



United Nations Educational, Scientific and Cultural Organization



United Nations Convention on Migrants' Rights

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

Entered into force on 1 July 2003

Contacts

Sector for Social and Human Sciences
International Migration and Multicultural Policies Section
Chief of Section: Paul de Guchteneire
E-mail: p.deguchteneire@unesco.org

Press contact Sector for Social and Human Sciences Communication, Information and Publications Section Jeanette Blom

Phone: +33 (0)1 45 68 44 33 E-mail: j.blom@unesco.org

Published in 2005
by the United Nations Educational,
Scientific and Cultural Organisation
7. place de Fontenov, 75352 PARIS 07 SP

Composed and printed in the workshops of UNESCO

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United Nations Convention on Migrants' Rights

n 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, the number of *international migrants* is between 185 and 192 million. This represents approximately three per cent of the world population, and is comparable to the population of Brazil. Nearly all countries are concerned by migration, whether as sending, transit, or receiving countries, or as a combination of these. International migration has become an intrinsic feature of globalization.

The *United Nations (UN) 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.



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

t 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, 9 November 2002.

The following countries have ratified the Convention as of October 2005:

Algeria, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libya, Mali, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Turkey, Uganda and Uruguay.

A Priority: The Human Rights of Migrants

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

ir 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 migrants 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' 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).

The Convention also states that migrants should have the right to remain connected to their country of origin. This implies:

- Ensuring that migrants can return to their country of origin if they so wish, 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' right 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 traffickers 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 relating to the Status of Refugees and its 1967 Protocol constituted a crucial step in improving the fate of refugees, and in establishing global management of this issue. The International Labour Organization 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 at the United Nations 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 unanimously 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 the NGO 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 agencies belong to the Steering Committee:

- The Office of 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 112 Member States. 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

he Convention required a minimum of 20 ratifying States before it could enter into force. When El Salvador and Guatemala ratified it on 14 March 2003, this threshold was reached. The 34 States that have ratified the Convention as of October 2005 are listed below with the year of their ratification:

```
1993
      Egypt III Morocco
1994
      Sevchelles
1995
      Colombia | Philippines | Uganda
1996
      Bosnia & Herzegovina | Sri Lanka
1997
      Cape Verde
1999
      Azerbaijan | Mexico | Senegal
      Bolivia [] Ghana [] Guinea
2000
     Belize | Uruguay
2001
2002
     Ecuador III Tajikistan
2003
      Burkina Faso | El Salvador | Guatemala
       2004
      East Timor | Libya | Turkey
2005
      Algeria | Chile | Honduras | Lesotho
      Nicaragua | Peru | Syria
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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, when the Convention entered into force, the countries that have ratified it are therefore legally bound by the Convention.

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

In addition, 15 countries have signed the Convention. This means that their government has expressed the intention of adhering to the Convention. These are: Bangladesh (1998), Comoros, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone (2000), Togo (2001), Argentina, Cambodia, Gabon, Indonesia, Liberia, Serbia and Montenegro (2004), Benin and Guyana (2005).

So far, countries that have ratified the Convention are primarily countries of origin of migrants (such as Mexico, Morocco and the Philippines). For these countries, the Convention is an important vehicle to protect their citizens living abroad. In the Philippines, for example, ratification of the Convention took place in a context characterized by several cases of Filipino 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 UN General Assembly entails in itself no binding commitment for individual States. States are committed once they have ratified the convention. This is why the impact of the Convention on Migrants' Rights remains limited, as the majority of States have not yet ratified it.

No Western migrant-receiving State has ratified the Convention, even though the majority of migrants live in Europe and North America. Other important receiving countries, such as Australia, the Gulf States and India have not ratified the Convention either.

Since the countries that have ratified the Convention are home to a limited number of the world's total migrant population, only a minority of migrants are able to enjoy the protection offered by the Convention.

Myth and Reality about Obstacles to Ratification

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

There are also practical considerations hindering ratification of the Convention. They include 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 include 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 to ratify the Convention because they consider that it gives too many rights to migrants. A number of points can be mentioned:

- The Convention incorporates migrant workers' 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 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.

Encouraging signs.

In 2002, both the European Parliament and the General Assembly of the Organization of American States supported the ratification of the Convention, and the former reaffirmed its call upon Member States to ratify the treaty in 2005. Similarly, in the summer of 2004, the European Economic and Social Committee adopted by a large majority a favourable opinion on the Convention, in which it encouraged European Union (EU) Member States to ratify the treaty before July 2006. The governments of Catalonia and Flanders have given their official support to ratification, urging federal governments to adhere to the Convention, and Italy has incorporated many provisions from the Convention in its 1998 Immigration Law. Moreover, nearly half of the EU Member States have ratified at least one of the two ILO Conventions



and others have used them as models for policy, thereby securing some degree of protection for migrants and indicating their concern regarding migrant workers' rights.

In addition, a high level dialogue on international migration, which will take place during the 61st Session of the UN General Assembly in 2006, will provide an important opportunity to discuss migration at the global level. Furthermore, a Global Commission on International Migration (GCIM) was launched by the UN Secretary General in 2004, with the aim of providing a framework for the formulation of a coherent, comprehensive and global response to migration.

s an international community, we need to manage the movement of people across borders far better than we do - not just for the sake of those who move, but for the sake of the countries they leave behind, those they travel through and those they migrate to.

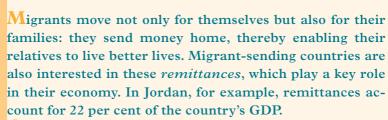
UN Secretary General, Kofi Annan, from his address to the European Parliament upon receipt of the Andrei Sakharov Prize for Freedom of Thought, 29 January 2004.

Facts about International Migration Today

The number of migrants in the world has more than doubled in one generation, reaching 185 to 192 million.

Why do Migrants Move?

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



Other migrants move because of political circumstances. They flee war, civil strife, ethnic conflict, violations of human rights or other situations of this kind. Some are recognized as *refugees* immediately, often in neighbouring countries. Others become *asylum seekers*. Refugees and asylum seekers 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 difficulties 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. 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 Convention relating to the Status of Refugees and its Protocol. 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 required because of shortages in the labour force and of native workers' reluctance to perform specific jobs: this particularly concerns the so-called '3D (dirty, demanding and dangerous) jobs', such as those in the building sector or in domestic services, which are often performed by migrants throughout the world. Most industrialized countries are therefore



economically dependant on migrants. In countries such as Switzerland, migrants represent nearly 20 per cent of the total labour force and this percentage climbs to 61 for Luxembourg.

International migrants are all the more important, given the declining birth rate in many developed nations. For example, between 1995 and 2000, migrants contributed significantly to the population of Austria, Denmark, Greece, Italy, Luxembourg, Spain and Switzerland, where they have at least tripled the rate of natural population growth. 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 growing mobility restrictions.

Where do Migrants Move?

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

The countries of origin of the largest number of migrants in recent decades have been countries such as Bangladesh, Mexico and the Philippines. Countries receiving the greatest number of migrants have been Western countries (in North America and Western Europe) as well as other countries (such as the Gulf States). Transition and less developed countries (such as India, Pakistan and Russia) also receive many migrants, and some countries are both sending and receiving migrants: for example, many Mexicans live abroad, while Mexico is a host country to migrants coming from Central America.



Migrants do not always move from developing countries to the developed world. Some 55 per cent of migrants live in Europe and North America, and the remaining 45 per cent reside in the rest of the world. The same applies to refugees: less than a third of refugees worldwide live in Europe and North America; 70 per cent of them live in less developed countries.

International migration is thus not only a South-North or East-West 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?

igrants all share a common characteristic: they live and work in a country of which they are not nationals. They therefore face the challenge of adapting to a society that is not their own and that may reject them. Moreover, as noncitizens, 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. 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 (1979) and the Convention on the Rights of the Child (1989). Both of these Conventions have been widely ratified; this is not the case for the Convention on Migrants' Rights.

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', migrants 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 (million)	Share of total number of migrants (%)
Africa	16.3	9.3
Asia	49.8	28.5
Europe	56.1	32.1
Latin America/Caribbean	5.9	3.4
North America	40.8	23.4
Oceania	5.8	3.3
Total World	174.7	100.0

Source: International Migration Report 2002. United Nations. 2002.

The ten countries with the largest migrant populations

Country	Number of migrants (million)	Share of total population (%)
United States of America	35.0	12.4
Russian Federation	13.3	9.1
Germany	7.3	9.0
Ukraine	6.9	14.0
France	6.3	10.6
India	6.3	0.6
Canada	5.8	18.9
Saudi Arabia	5.3	25.8
Australia	4.7	24.6
Pakistan	4.2	26.7

Source: International Migration Report 2002. United Nations. 2002.

The ten countries with the highest proportion of migrants

Country	Share of total population (%)	Number of migrants (million)
United Arab Emirates	73.8	1.9
Kuwait	57.9	1.1
Jordan	39.6	1.9
Israel	37.4	2.3
Singapore	33.6	1.4
Oman	26.9	0.7
Estonia	26.2	0.4
Saudi Arabia	25.8	5.3
Latvia	25.3	0.6
Switzerland	25.1	1.8

Source: International Migration Report 2002. United Nations. 2002.

Refugees and asylum seekers by region and in the world (2003)

Region	Number of refugees/ asylum seekers (million)	Share of total number of refugees/asylum seekers (%)
Africa	4.3	25.3
Asia	6.2	36.5
Europe	4.1	24.1
Latin America/Caribbean	1.3	7.6
North America	1.0	5.9
Oceania	0.1	0.6
Total World	17.0	100.0

Source: United Nations High Commissioner for Refugees (http://www.

Participation of migrants in the labour force in selected European countries (2001)

Country	Share of total labour force (%)
Luxembourg	61.7
Switzerland	18.1
Austria	11.0
Belgium	9.1
Germany	9.1
France	6.2
Sweden	5.1
Norway	5.0
Ireland	4.6
United Kingdom	4.4
Italy	3.8
Denmark	3.5
Spain	3.4
Portugal	2.0
Finland	1.7

Source: Trends in international migration: Annual report, 2003 (SOPE-MI (Continuous Reporting System on Migration), OECD. 2004.) in World Economic and Social Survey 2004: International Migration. United Nations. 2004. The ten developing countries with the highest remittance flows (2003)

Country	Remittances (billion USD)
India	137.4
Mexico	14.6
Philippines	7.9
China	4.6
Pakistan	4.0
Bangladesh	3.2
Colombia	3.1
Brazil	2.8
Viet Nam	2.7
Poland	2.3
All Developing Countries	116.0

Source: Balance of Payments Statistics Yearbook 2004. International Monetary Fund. 2004. and Global Development Finance 2005. World Bank. 2005.



International Migrants

Persons who live temporarily or permanently in a country of which they are not nationals. As the term 'migrant' refers to cases where the decision to migrate has been taken freely by the individual concerned, i.e. without the intervention of external compelling factors, migrants are differentiated from refugees and asylum seekers.

Migrant Workers And Members Of Their Families

According to the Convention on Migrants' Rights, 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/she is not a national. This definition therefore encompasses both documented and undocumented migrants. 'Members of the family' are 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.

Refugees And Asylum Seekers

According to the Convention relating to the Status of Refugees and its Protocol, 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 himself/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 an asylum seeker.

Remittances

Sums of money earned by migrants that are transmitted back to their country of origin. Particularly for developing countries, remittances represent a significant proportion of global financial flows, amounting to substantially more than official development assistance, more than capital market flows and more than half of foreign direct investment.

Trafficking and Traffickers

According to the Convention against Transnational Organized Crime and its Protocols (2000), 'trafficking in per-

sons' means the recruitment, transportation, harbouring or receipt of persons by means of threat or use of force, or other forms of coercion or deception for purposes of exploitation. 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, or covenant, 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 General Assembly. There are two major kinds of human rights instruments. Declarations and conventions are normative, in the sense that they set a human rights standard that should be respected by all States. Declarations are often 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. The seven core UN Conventions in the field of human rights are:

- International Convention on the Elimination of All Forms of Racial Discrimination (ratified by 170 States);
- International Covenant on Civil and Political Rights (ratified by 154 States);
- International Covenant on Economic, Social and Cultural Rights (ratified by 151 States);
- Convention on the Elimination of All Forms of Discrimination against Women (ratified by 180 States);

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by 139 States);
- Convention on the Rights of the Child (ratified by 192 States);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified by 34 States).

United Nations Conventions: Signature, Ratification And Accession

Once a convention has been adopted by the UN 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, which has the same legal effect as ratification.



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:

http://www.unesco.org/migration/convention

Other Sources of Information

Full text of the Convention: http://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 Convention:

http://www.migrantwatch.org

Since 1999, the Office of the United Nations High Commissioner for Human Rights has appointed a Special Rapporteur on the Human Rights of Migrants. The position is currently held by Dr. Jorge A. Bustamante from Mexico. All documents relating to the work of the Special Rapporteur are accessible online: http://www.unhchr.ch/html/menu2/i2othmig.htm



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

International Labour Organization: http://www.ilo.org/migrant

International Organization for Migration: http://www.iom.int

United Nations Educational, Scientific and Cultural Organization: http://www.unesco.org/migration

United Nations High Commissioner for Refugees: http://www.unhcr.org



Everyone has the right to leave any country, including his own, and to return to his country.

Article 13(2), Universal Declaration of Human Rights.

Sector for Social and Human Sciences
UNESCO
1, rue Miollis
75732 Paris Cedex 15
France
www.unesco.org/shs

November 2005