



## **ACTRAV/ITC-ILO Course (A155169)**

**Trade Union Actions for Achieving Decent Work for Migrants  
(Kisumu, Kenya, 21 – 25 May 2012)**

# **The International Normative Framework: International Labour Standards on Labour Migration**

# Outline of the presentation

- ✓ Why do migrant workers need protection?
- ✓ The need for a normative framework
- ✓ ILO International Labour Standards
- ✓ The broader normative context
  - ✓ International human rights and the 1990 UN Convention on Migrant Workers
  - ✓ Regional frameworks
- ✓ Conclusions

# Why do Migrant Workers Need Protection?

- ✓ At risk of exploitation in the recruitment process
  - ✓ E.g. misleading propaganda, payment of high fees, etc.
- ✓ Often undertake hazardous journeys to their destination
- ✓ Non-citizens of the country in which they work
- ✓ Frequently employed in low-skilled sectors not fully regulated under national labour laws
  - ✓ E.g. agriculture, construction, domestic work, etc.
- ✓ Women migrant workers subject to multiple discrimination
- ✓ More vulnerable if in an irregular situation

# The Need for a Normative Framework

- ✓ Recognizes that human beings as workers and family members are at the heart of international labour migration
- ✓ Bedrock of minimum standards agreed at an international level necessary to ground and guide formulation of equitable labour migration policies at the national level
- ✓ Monitoring of application of such standards essential to State compliance with them and to advance policy improvements
- ✓ International Labour Standards are discussed and agreed by ILO tripartite constituents comprising governments, employers and workers who are the most important stakeholders in labour migration

# The ILO Mandate and ILS

- ✓ ILO Constitution proclaims principles of social justice protecting persons in their working environment including “workers when employed in countries other than their own”
- ✓ International Labour Standards
  - ✓ Found in numerous ILO Conventions and Recommendations, which in principle are applicable to all workers irrespective of nationality and immigration status unless otherwise stated
- ✓ ILO Declaration on Fundamental Principles and Rights at Work, 1998
  - ✓ Member States must adhere to principles in the 8 fundamental ILO Conventions even when they have not ratified the specific instrument/s in question
- ✓ ILO Declaration on Social Justice for a Fair Globalization, 2008
  - ✓ Interdependence of four strategic objectives of Decent Work Agenda: employment, social protection, social dialogue, rights at work

# Application 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
  
- ✓ Specific instruments protecting migrant workers
  - C97 Migration for Employment Convention (Revised), 1949
  - C143 Migrant Workers (Supplementary Provisions) Convention, 1975

# Application International Labour Standards

- Conventions with specific provisions on migrant workers
  - C19 Equality of Treatment (Accident Compensation) Convention, 1925
  - C88 Employment Service Convention, 1948
  - C102 Social Security (Minimum Standards) Convention, 1952
  - C118 Equality of Treatment (Social Security) Convention, 1962
  - C121 Employment Injuries Benefit Convention, 1964
  - C157 Maintenance of Social Security Rights Convention, 1982
  - C181 Private Employment Agencies Convention, 1997
  - C189 Decent Work for Domestic Workers Convention, 2011**
- Conventions of general application
  - C81 Labour Inspection Convention, 1947
  - C95 Protection of Wages Convention, 1949
  - C122 Employment Policy Convention, 1964
  - C183 Maternity Protection Convention, 2000
  - C184 Safety and Health in Agriculture Convention, 2001

# Migration for Employment Convention (Revised), 1949 (No. 97)

- ✓ Historical context
  - ✓ To facilitate the movement of surplus labour
- ✓ Purpose
  - ✓ To protect migrant workers from exploitation and discrimination
- ✓ Scope
  - ✓ Migrant workers and their families regularly admitted to the country of employment
- ✓ Categories of workers excluded
  - ✓ Frontier workers, seafarers, members of liberal professions and artists entering on a short-term basis

# Convention No. 97: Structure

- ✓ Regulation of conditions in which labour migration takes place
- ✓ General protection provisions
- ✓ Non-discrimination and equality of treatment between migrants and nationals
  - ✓ Wages/ working conditions
  - ✓ Trade union rights
  - ✓ Accommodation
  - ✓ Social security
  - ✓ Employment taxes
  - ✓ Access to courts



# Convention No. 97: Cooperation

- ✓ Whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large
- ✓ Annex to accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86) contains a model bilateral labour migration agreement

# Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

## ✓ Historical context

- ✓ Aftermath of oil crisis in early 1970s; stop on immigration to western European countries; increase in irregular migration, exploitation and abuses

## ✓ Aims

- ✓ Facilitate and regulate labour migration flows
- ✓ Suppress activities of organizers of clandestine movements of migrant workers
- ✓ Provide minimum protection to all migrant workers

## ✓ Structure: Flexible instrument

- ✓ Part I – Migrations in abusive conditions (Articles 1-9)
- ✓ Part II – Equality of opportunity and treatment (Articles 10-14)

# C143 – Part I: Migration in abusive conditions – rights' protections

- ✓ Respect for basic human rights of all migrant workers
- ✓ Protects regular status of migrant workers in the event of loss of employment
  - ✓ But needs to be distinguished from “a right to stay”
- ✓ Migrants in an irregular situation entitled to:
  - ✓ Equal treatment in respect of rights arising out of past employment (e.g. remuneration, social security)
  - ✓ Access to legal proceedings
  - ✓ No costs on expulsion
  - ✓ Possibility of regularization

# C143 – Part II: National policy on equality of opportunity and treatment

- ✓ Employment and occupation
  - ✓ Some limitations on access to employment (2 years lawful residence or completion of first employment contract if shorter in duration)
- ✓ Social security (with some limitations)
- ✓ Trade union rights
- ✓ Cultural rights
- ✓ Individual and collective freedoms

Excluded categories from Part II: frontier workers; artists and members of the liberal professions entering on a short-term basis, seafarers, **trainees, persons on specific temporary duty assignments**

# Consultation with Social Partners

- ✓ Recommendation No. 86, Para. 4(2):
  - ✓ Consultation on all general questions concerning migration for employment
- ✓ Convention No. 143, Art. 7:
  - ✓ Consultation on laws and regulations and other measures designed to prevent and eliminate migration abuses

# 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

**Middle East:** Israel

### 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

# C 97 and C 143: Some observations

- ✓ C97 and C143 do not affect the sovereign prerogative of States to determine admission into their territory of foreign nationals for employment
- ✓ But taken together C97 and C143 determine that
  - ✓ All 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
  - ✓ While the focus is on migration for employment, there are also a few provisions addressing the social consequences of migration
    - ✓ E.g. facilitation of family reunification (C143 and R151)

# ILO Supervisory System and Protection of Migrant Workers' Rights

- ✓ Regular supervisory system
  - ✓ Committee of Experts on the Application of Conventions and Recommendation
    - ✓ Observations and direct requests
    - ✓ 1999 General survey on migrant workers' instruments
  - ✓ International Labour Conference Committee on the Application of Standards
- ✓ Representations and Complaints (Governing Body)
  - ✓ Cases on treatment of migrant workers in both countries of origin and destination countries
- ✓ Committee on Freedom of Association (GB)
  - ✓ Cases on trade union rights of migrant workers in an irregular situation

# ILO Multilateral Framework on Labour Migration (2006)

- ✓ Plan of Action for migrant workers adopted by International Labour Conference in June 2004
- ✓ To be implemented by ILO and its tripartite constituents in partnership with other international governmental organizations
- ✓ Objective: to develop “a non-binding multilateral framework for a **rights-based approach** to labour migration, which takes account of labour market needs”
- ✓ Multilateral Framework adopted by Tripartite Meeting of Experts in December 2005, and ILO Governing Body approved its publication and dissemination in March 2006
  - ✓ Comprises international principles and guidelines illustrated by “best practices” in a broad range of areas
  - ✓ Available from ILO website
  - ✓ [http://www.ilo.org/public/english/protection/migrant/download/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf)
  - ✓ Has been used in development of national labour migration policies (e.g. Sri Lanka)

# Obstacles to Ratification of Migrant Workers' Conventions (ILO and UN)

## ➤ Practical

- Inadequate knowledge /lack of promotion
- Administrative – implementation
  - Length and complexity of instrument (1990 Convention)
  - Resources and coordination between different government departments

## ➤ Legal

- Reluctance to guarantee explicit and more extensive safeguards in law for migrant workers in an irregular situation
- Argument that migrant workers' rights are adequately protected by other human rights instruments

## ➤ Political

- Relevance? – Changes to labour migration policies since adoption
- Competition amongst countries of origin
- General lack of political will

# Why ratify?

- ✓ Importance of rule of law in governance of labour migration
- ✓ All countries (origin, transit and destination) have obligations
- ✓ State prerogative to determine labour migration policy reinforced
- ✓ Social cohesion strengthened
- ✓ “Commodification” and abuse of migrants discouraged
- ✓ Irregular migration reduced by eliminating incentives for labour exploitation
- ✓ Clear guidance for bilateral and multilateral cooperation for lawful, humane, and equitable labour migration
- ✓ International guidance on implementation of legal norms through reporting obligations and periodic review by independent expert bodies (ILO CEACR and UN CMW)

Source: International Steering Committee for Ratification of Migrants' Rights Convention, Guide on Ratification (2008)

# Regional Frameworks: Binding and Non-binding Instruments

- ✓ Africa
  - ✓ African Charter on Human and Peoples' Rights 1981
  - ✓ Regional integration regimes (e.g. ECOWAS, SADC)
  - ✓ AU Migration Policy Framework for Africa 2006
- ✓ Americas – American Convention on Human Rights 1969
- ✓ Middle East – Arab Charter on Human Rights 2004
- ✓ Asia – ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (13 January 2007)
- ✓ Europe
  - ✓ Council of Europe instruments (ECHR, ESC, ECLSMW)
  - ✓ European Union Law
    - ✓ Free movement of EU workers
    - ✓ EU law and policy on asylum and migration from third countries

# Conclusions

- ✓ Greater awareness of application of human and labour rights to all migrant workers and their families
- ✓ Awareness enhanced by the work of
  - ✓ ILO Committee of Experts / other supervisory bodies
  - ✓ Human rights treaty bodies
  - ✓ UN Special Rapporteur on human rights of migrants
- ✓ New ratifications of ILO migrant workers' conventions
- ✓ Steady progress in acceptance of the 1990 Convention on Migrant Workers
- ✓ Growing importance of regional frameworks