

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

THE OUTCOME OF A LONG PROCESS

(text from www.unesco.org/most/migration/convention/)

The Convention is the outcome of a long process at the international level. Human flows have always been a concern of the international community and of UN agencies. The 1951 Convention on Refugees constituted a crucial step in improving the fate of refugees and in establishing global management of this issue. The International Labour Organisation (ILO) has elaborated two Conventions that aim at protecting migrant workers: Convention 97 (1949) and Convention 143 (1975). In the seventies, it was recognized that migrants constitute a vulnerable group and that the promotion of human rights for this population required a special UN convention.

A working group was created in 1980, chaired by Mexico. It drew up the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted at the 69th plenary meeting of the General Assembly on December 18, 1990.

A Campaign for the Ratification of the Convention was launched in 1998, following several other initiatives promoting the ratification of the Convention. The Steering Committee of the Campaign was convened in Geneva by a NGO called **Migrants Rights International**, with the objective of establishing a broad base for a global campaign for the ratification and entry into force of the Convention. Currently, the Steering Committee of the Campaign is composed of 14 organisations: UN agencies, trade unions, NGOs and other international organisations.

Three United Nations entities belong to the Steering Committee of the Campaign:

- The United Nations High Commissioner for Human Rights (**UNHCHR**) has a Special Rapporteur dealing with the human rights of migrants;
- The International Labour Organization (**ILO**) deals with the promotion and protection of labour standards. As such, it is active in the protection of migrant workers' rights;
- The United Nations Educational, Scientific and Cultural Organization (**UNESCO**) is concerned with migrants' human rights and with the promotion of migrants' social integration, as well as with the protection of cultural diversity.

The International Organization for Migration (**IOM**) is also a member of the Steering Committee. IOM is a leading international organization in the field of migration. It is an intergovernmental agency outside the UN system with some 100 members. It seeks to advance the understanding of migration issues and to promote the orderly management of migration to the benefit of both migrants and societies.

RATIFICATIONS AND SIGNATORIES OF THE CONVENTION

(text from www.unesco.org/most/migration/convention/)

The Convention required a minimum of 20 ratifications before it could enter into force. When Guatemala and El Salvador ratified the Convention on 14 March 2003, this threshold was reached.

As of October 9th, 2008, the Convention has been ratified by 39 states and signed by 15 (for up to date information on ratifications and signatures, go to <http://www.december18.net/web/general/page.php?pageID=79&menuID=36&lang=EN#eleven>)

The ratification of the Convention by a state means that the legislative or law-making branch of its government has adopted the Convention and promised to incorporate it into its national laws. From 1 July 2003, these countries are therefore legally bound by the Convention.

So far, countries that have ratified the Convention are primarily countries of origin of migrants (such as Mexico, Morocco, Philippines). For these countries, the Convention is an important vehicle to protect their citizens living abroad. In the Philippines for example, the ratification of the Convention took place in a context characterized by several cases of Filipino overseas workers being mistreated abroad: such cases hurt the Filipino population and prompted the ratification of the Convention. However, these countries are also transit and destination countries, and the Convention delineates their responsibility to protect the rights of migrants on their territory.

Ratifications (as of 09/10/2008):

1. Albania, 05.06.07 - Europe
2. Algeria, 21.04.05 - Africa
3. Argentina, 23.02.07 - Latin America
4. Azerbaijan, 11.01.99 - Asia
5. Belize 14.11.01 - Latin America
6. Bolivia 12.10.00 - Latin America
7. Bosnia & Herzegovina 13.12.96 - Europe
8. Burkina Faso 26.11.03 - Africa
9. Cape Verde 16.09.97 - Africa
10. Chile 21.03.05 - Latin America
11. Colombia 24.05.95 - Latin America
12. Ecuador 05.02.02 - Latin America
13. Egypt 19.02.93 - Africa
14. El Salvador 14.03.03 - Latin America
15. Ghana 08.09.00 - Africa
16. Guatemala 14.03.03 - Latin America
17. Guinea 08.09.00 - Africa
18. Honduras 11.08.05 - Latin America
19. Jamaica 25.09.08 - Africa
20. Kyrgyzstan 29.09.03 - Asia
21. Lesotho 16.09.05 - Africa
22. Libyan Arab Jamahiriya 18.06.04 - Africa
23. Mali 05.06.03 - Africa
24. Mauritania 22.01.2007 - Africa
25. Mexico 08.03.99 - Latin America
26. Morocco 21.06.93 - Africa
27. Nicaragua 26.10.05 - Latin America
28. Paraguay 23.09.08 - Latin America
29. Philippines 05.07.95 - Asia
30. Senegal 09.06.99 - Africa
31. Seychelles 15.12.94 - Africa
32. Sri Lanka 16.03.96 - Asia

33. Syria 02.06.05 - Asia
34. Peru 14.09.05 - Latin America
35. Tajikistan 08.01.02 - Asia
36. Timor Leste 30.01.04 - Asia
37. Turkey 27.09.04 - Europe
38. Uganda 14.11.95 - Africa
39. Uruguay 15.02.01 - Latin America

In addition, fifteen countries have signed the Convention. This means that their government has expressed the intention of adhering to the Convention.

Signatures:

1. Bangladesh 07.10.98 - Asia
2. Benin 15/09/05 - Africa
3. Cambodia 27.09.04 - Asia
4. Comoros 22.09.00 - Africa
5. Congo 29.09.08 - Africa
6. Gabon 15.12.04 - Africa
7. Guinea-Bissau 12.09.00 - Africa
8. Guyana 15.09.05
9. Indonesia 22.09.04 - Asia
10. Liberia 22.09.04 - Africa
11. Montenegro 26.10.06 - Europe
12. Sao Tome and Principe 06.09.00 - Africa
13. Serbia 11.11.04 - Europe
14. Sierra Leone 15.09.00 - Africa
15. Togo 15.11.01 – Africa

THE NUMBER OF RATIFICATIONS REMAINS LOW
(text from www.unesco.org/most/migration/convention/)

The adoption of a Convention by the United Nations General Assembly entails in itself no binding commitment for individual states. States are committed once they have signed and ratified the Convention. This is why the impact of the Convention on Migrants' Rights remains limited, as the majority of states have not signed or ratified it yet.

To date, no Western migrant-receiving country has ratified the Convention, even though the majority of migrant workers (nearly 100 million out of a total of 175) live in Europe and North America. Other important receiving countries, such as India, Japan, Australia and the Gulf States, have not ratified the Convention either.

The countries that have ratified the Convention are home to some 4.5 million migrants, who will enjoy the protection offered by the Convention from 1st July 2003. However, they represent only 2.6 per cent of the world total migrant population, which is approximately 175 million.

MYTH AND REALITY ABOUT OBSTACLES TO RATIFICATION (text from www.unesco.org/most/migration/convention/)

First, some states maintain that their national legislation already protects migrant workers in a satisfactory way. This is notably the case with Western countries. They therefore argue that ratifying the Convention would be superfluous.

There are also practical reasons for this situation. They are the following:

- Some states have only a small number of migrants on their territory and do not therefore see the need to legislate on this topic.
- In other cases, the Convention is not well-known and is therefore not high on the political agenda.
- Some states lack the necessary infrastructure to apply the Convention and are therefore reluctant to ratify it.

Finally, there are broader social, economic and political reasons for the limited number of ratifications. These are the following:

- Some states do not wish international agreements to interfere with their migration policies, which they view as a strictly national issue.
- Economic instability and high unemployment prompt states to give preference to nationals over foreign workers.

States have ungrounded fears

Several states are reluctant towards the Convention because they consider that it gives too many rights to migrant workers. Several points can be mentioned:

- The Convention incorporates migrants' families, thus recommending the facilitation of family reunifications, at a time when the policy of receiving states seems, on the contrary, to be to diminish the number of migrants living in their country, and to prefer focusing on productive migrants – i.e. workers – rather than on their dependants.
- The Convention includes undocumented migrants and, while it does not encourage their presence, ensures that they have access to basic human rights. Rather than granting rights to undocumented migrants, present policies tend to expel them.
- Several states are afraid that granting more rights to migrants would make their country more attractive for irregular migrants. Not ratifying the Convention can therefore be considered as part of their strategy to discourage potential migrants.
- By signing and ratifying the Convention, states would be subject to an examination of the way they implement it. This could lead to embarrassing situations in which their shortcomings in terms of human rights would be highlighted at the international level.

These fears are ungrounded, as the Convention is not an instrument for more liberal immigration policies. It does not propose any new set of rights that would be specific to migrants. It only ensures that human rights are properly applied to migrant workers. States that already respect human rights and that have ratified other human rights instruments therefore have no reason to resist ratifying the Convention.

Positive signs

In 2002, both the European Parliament and the General Assembly of the Organisation of American States supported the ratification of the Convention. In January 2003, Brazilian President Lula da Silva has reaffirmed his country's commitment to human rights instruments, including the Convention on Migrant Workers. Italy has incorporated many provisions from the

Convention in its 1998 Immigration Law. Finally, eleven EU countries have ratified at least one of the two ILO Conventions, thereby securing some degree of protection to migrant workers on their territory and indicating their concern about migrant workers' human rights.

WHY IS THE INTERNATIONAL CONVENTION SIGNIFICANT?

(text from http://www.migrantsrights.org/about_campaign_engl.htm)

The importance of this Convention may be highlighted by these six points:

1. Migrant workers are viewed as more than laborers or economic entities. They are social entities with families and accordingly have rights, including that of family reunification.
2. It recognizes that migrant workers and members of their families, being non-nationals residing in states of employment or in transit, are unprotected. Their rights are often not addressed by the national legislation of receiving states or by their own states of origin. Therefore, it is the responsibility of the international community, through the UN, to provide measures of protection.
3. It provides, for the first time, an international definition of migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families. *These standards would serve to uphold basic human rights of other vulnerable migrants as well as migrant workers.*
4. Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognized for documented migrant workers and members of their families, notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.
5. The International Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families, including an end to their illegal or clandestine movements and to irregular or undocumented situations.
6. It attempts to establish minimum standards of protection for migrant workers and members of their families that are universally acknowledged. It serves as a tool with which to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards.

WHY IS A GLOBAL CAMPAIGN FOR RATIFICATION NECESSARY?

(text from http://www.migrantsrights.org/about_campaign_engl.htm)

The decision of the UN to draft and adopt this Convention was a strong statement of international consensus concerning the need for greater protection of the rights of migrants. Now, that decision must be implemented through national ratification and legislation.

Governments need to be convinced that ratification of the Convention is necessary. This will be achieved only by building awareness about the Convention with government officials, diplomats, politicians, NGOs and the public-at-large, nationally and internationally.

How is the global campaign organized and carried out?

The campaign's main purpose is to promote the ratification of, or accession to, the International Convention by a large number of States, and for the incorporation of its standards in national laws and practices. A formal campaign steering committee generates basic campaign strategies and materials, but the success of the campaign is grounded in its purpose being adopted and

promoted by hundreds of organizations and people who may or may not be formally affiliated to the campaign.

Campaigning for ratification requires political and awareness-building elements directed towards building endorsement of the Convention from a broad cross-section of society, including public officials, political parties, trade unions, religious groups, women's organizations and so on.

What to do?

- Join with others to form a national ratification committee or coalition to implement a national campaign. Involve the widest possible alliance of concerned national organizations and grassroots groups: human rights, church, trade union, migrant, civil rights, women, refugee, others.
- Design a national ratification strategy including public education, print-radio-television media, building support in governmental agencies, lobbying of politicians and governments.
- Identify, cultivate contacts and advocate with groups and individuals, including political parties, politicians and government employees.
- Pursue discussions with political leaders and governmental officials to promote political support for the Convention.
- Develop advocacy contacts with congressional/parliamentary delegates and staff, and identify experienced "lobbyists" and/or techniques to help draft, introduce, promote and pass legislation.
- Conduct seminars and other training programs for national and local non-governmental organizations about awareness building, implementation and monitoring of the Convention.
- Raise funds for national campaigning, and for international and regional networking.
- Create a presence of migrant issues in national media by cultivating contacts with reporters and editors, providing leads and ideas for stories, offering background briefings and materials, etc.

THE COMMITTEE ON MIGRANT WORKERS: MONITORING THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (text from www2.ohchr.org/english/bodies/CMW/index.htm)

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It is the newest treaty body which held its first session in March 2004.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of "concluding observations".

The Committee will also, under certain circumstance, be able to consider individual complaints or communications from individuals claiming that their rights under the Convention have been

violated once 10 States parties have accepted this procedure in accordance with article 77 of the Convention.

The Committee meets in Geneva and normally holds one session per year. The Committee will also publish its interpretation of the content of human rights provisions, known as general comments on thematic issues.

THE INTERNATIONAL PLATFORM ON THE MIGRANT WORKERS CONVENTION (IPMWC)
(text from www.december18.net/web/general/page.php?pageID=530&menuID=36&lang=EN)

The International Platform on the Migrant Workers Convention (IPMWC) was launched in Geneva on 19th April 2005. It is a coalition of non-governmental organisations that have activities in relation with the UN Committee on Migrant Workers (CMW). The Platform was created to facilitate and strengthen the participation of these NGO members in the sessions of the Committee, and especially to facilitate the participation of local and national NGOs that would normally have difficulties to take part in the activities of UN human rights mechanisms. The Platform is serviced by a Secretariat. As an extension to its main purpose, the IPMWC is also mandated to monitor the activities of and to engage with the six other treaty bodies of the UN and the relevant extra-conventional mechanisms created by the UN Commission on Human Rights, i.e. the special procedures and the working groups.

The aim of the IPMWC is to facilitate the promotion, implementation and monitoring of the UN Migrant Workers' Convention. This is achieved through:

- Following up the work of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee) by maintaining a close contact with the Committee Secretariat and the Committee members, without prejudice to their independence.
- Following, from a migrants' rights perspective, the work of the six other UN human rights treaty bodies, primarily in close cooperation with other NGO groupings monitoring these treaty bodies.
- Contributing to raising awareness about the existence, activities and recommendations of the Committee, including with UN-accredited media representatives in Geneva.
- Facilitating the flow of information on migrants' rights between the treaty bodies and relevant NGOs, migrants rights groups and other interested organisations.
- Facilitating the flow of information on migrants' rights within the NGO community.
- Encouraging existing national migrants' rights coalitions to work on the preparation of NGO submissions.
- Supporting national coalitions with the preparation of their submissions and increasing their capacity to do so.
- Promoting the benefits of national coalitions where such a coalition does not yet exist and encouraging NGOs to form a coalition.

Structure of the IPMWC: The Assembly of the IPMWC is composed of all members. They meet once a year. The IPMWC Committee is the active body of the Platform. It is composed of a President, a Vice-President and other members. The IPMWC also has a Secretariat that takes care of administrative aspects of the IPMWC. Since its launch in 2005, December 18 has coordinated the IPWMC, both acting as Secretariat and leading the activities of the IPMWC.

RELEVANT WEBSITES

www.migrantsrights.org/

www.december18.net/

www.unesco.org/most/migration/convention/