification Status
ILO Convention 182: Concerning the Prohibition and Immediate Action for the Worst Forms of Child Labour Convention, 1999	Ratification Status
ILO Convention 97: Migration for Employment Convention (Revised), 1949	Ratification Status
ILO Convention 143: Migrant Workers (Supplementary Provisions) Convention, 1975	Ratification Status
ILO Convention 189: Domestic Workers Convention, 2011	Ratification Status
ILO Convention 181: Private Employment Agencies Convention, 1997	Ratification Status

Appendix C

Select Relevant Hyperlinks

UN Conventions

Convention on the Elimination of all Forms of Discrimination against Women:

<<http://www.un.org/womenwatch/daw/cedaw/>>.

Convention on the Rights of the Child:

<<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

International Covenant on Civil and Political Rights:

<<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

International Covenant on Economic, Social and Cultural Rights:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.

International Convention on the Elimination of All Forms of Racial Discrimination:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: <<http://www2.ohchr.org/english/bodies/cmw/cmw.htm>>.

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International Obligations
Regarding Migrant Workers

A GUIDE FOR COUNTRIES ORIGIN