



United Nations Convention on Migrants' Rights

Entered into force on 1 July 2003

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United Nations Convention on Migrants' Rights

On 1 July 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force, after the threshold of 20 ratifying States was reached in March 2003.

Today, one human being in 35 is an international migrant. The number of people who have settled down in a country other than their own is estimated at 175 million worldwide. This represents 3 per cent of the world population, and is comparable to the population of Brazil. Nearly all countries are concerned by international migration, whether as sending, transit, or receiving countries, or as a combination of those. International migration has become an intrinsic feature of globalization.

The Convention constitutes a comprehensive international treaty regarding the protection of migrant workers' rights.

It emphasizes the connection between migration and human rights, which is increasingly becoming a crucial policy topic worldwide.

"It is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of millions of people and affects countries of origin, transit and destination. We need to understand better the causes of international flows of people and their complex interrelationship with development".

UN Secretary-General Kofi Annan [from his report on strengthening the Organization, 09/11/2002].

The Convention aims at protecting migrant workers; its existence sets a moral standard and serves as a guide and stimulus for the promotion of migrant rights in each country.

The following countries have ratified the Convention so far:

Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda, Uruguay.



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Migrants often do the work that nationals are unwilling to do.

A PRIORITY:

THE HUMAN RIGHTS OF MIGRANTS

The major objective of the Convention is to foster respect for migrants' human rights. Migrants are not only workers, they are also human beings.

*"Wir riefen Arbeitskräfte und es kamen Menschen".
("We asked for manpower, and we got human beings".)*

Swiss writer Max Frisch on labour migration to Europe.

The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals.

This implies notably:

- Preventing inhumane living and working conditions, physical and sexual abuse and degrading treatment (articles 10-11, 25, 54);
- Guaranteeing migrants' rights to freedom of thought, expression and religion (articles 12-13);
- Guaranteeing migrants' access to information on their rights (articles 33, 37);
- Ensuring their right to legal equality, which implies that migrant workers are subject to correct procedures, have access to interpreting services and are not sentenced to disproportionate penalties such as expulsion (articles 16-20, 22);
- Guaranteeing migrants' equal access to educational and social services (articles 27-28, 30, 43-45, 54);
- Ensuring that migrants have the right to participate in trade unions (articles 26, 40).

Migrants should also have the right to remain connected to their country of origin, says the Convention.

This implies:

- Ensuring that migrants can return to their country of origin if they wish to and that they are allowed to pay occasional visits and are encouraged to maintain cultural links (articles 8, 31, 38);
- Guaranteeing migrants' political participation in the country of origin (articles 41-42);
- Ensuring migrants' rights to transfer their earnings to their home country (articles 32, 46-48).

In a regular or irregular situation, all migrants are entitled to a minimum degree of protection.

The Convention innovates because it relies on the fundamental notion that all migrants should have access to a minimum degree of protection.

The Convention recognizes that legal migrants have the legitimacy to claim more rights than undocumented migrants, but it stresses that undocumented migrants must see their fundamental human rights respected, like all human beings.

In the meantime, the Convention proposes that actions be taken to eradicate clandestine movements, notably through the fight against misleading information inciting people to migrate irregularly and through sanctions against smugglers and employers of undocumented migrants.

THE OUTCOME OF A LONG PROCESS

The Convention is the outcome of a long process at 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 Organization (ILO) has elaborated two Conventions that aim at protecting migrant workers: Convention 97 (1949) and Convention 143 (1975). In the 1970s, 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 session of the General Assembly on 18 December 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 an 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 organizations: UN agencies, trade unions, NGOs and other international organizations. 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.

THIRTEEN YEARS OF INTERNATIONAL MOBILIZATION

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.

The twenty-two States that have ratified the Convention are listed below with the year of their ratification:

1993	Egypt, Morocco
1994	Seychelles
1995	Colombia, Philippines, Uganda
1996	Bosnia & Herzegovina, Sri Lanka
1997	Cape Verde
1999	Azerbaijan, Mexico, Senegal
2000	Bolivia, Ghana, Guinea
2001	Belize, Uruguay
2002	Ecuador, Tajikistan
2003	El Salvador, Guatemala, Mali (acceded)

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.

Since 1 July 2003, these countries are therefore legally bound by the Convention.

Moreover, the application of the Convention will be monitored by a panel composed of ten experts (to be known as the *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*). These experts will be recognized as impartial authorities in the field covered by the Convention and will be elected by the States that have ratified the Convention (article 72).

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

These are: Chile (1993), Bangladesh (1998), Turkey (1999), Comoros, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone (2000), Burkina Faso and Togo (2001).

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.

■ The number of ratifications remains low.

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.

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 can enjoy the protection offered by the Convention since 1 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

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 Organization of American States supported the ratification of the Convention. In January 2003, Brazilian President Lula da Silva 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.



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The Convention encourages all migrants to be in a regular situation with the authorities.

Facts about international migration today

The number of migrants in the world has more than doubled in one generation to reach 175 million people.

WHY DO MIGRANTS MOVE?

Many migrants move for economic reasons. Many are in search of better socio-economic perspectives and seek to work abroad. Others face extreme economic vulnerability in their home country and see no choice but migrating to survive. Some work legally while others have no work permit and are employed in the shadow economy.

Migrants move not only for themselves but also for their families: they send money back home, thereby enabling their relatives to live better lives. Migrant-sending countries are also interested in these remittances, which play a key role in their economy. In Morocco, for example, the amount of money sent via remittances represents 66 per cent of total financial inflows in the country and nearly 10 per cent of the country's GDP.

Other migrants move because of political circumstances. They flee war, civil strife, ethnic conflict, violations of human rights or other circumstances. Some are recognized as refugees straight away, often in neighbouring countries. Others become asylum-seekers. Asylum-seekers and refugees are not always entitled to work, but many work illegally.

The distinction between migrant workers and refugees is not always clear.

Asylum-seekers may be "economic refugees" because they flee economic precariousness rather than political circumstances. Migrants are sometimes incited to present themselves as asylum-seekers because they have no other possibility of legally entering a country. On the other hand, other migrants are in refugee-like situations but prefer to cross borders as migrant workers to avoid suspicion. The Convention only applies to migrant workers and not to refugees, whose situation is handled by the 1951 Geneva Convention relating to the Status of Refugees. However, the complexity of contemporary migratory flows challenges this distinction.

Receiving countries may have reasons to welcome migrants as well. Their presence and labour are needed because of shortages in the labour force and

of native workers' reluctance to perform specific jobs: this particularly concerns the so-called "3D jobs" (dirty, demanding and dangerous), such as those in the building sector or in domestic services, which are performed by migrants throughout the world. Most industrialized countries are therefore economically dependent on migrants. In countries such as Switzerland and Australia, migrants represent nearly 25 per cent of the labour force, and this percentage climbs to 74 per cent for the United Arab Emirates.

Migrants are therefore **pushed** to leave their country and **pulled** towards countries that need them. Because of the combination of both push and pull factors, migration is likely to continue, despite the growing restrictions put on human mobility.

WHERE DO MIGRANTS MOVE?

Migration is global and migrants move from anywhere in the world to almost anywhere else.

The largest countries of origin in the last decades have been countries such as Mexico, the Philippines and Bangladesh. The largest receiving countries have been Western countries (in North America, Australia and Western Europe) and other countries (such as the Gulf States or Japan). Transition and less developed countries (such as Russia, India or Côte d'Ivoire) also receive many migrants. Some States are both sending and receiving countries: for example, many Mexicans live abroad while Mexico is a host country to migrants coming from Central America.

Migrants do not always move from the developing world to developed countries. Fifty-five per cent of migrants live in North America and Western Europe and the remaining 45 per cent in the rest of the world. The same applies to refugees: less than a third of refugees worldwide live in North America or Europe; 70 per cent of them live in less developed countries.

International migration is thus not only a South-North, but also a South-South process. It is a multi-directional phenomenon in which many countries are both emigration and immigration countries at the same time.

WHY ARE MIGRANTS VULNERABLE?

Migrants all share a common characteristic: they live and work in a country of which they are not citizens. They therefore face the challenge of adapting to a society that is not their own and that may reject them. Moreover, as non-citizens, they usually have fewer rights than the native population. They suffer directly from the widespread idea that migrants are not entitled to the full protection of human rights laws: this is a fundamentally misguided idea from a human rights perspective but it contributes to migrants' difficult access to social protection and welfare.

Moreover, migrants do not always enjoy the protection provided by specific institutions or legal provisions. For example, workers' rights are defended by unions, but these do not always include migrant workers in their activities. Similarly, women and children have been recognized as vulnerable groups and have benefited from several forms of legal protection, including UN Conventions such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Both of these Conventions have been more widely ratified; this is not the case for the Convention on Migrants.

Migrants are therefore a highly vulnerable group. They often suffer from several forms of exploitation and from serious abuses of human rights and dignity.

Being in one way or another perceived as "different", they often encounter hostility: they are sometimes used as scapegoats and may face racism and xenophobic violence. The Convention constitutes a response to this vulnerability.

SOME FIGURES

Migrant population by region and in the world (2000)

Region	Number of migrants (thousands)	Percent of total number of migrants
Africa	16.277	9,31 %
Asia	49.781	28,48 %
Europe	56.100	32,10 %
Latin America / Caribbean	5.944	3,40 %
North America	40.844	23,37 %
Oceania	5.835	3,34 %
Total World	174.781	100 %

Source: International Migration Report 2002, United Nations (Department of Economic and Social Affairs, Population Division)

The 10 countries with the largest migrant populations (2000)

Country	Number of migrants (thousands)	Percent of total population
United States of America	34.988	12,4 %
Russian Federation	13.259	9,1 %
Germany	7.349	9,0 %
Ukraine	6.947	14,0 %
France	6.277	10,6 %
India	6.271	0,6 %
Canada	5.826	18,9 %
Saudi Arabia	5.255	25,8 %
Australia	4.705	24,6 %

Source: International Migration Report 2002, United Nations (Department of Economic and Social Affairs, Population Division)

The 10 countries with the highest % of migrants (2000)

Country	Percent of total population	Number of migrants (thousands)
United Arab Emirates	73,8 %	1.922
Kuwait	57,9 %	1.108
Jordan	39,6 %	1.945
Israel	37,4 %	2.256
Singapore	33,6 %	1.352
Oman	26,9 %	682
Estonia	26,2 %	365
Saudi Arabia	25,8 %	5.255
Latvia	25,3 %	613
Switzerland	25,1 %	1.801

Source: International Migration Report 2002, United Nations (Department of Economic and Social Affairs, Population Division)

Remittances: Top 10 recipient countries (2001)

Country	Billions US \$
India	10
Mexico	9,9
Philippines	6,4
Morocco	3,3
Egypt	2,9
Turkey	2,8
Lebanon	2,3
Bangladesh	2,1
Jordan	2
Dominican Republic	2

Source: World Bank, Global Development Finance 2003

Refugees by region and in the world (2002)

Region	Number of refugees (thousands)	Percent of total number of refugees
Africa	4.173	21,09 %
Asia	8.821	44,59 %
Europe	4.855	24,54 %
Latin America / Caribbean	765	3,87 %
North America	1.087	5,49 %
Oceania	81	0,41 %
Total World	19.782	100,00 %

Source: UNHCR (<http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>)

Remittances as a % of GDP for selected countries (2001)

Country	Country Percent of GDP
Jordan	22,8 %
Lebanon	13,8 %
El Salvador	13,8 %
Morocco	9,7 %
Dominican Republic	9,3 %
Philippines	8,9 %
Sri Lanka	7 %

Source: World Bank, Global Development Finance 2003

MIGRANT WORKERS

According to the Convention, the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. This definition therefore encompasses both documented and undocumented migrants.

REFUGEES AND ASYLUM-SEEKERS

According to the 1951 Convention Relating to the Status of Refugees, a refugee is someone who is outside his/her country of origin; has a well founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution. A person may be granted refugee status immediately, i.e. at the time of admission in a country other than his/her own. Or he/she can fill in an application for refugee status after having arrived in such a country. Until the application has been considered, he/she is considered as an asylum-seeker.

REMITTANCES

They are sums of money earned by migrants that are transmitted back to their country of origin. They represent a very important source of foreign capital for less developed countries, sometimes amounting to about ten per cent of the gross domestic product (GDP) of migrants' countries of origin.

TRAFFICKING

According to the UN Convention against Transnational Organized Crime and its Protocols, "trafficking in persons" means the recruitment, transportation, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion. Traffickers are those who transport migrants and profit economically or otherwise from their relocation. Trafficking in human beings has been recognized as a gross human rights violation.

UNITED NATIONS CONVENTIONS

A convention is an agreement between countries that is binding in international law. A United Nations Convention in the field of human rights is generally adopted by the United Nations General Assembly. There are two major kinds of human rights instruments. Declarations and proclamations are normative, in the sense that they set a human rights standard that should be respected by all States. Declarations often are the first step in exploring, analysing and defining a cluster of rights, prior to the decision to draft a legally binding instrument. Conventions are not only normative, but also legally binding, in the sense that States that have ratified them must incorporate them in their own laws. Examples of UN Conventions include the *International Convention on the Elimination of All Forms of Racial Discrimination* (ratified by 168 States), the *Convention on the Elimination of All Forms of Discrimination against Women* (ratified by 172 States), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (ratified by 132 States), and the *Convention on the Rights of the Child* (ratified by 192 States).

UNITED NATIONS CONVENTION: SIGNATURE, RATIFICATION AND ACCESSION

Once a convention has been adopted by the General Assembly, it must be ratified by States. States may initially sign a convention, which indicates their willingness to adopt its standards. This is usually done by the executive branch of government. States' formal agreement to adopt the norms contained in a convention can take place only through ratification, which usually requires the acceptance of the legislative or law-making branch of government. Once a Convention has entered into force, States can accede unilaterally to the Convention.

Useful sources of information

The present document as well as links to other useful sources of information can be found on UNESCO's web page:

www.unesco.org/migration/convention

OTHER SOURCES OF INFORMATION

Full text of the UN Convention:

www.un.org/documents/ga/res/45/a45r158.htm

This information kit has been elaborated within the framework of the International Steering Committee for the Campaign for Ratification of the Migrants' Rights Convention, which is one of the main sources of information regarding the UN Convention:

www.migrantsrights.org

Since 1999, the United Nations Office of the High Commissioner for Human Rights (UNHCHR) www.unhchr.ch has appointed a *Special Rapporteur on the Human Rights of Migrants*. The position is currently held by Ms Gabriela Rodriguez Pizarro from Costa Rica. All documents related to the work of the Special Rapporteur can be found at:

www.unhchr.ch/html/menu2/i2othmig.htm

The United Nations Department of Economic and Social Affairs/Population Division publishes an International Migration Report every year.

The 2002 edition can be found at:

www.un.org/esa/population/publications/ittmig2002/ittmigrep2002.htm

International Labour Organization (ILO):

www.ilo.org/migrant

International Organization for Migration (IOM):

www.iom.int

United Nations Educational, Scientific and Cultural Organization (UNESCO):

www.unesco.org/migration

United Nations High Commissioner for Refugees (UNHCR):

www.unhcr.org



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Shoe factory in Thailand where many migrants work.

"It is time to take a more comprehensive look at the various dimensions of the migration issue, which now involves hundreds of millions of people and affects countries of origin, transit and destination. We need to understand better the causes of international flows of people and their complex interrelationship with development".

UN Secretary-General Kofi Annan [from his report on strengthening the Organization, 09/11/2002].

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