Migration and the Ecclesial Landscape: Global Ecumenical Network on Migration

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Manila, Philippines
International Labour Standards (ILS)

- ILO Conventions and Recommendations
- Declaration on Fundamental Principles and Rights at Work, 1998
  - All ILO Members must respect, promote and realize the principles concerning the fundamental rights that are the subject of the conventions recognized as fundamental even if they have not yet ratified them
  - Special attention to be given to the problems of persons with special social needs, including migrant workers
- Declaration on Social Justice for a Fair Globalization, 2008
  - Articulates ILO’s Decent Work agenda
Applicable International Labour Standards

- **ILO Fundamental Conventions** (widely ratified)
  - C87  Freedom of Association and Protection of the Right to Organise Convention, 1948
  - C98  Right to Organise and Collective Bargaining Convention, 1949
  - C29  Forced Labour Convention, 1930
  - C105 Abolition of Forced Labour Convention, 1957
  - C138 Minimum Age Convention, 1973
  - C182 Worst Forms of Child Labour Convention, 1999
  - C100 Equal Remuneration Convention, 1951
  - C111 Discrimination (Employment and Occupation) Convention, 1958

- **Instruments of general application** (selected)
  - C81  Labour Inspection Convention, 1947
  - C95  Protection of Wages Convention, 1949
Applicable International Labour Standards

- Instruments containing specific provisions on migrant workers
  - C181 Private Employment Agencies Convention, 1997
  - C19 Equality of Treatment (Accident Compensation) Convention, 1925
  - C102 Social Security (Minimum Standards) Convention, 1952
  - C118 Equality of Treatment (Social Security) Convention, 1962
  - C121 Employment Injury Benefits Convention, 1964
  - C157 Maintenance of Social Security Rights Convention, 1982
  - C169 Indigenous and Tribal Peoples Convention, 1989
  - R200 HIV and AIDS Recommendation, 2010
  - C189 Domestic Workers Convention, 2011 (and R201)

- Instruments on labour migration and protection of migrant workers
  - C97 Migration for Employment Convention (Revised), 1949
  - C143 Migrant Workers (Supplementary Provisions) Convention, 1975
  - R86 Migration for Employment Recommendation (Revised), 1949
  - R151 Migrant Workers Recommendation, 1975
Ratifications
ILO migrant workers’ instruments

Convention No. 97 (1949)
- 49 States parties
  - Africa: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Tanzania Zanzibar, Zambia
  - Americas and Caribbean: Belize, Bahamas, Barbados, Brazil, Cuba, Dominica, Ecuador, Grenada, Guatemala, Guyana, Jamaica, Saint Lucia, Trinidad and Tobago, Uruguay, Venezuela
  - Asia and Pacific: Kyrgyzstan, Malaysia (Sabah), New Zealand, Philippines, Tajikistan
  - Europe: Albania, Armenia, Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Italy, The former Yugoslav Republic of Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovenia, Spain, United Kingdom

Convention No. 143 (1975)
- 23 States parties
  - Africa: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Togo, Uganda
  - Americas and Caribbean: Venezuela
  - Asia and Pacific: Philippines, Tajikistan
  - Europe: Albania, Armenia, Bosnia and Herzegovina, Cyprus, Italy, The former Yugoslav Republic of Macedonia, Montenegro, Norway, Portugal, San Marino, Serbia, Slovenia, Sweden

Middle East: Israel
C 97 and C 143

Key features

- C97 and C143 do not affect the sovereign prerogative of States to determine admission into their territory of foreign nationals for employment
- Relevant for both countries of destination and origin
- Taken together, C97 and C143 recognize that:
  - Migrant workers, including those in an irregular situation, have basic human and labour rights
  - Once admitted to employment, regular migrant workers should enjoy equal treatment with nationals
  - The social consequences of migration also need to be addressed
    - E.g. facilitation of family reunification (C143 and R151)
  - The labour migration process needs to be regulated within a rights-based rule of law framework
“Soft law”/ policy tools/ statements relevant to labour migration governance at the global level

- UN General Assembly Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, 1985
- Cairo Conference on Population and Development (Ch X.), 1990
- UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance/ Programme of Action, 2001
- World Commission on Social the Dimension of Globalization, 2004
- Berne Initiative – International Agenda on Migration Management, 2005
- Report of Global Commission on International Migration, 2005
- ILO Multilateral Framework on Labour Migration, 2006
- UN General Assembly High-level Dialogue on International Migration and Development, 2006
- Six GFMD meetings since (2007-2012)
- Global Migration Group – GMG statement on the rights of irregular migrants, 2010
International Legal Framework

International Human Rights instruments

- Universal Declaration of Human Rights (UDHR) 1948
- Nine core international human rights treaties
  - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
  - Covenant on Civil and Political Rights (ICCPR) 1966
  - Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984
  - Convention on Rights of the Child (CRC) 1989
  - International Convention on the Rights of All Migrant Workers and Members of the Their Families (ICRMW) 1990
  - Convention on the Rights of Persons with Disabilities (CRPD) 2006
  - International Convention for the Protection of All Persons from Forced Disappearance 2006
International Legal Framework
Non-discrimination and key rights

- Universal principle of non-discrimination
  - Human rights applicable to nationals and non-nationals alike with few exceptions (e.g. political rights)
- Some rights of particular relevance to migrant workers and their families, for example:
  - Right to leave one’s own country and enter/ return to that country - ICCPR
  - Rights to freedom of assembly and association – ICCPR and ICESCR (see also International Labour Standards)
  - Rights to equal work and employment conditions – ICESCR
  - Rights to education and health – ICESCR
  - Right to family life – ICCPR and ICESCR
International Legal Framework
Human rights treaty bodies

- Monitor application of human rights treaties in States parties by examining periodic reports and issuing concluding observations
- Adopt General Comments / Recommendations on interpretation of instruments, e.g.
  - HRC General Comment 15 on the position of aliens under the ICCPR (1986)
  - ESCR General Comment 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2) (2009)
  - CMW General Comment 1 on migrant domestic workers (2011)
- Some bodies hear individual (and inter-state) complaints
UN Convention on Migrant Workers, 1990
Structure (93 Articles)

➢ Part I – Scope and definitions
  ▪ Broad definition of migrant worker: “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”

➢ Part II – Non-discrimination with respect to rights

➢ Part III – Human rights of all migrant workers

➢ Part IV – Other rights of regular migrants

➢ Part V – Rights of particular categories of migrant workers

➢ Part VI – Inter-State cooperation

➢ Part VII – Application of Convention

➢ Part VIII – General Provisions

➢ Part IX – Final Provisions
1990 Convention on Migrant Workers
Personal scope

- Migrant workers and members of their families
  - Family members defined to include common law spouses, dependent children and other dependent persons
- Persons to be engaged or who have been engaged in employment are included in the definition
- Lawfully resident and migrants in an irregular situation
- Specific groups of (temporary) migrant workers
  - E.g. seasonal workers/ project-tied workers
- But not certain categories of foreigners
  - E.g. diplomats, international organization officials, students or trainees, refugees, investors
Civil and political rights

- Freedom from cruel, inhuman or degrading treatment – Art 10
- Freedom from slavery, forced labour – Art 11
- Procedural protection against individual expulsion applicable to all migrant workers – Art 22

Employment rights

- Rights to equal work/employment conditions with nationals – Arts 25, 54
  - Irregular status does not preclude employment rights – Art 25(3)
- Trade union rights (freedom of association) – Arts 26, 40
1990 Convention on Migrant Workers
Economic, Social and Cultural Rights

- All migrant workers and their families (including irregular migrants)
  - Social security – Art 27
  - Emergency medical care – Art 28
  - Equal access with nationals to education – Art 30
    - Primary education not to be refused to children of irregular migrants
  - Respect for cultural identity – Art 31

- Lawfully resident migrant workers and families only
  - Equal access with nationals to housing – Art 43(1)(d)
  - Equal access to social and health services – Art 43(1)(e)
  - Family reunification – Art 44
  - Access to employment – Arts 52, 53
1990 Convention on Migrant Workers
Migrant-specific rights

- Effective protection by the State against violence, physical injury, threats and intimidation – Art 16(2)
- Prohibition on confiscation and destruction of identity and travel documents (e.g. passports) – Art 21
- Recourse to protection and assistance of consular/diplomatic authorities of State of origin – Art 23
- Transfer of earnings and savings (i.e. remittances) – Art 32
- Free provision of information on Convention rights and conditions of admission and, as far as possible, in a language migrants can understand – Art 33
States have obligations to

- Consult and cooperate to promote sound, equitable and humane migration conditions - Art 64(1)
- Collaborate to prevent and eliminate irregular migration - Art 68
- Punish traffickers, smugglers and those who exploit migrant workers (e.g. employers) - Art 68(1)-(2)
  - See also ILO Convention No. 143 (1975) and the Trafficking and Smuggling Protocols supplementing the UN Convention against Transnational Organized Crime 2000 (Palermo Convention)
UN Convention on Migrant Workers, 1990

Ratifications

- 46 States parties

**Africa**: Algeria, Burkina Faso, Cape Verde, Egypt, Ghana, Guinea, Lesotho, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, Uganda

**Americas and Caribbean**: Argentina, Belize, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, St. Vincent and the Grenadines, Uruguay

**Asia and Pacific**: Bangladesh, Indonesia, Kyrgyzstan, Philippines, Sri Lanka, Tajikistan, Timor-Leste

**Europe**: Albania, Azerbaijan, Bosnia and Herzegovina, Turkey

**Middle East**: Syria

Signatories

- 16 States

**Africa**: Benin, Cameroon, Chad, Comoros, Congo, Gabon, Guinea-Bissau, Liberia, Mozambique, Sao Tome and Principe, Sierra Leone, Togo

**Americas and Caribbean**: Venezuela

**Asia and Pacific**: Cambodia

**Europe**: Montenegro, Serbia
Practical / Administrative obstacles
- Inadequate knowledge / dissemination of the Convention
- Difficulties cited regarding implementation
  - Length and complexity of instrument
  - Requires resources and coordination between different government departments

Legal / Political obstacles
- Explicit safeguards for migrant workers in irregular situations
- Migrant workers’ rights are adequately protected by other human rights instruments?
- Relevance? – i.e. changes to labour migration landscape in the era of globalization
- Lack of political will
THANK YOU