International Labour Standards and Protection of Migrant Workers

Ryszard Cholewinski
International Migration Branch
International Labour Office
Geneva
Presentation outline

- 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
- ILO Multilateral Framework on Labour Migration
- Conclusions
Why specific protection and policies are needed?
Violations of migrant workers’ rights

- Migrant workers are at risk of exploitation in the recruitment process
  - E.g. Misleading propaganda, payment of high fees
- Non-citizens of the country in which they work and rarely benefit from full equal treatment in employment and access to social rights
- Frequently work in low-skilled precarious employment sectors not fully regulated under national labour laws
  - Agriculture, domestic work, construction
- Women migrant workers are particularly susceptible to multiple discrimination
- Migrant workers are more at risk if in an irregular situation
  - E.g. often undertake hazardous journeys to their destination
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 the international level ground and guide formulation of equitable labour migration policies at national, bilateral and regional levels
- Monitoring of application of such standards essential to ensure State compliance with them and to advance improvements in national legislation and policy
- International Labour Standards are discussed and agreed by ILO tripartite constituents comprising governments, employers and workers who – together with the migrants themselves – are the most important stakeholders in labour migration
ILO Mandate and International Labour Standards

- ILO Constitution proclaims principles of social justice protecting all persons in their working environment including “the interests of workers when employed in countries other than their own”

- International Labour Standards (ILS)
  - ILO Conventions and Recommendations
  - Fundamental rights conventions
  - Conventions and Recommendations of general application
  - Specific instruments relating to sectors or groups of workers

- In principle, ILS applicable to all workers irrespective of nationality and immigration status unless otherwise stated

- ILO Declaration on Fundamental Principles and Rights at Work, 1998

- ILO Declaration on Social Justice for a Fair Globalization, 2008
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
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
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

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
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
Nine core human rights treaties
- ICCPR, ICESCR
- CAT, ICERD, CEDAW, CRC, CRPD, CPED
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

Important work of human rights treaty bodies
- Opinions on application of rights to migrant workers
- Landmark general comments / recommendations
  - CESCR – right to health/ non-discrimination in ESC rights
  - CERD – discrimination against non-citizens/ women migrant workers
  - CMW – migrant domestic workers

Special Procedures mandates
- UN Special Rapporteur on human rights of migrants
- Universal Periodic Review (UPR)
UN Convention on Migrant Workers, 1990
Key features

- Comprehensive instrument applicable to the whole labour migration process and regulating the legal status of migrant workers and their families
- As with ILO C97 and C143, the Convention does not “affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families” (Part VII, Art. 79)
- Protects the basic rights of all migrant workers and their families (lawfully resident migrants and migrants in irregular situations) on the basis of equality with nationals (Part III)
- Grants regular migrants a number of additional rights on the basis of equality with nationals (Part IV)
- Obligations on states to cooperate in promoting sound equitable, humane and lawful migration conditions (Part VI)
- Monitoring mechanism – Committee on Migrant Workers (Part VII)
Committee on Migrant Workers [http://www2.ohchr.org/english/bodies/cmw/]

16 sessions held to date, commencing in March 2004

States parties are required to submit initial reports (after one year) and then periodic reports (after 5 years) on application/implementation of Convention

- Committee issues Concluding Observations
- 22 issued so far: Albania, Algeria, Argentina, Azerbaijan, Bolivia, Bosnia, Chile, Colombia, Ecuador (2), Egypt, El Salvador, Guatemala, Mali, Mexico (2), Paraguay, Philippines, Sri Lanka (2009), Senegal, Syria, Tajikistan

Optional individual and inter-State complaint mechanisms

- To date, only Guatemala and Mexico have made declarations under Article 77 recognizing the competence of the Committee to receive and consider individual complaints (this mechanism can only come into force once 10 States parties have made such a declaration)

General Comments

- General Comment No. 1 on Migrant Domestic Workers (February 2011)
- Committee is working on its second general Comment on the rights of migrant workers and their families in an irregular situation
UN Convention on Migrant Workers, 1990

Ratifications

- 45 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, Kyrgyzstan, Philippines, Sri Lanka, Tajikistan, Timor-Leste
  - **Europe**: Albania, Azerbaijan, Bosnia and Herzegovina, Turkey
  - **Middle East**: Syria

Signatories

- 14 States
  - **Africa**: Benin, Cameroon, Comoros, Congo, Gabon, Guinea-Bissau, Liberia, Sao Tome and Principe, Sierra Leone, Togo
  - **Asia and Pacific**: Cambodia, Indonesia
  - **Europe**: Montenegro, Serbia
Regional frameworks:
Binding and non-binding instruments

- **Africa**
  - 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 (2007)

- **Europe**
  - Council of Europe instruments (ECHR, ESC, ECLSMW)
  - Regional integration - European Union
    - Free movement of EU workers / citizens
    - EU law and policy on asylum and (labour) migration from third countries
The Case for a Multilateral Framework on Labour Migration*

- Need for new tools and clear rules for governance of labour migration in light of expansion and increasing complexity of international migration
- Reluctance of some countries to ratify legally binding Conventions
- Risk of lowering existing standards
- Need to take into account new developments
  - Greater role of private sector and private employment services in international labour migration
  - Feminization of labour migration
  - Growth of irregular migration
  - Proliferation of temporary labour migration schemes
  - Emphasis on relationship between migration and development

* The material in some of the slides on the Multilateral Framework draws on work by former ILO colleagues Piyasiri Wickramasekera and Patrick Taran
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 132 “best practices” in 9 areas
ILO Multilateral Framework on Labour Migration

Key features

- Non-binding but rights-based – rooted in international rule of law framework and principles
  - Therefore, it complements existing international labour and human rights standards
- Recognizes also sovereign prerogative of states to determine their own migration policies
- Negotiated outcome based on tripartite negotiations and not solely driven by governments
  - Thus, it recognizes the important role of social dialogue and social partner participation in labour migration policy
- Tool-kit for design of national/ regional labour migration policies
- Advocates gender-sensitive policies
- Addresses challenge of migration and development
  - Development understood in a decent work context
ILO Multilateral Framework on Labour Migration
Follow-up

- Framework widely circulated and publicized
  - Translated into six UN languages (Arabic, Chinese, English, French, Russian, Spanish) as well as other languages
- Mobilization of efforts to support the Action Plan for migrant workers and Framework
- Dialogue and cooperation with other concerned international agencies – Global Migration Group (GMG), OECD, IOM, OSCE – and regional entities (e.g. EU)
- Principles and guidelines of Multilateral Framework incorporated into ILO Decent Work Country Programmes and technical cooperation projects
- Work with social partners (trade unions and employers) and civil society to promote Framework’s implementation
- Multilateral Framework has been used in development of national labour migration policies (e.g. Sri Lanka)
Thank you for your attention!

Ryszard Cholewinski
International Migration Branch (MIGRANT)
International Labour Office, Geneva
cholewinski@ilo.org