

Protection of the Rights of Migrant Workers

Introduction

In 1972, the United Nations (UN) raised for the first time its concern about the rights of migrant workers. Following a report in 1976 by a UN Special Rapporteur, who recommended an international convention on migrant workers, the UN General Assembly set up in 1980 a working group, open to all UN Member States, to draw up such an international convention. Several international organs and organizations were invited to participate in the process. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)¹ was adopted by the UN General Assembly on 18 December 1990 and entered into force on 1 July 2003.² It is the most recent UN human rights treaty to come into force.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Convention in general

The Convention in article 2(1) defines a migrant worker as ‘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’³ and in article 1(2) it is specified that the ICRMW applies to the



‘entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence’. Following the Convention, migrant workers and members of their families⁴ are divided into two groups: those migrant workers and members of their families who are documented or are in a regular situation and those migrant workers and members of their families who are non-documented or are in an irregular situation (article 5). Migrant workers and members of their families are considered documented or in a regular situation if they have been authorized to enter, stay and engage in a remunerated activity in the State of employment according to the laws of that State and to any international agreements to which that State is a party. Non-documented migrant workers or migrant workers in an irregular situation are those who do not fulfil these conditions. The ICRMW foresees the protection of some human rights for all migrant workers irrespective of their

¹ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will herein be referred to as the Convention or as the ICRMW.

² If otherwise not referenced the information included in this fact sheet can be found in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or on the website of the Office of the United Nations High Commissioner for Human Rights www.ohchr.org.

³ Article 3 excludes the following persons from the Convention's application: ‘(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions; (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other cooperation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers; (c) Persons taking up residence in a State different from their State of origin as investors; (d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned; (e) Students and trainees; (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment’.

⁴ Members of the family are defined in article 4 which states that ‘the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned’.





status and thereafter additional rights to migrant workers who are documented or are in a regular situation.

In accordance with article 7, States parties undertake to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction, the rights provided for in the ICRMW without distinction of any kind such as to 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 (the right to non-discrimination). Other rights which are applicable to all migrant workers and members of their families include: the right to life (article 9); the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 10); freedom of expression (article 13)⁵; the right to property (article 15); the right to a fair trial (articles 18 and 19); the right to receive urgent medical care (article 28); and the right to not be treated less favourably than nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment (article 25)⁶. The Convention also includes provisions which take into account the migrant worker's particular situation such as: consular notification rights upon arrest (article 16); prohibition on confiscating or destroying identity, entry or work permit documents except by duly authorized public officials (article 21) (passports or equivalent documents may never be destroyed); and prohibition on collective expulsions (article 22). Those further rights, which are only applicable to migrant workers

and members of their families who are documented or in a regular situation, include: the right to free movement (article 39); the right to enjoy equality of treatment with nationals in relation to access to educational/vocational guidance and training institutions and services, housing, social and health services, and to participation in cultural life (articles 43 and 45); the right to transfer earnings and savings from the State of employment to any other State (article 47); and equality in treatment in regard to dismissal and the enjoyment of unemployment benefits (article 54). Moreover, States parties in accordance with article 70 are obliged to take measures which are 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.

The following two sections consider those obligations in the Convention which are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

Direct linkages to health

Migrant workers' enjoyment of their right to health may be compromised due to their particular status as migrant workers. Those rights within the ICRMW which are directly linked to the right to health and are applicable to all migrant workers and members of their families include: the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 10); the right to not be held in slavery, servitude or be required to perform forced or compulsory labour (article 11); the right to liberty and security of person, including the right to be protected against violence, physical injury, threats and intimidation by public officials or private individuals, groups or institutions (article 16); and the right to receive, on the basis of equality of

⁵ This right is subject to limitations, but only such as are provided by law and are necessary for respect of the rights or reputation of others, for the purpose of preventing any propaganda for war and for the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

⁶ These rights may not be derogated from in a private contract of employment (article 25[2]).

treatment with nationals, any medical care that is urgently required for the preservation of life and avoidance of irreparable harm to their health (article 28). In addition, for those migrant workers and members of their families who are documented or in a regular situation, States parties undertake to ensure the right to enjoy social and health services on equal terms with nationals (articles 43 and 45). States parties must also take measures which are not less favourable than those applied to nationals to ensure that working and living conditions are in keeping with the standards of fitness, safety, health and principles of human dignity (article 70).

Indirect linkages to health

The fulfilment of the right to health is also linked to the realization of other human rights of migrant workers and members of their families which include: the right to life (article 9); the freedom of expression, including the right to seek, receive and impart information and ideas (article 13); the right to not be subjected to arbitrary or unlawful interference with his/her privacy, family, home, correspondence or other communications (“the right to privacy”) (article 14); the right to be treated with humanity and with respect for the inherent dignity of the human person and his/her cultural identity when deprived of liberty (article 17); the right to social security (article 27); and the basic right of every child of a migrant worker to have access to education (article 30). Moreover, States parties undertake to ensure to migrant workers and members of their families who are documented or are in a regular situation the right to liberty of movement and freedom to choose residence (article 39), and the right to protection of family unity (article 44).

The Committee on Migrant Workers

The Committee in general

Article 72 of the ICRMW established the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (known as the Committee on Migrant Workers). It met for the first time in March 2004. The Committee examines reports submitted by States parties (article 73) on legislative, judicial, administrative and other measures they have taken to give effect to the Convention and any factors and difficulties affecting the implementation of the Convention.⁷ In examining States parties’ reports, the Committee works closely with the International Labour Organization (ILO). The outcome of the Committee’s examinations is known as the “concluding observations” where the Committee outlines its concerns and recommendations to the State party concerned.⁸ The Committee has so far not issued

any general comments; however, it is foreseen that it will publish its interpretation of the content of human rights provisions on thematic issues. The Committee may, moreover, consider individual communications concerning allegations of violations of rights enshrined in the ICRMW (article 77). In order for the mechanism to be accessible to a migrant worker, the State party under which jurisdiction the migrant worker is subject to must have made a declaration accepting the competence of the Committee to consider such communications. The Committee will consider the received communications in light of all the information made available to it by the parties and thereafter it will issue a response in the form of “views”. The Committee may also entertain inter-state claims (article 76) whereby a State party may bring to the Committee’s attention that another State party is not fulfilling its obligations under the Convention. This mechanism has so far not been employed within the other human rights treaties.

How can the Committee help in ensuring the right to health?

Having considered a State party’s report, the Committee may, among other things, highlight in its concluding observations a State party’s shortcomings in relation to implementing the right to health, but also for other directly or indirectly related rights. The Committee may also indicate how the State party should go about correcting these shortcomings. Future general comments



⁷ In these reports States parties are also to include the characteristics of migration flows in which the State party is involved.

⁸ The concluding observations are publicly available on the United Nations human rights treaty bodies’ database of the Office of the United Nations High Commissioner for Human Rights www.unhcr.ch/tbs/doc.nsf.

may include direct or indirect references to the right to health and States parties' obligations in relation to this right or other health-related rights. The process of individual communications may be employed if a migrant worker considers that his or her right to health has been violated.

Other mechanisms or instruments dealing with migrant workers and the right to health

There are several mechanisms and instruments which deal with migration, migrant workers and health. Only a few will be highlighted here. The mandate of the Special Rapporteur⁹ on the Human Rights of Migrants of the former UN Commission on Human Rights, now the UN Human Rights Council,¹⁰ consists inter alia of examining ways and means to overcome the obstacles that exist to the full and effective protection of migrants' human rights. For example, in his 2005 report the Special Rapporteur has highlighted the relationship between discrimination and access to health care and the obligation on States to guarantee the right to primary health care to migrants.¹¹ Also, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considers the right to health of migrants.¹² The other UN human rights committees have also dealt with migrants and the right to health, such as the Committee on the Elimination of Racial Discrimination, which in one of its general recommendations on non-citizens specifies that States parties to the International Convention on the Elimination of All Forms of Racial Discrimination are obliged to recognize the right of non-citizens to an adequate standard of physical and mental health and access to preventive, curative and palliative health services.¹³ The Committee to the International Covenant on Civil and Political Rights has stressed in one of its general comments that the rights enshrined in the Covenant, as a general rule, are to be guaranteed without discrimination between citizens and aliens.¹⁴ Furthermore, the International Covenant on Economic, Social



and Cultural Rights (ICESCR) protects in article 12 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and in article 2(2) the Covenant ensures the right to non-discrimination, hence its applicability to migrant workers and members of their families.¹⁵ See also article 7 of the ICESCR, which recognizes the right of everyone to safe and healthy working conditions. Also, the Arab Charter on Human Rights recognizes the right of migrant workers to receive the requisite protection (article 34). States parties to the Convention on the Rights of the Child undertake to respect and ensure all the rights in the Convention to each child within their jurisdiction without discrimination of any kind, which also includes the right to health of children.¹⁶ Moreover, two of the ILO's Conventions are of particular importance to migrant workers: the Migration for Employment Convention (Revised) (No. 97) of 1949 and the 1975 Migrant Workers (Supplementary Provisions) Convention (No. 143) which concerns migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers.

Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Convention are Egypt, Libyan Arab Jamahiriya, Morocco and the Syrian Arab Republic. The total number of States parties to the ICRMW is 34 (as of May 2006).¹⁷

⁹ It is important to remember that the Special Rapporteur is a figure completely separate to the ICRMW and other human rights treaties. He/she deals with human rights obligations for all States, independently of whether or not they are parties to specific human rights treaties.

¹⁰ The UN Commission on Human Rights has been replaced by the United Nations Human Rights Council as per United Nations General Assembly resolution A/RES/60/251 adopted on 15 March 2006. The Commission on Human Rights ceased to exist on 16 June 2006, see press release at: www.un.org/News/Press/docs/2006/ecosoc6192.doc.htm

¹¹ Specific Groups and Individuals, Migrant Workers. Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, UN Doc. E/CN.4/2006/73, 30 December 2005, paras. 65 and 67.

¹² See e.g. annual reports to the Commission on Human Rights, UN Doc. E/CN.4/2003/58 and E/CN.4/2004/49.

¹³ General Recommendation 30, Discrimination against Non-citizens, 1 October 2004, paras. 29 and 36, contained in UN Doc. HRI/GEN/1/Rev. 7/Add. 1, 4 May 2005.

¹⁴ General Comment 15, The position of Aliens under the Covenant, 27th Session, 11 April 1986.

¹⁵ See General Comment 14 of the Committee on Economic, Social and Cultural Rights, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000.

¹⁶ Article 25 of the Convention on the Rights of the Child.

¹⁷ Ratifications, signatures and reservations to international human rights instruments can be found at: www.ohchr.org/english/countries/ratification/index.htm