



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

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COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL
MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES
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WORKING PAPER

Note by the secretariat

1. At its informal meeting held from 11 to 15 October 2004, the Committee decided to hold a substantive discussion on terminology at its second session.
2. In order to assist the discussion by the Committee, the Secretariat has prepared the attached working paper containing a comparative overview of terminology used in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families with terminology used in other conventions.

TERMINOLOGY IN THE INTERNATIONAL CONVENTION ON MIGRANT WORKERS: A COMPARISON WITH OTHER INTERNATIONAL AND REGIONAL INSTRUMENTS

1. Migration process (ICRMW, Art 1 par 2)

Comprises “*preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence*”.

2. Remunerated Activity (ICRMW, Art 1, Art 51)

Cf. The term remuneration “includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment”. (ILO C100, Art 1(a))

3. Migrant worker (ICRMW, Art 2, par 1)

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*”.

- Means “any worker participating in such migratory movements either within the countries and territories described in clause (a) of Paragraph 1¹ above or from such countries and territories into or through the countries and territories described in clauses (b) and (c) of Paragraph 1 above, whether he has taken up employment, is moving in search of employment or is going to arranged employment, and irrespective of whether he has accepted an offer of employment or entered into a contract. Where applicable, the term migrant worker also means any worker returning temporarily or finally during or at the end of such employment”. (ILO R100, Par. 2)

¹Art 1: This Recommendation applies to: (a) countries and territories in which the evolution from a subsistence form of economy towards more advanced forms of economy, based on wage earning and entailing sporadic and scattered development of industrial and agricultural centres, brings with it appreciable migratory movements of workers and sometimes their families; (b) countries and territories through which such migratory movements of workers pass on their outward and, where applicable, their return journeys, if existing arrangements in such countries and territories, taken as a whole, afford less protection to the persons concerned during their journeys than is laid down in this Recommendation; (c) countries and territories of destination of such migratory movements of workers, if existing arrangements in such countries and territories, taken as a whole, afford less protection to the persons concerned during their journeys or employment than is laid down in this Recommendation.

- Means “a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker”. (ILO C143, Art 11 (1))

Cf. - Migrant for employment - Means “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”. (ILO C97, Art 11 (1)) (ILO R86, Par.1 (a))

4. Specific categories of migrant workers (ICRMW, Art 2 par 2, Art 3)

- The UN Convention extends and defines rights applicable to certain categories of migrant workers: frontier worker, seasonal worker, itinerant worker, project-tied worker, specific-employment worker, self-employed worker (ICRMW, Art 2 (2)) (ICRMW, Part V). It excludes: persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions; persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes; investors; refugees and stateless persons, students and trainees; seafarers and workers on an offshore installation. (ICRMW, Art 3)

- ILO C143 excludes application to: frontier workers; artists and members of the liberal professions who have entered the country on a short-term basis; seamen; persons coming specifically for purposes of training or education; employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments. (C143 Art, 11 (2))

- ILO C97 excludes application to frontier workers; short-term entry of members of the liberal professions and artist; and seamen. (C97 Art 11 (2))

5. Members of their family (ICRMW, Art 4)

Refers to “*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 or applicable bilateral or multilateral agreements between the States concerned*”.

- Should “include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant”. (ILO R86, Par. 15 (3))

- “The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother”. (ILO C143, Art 13 (2))

- Family of a Foreign Worker – is “understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.” (ESC, Appendix Part II/ Art 19 (6))

6. Documented or in a Regular Situation² (ICRMW, Art 5 a)

Migrant Workers and members of their families are considered as “*documented or in a regular situation, if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party*”.

Non-documented or in an Irregular Situation³ (ICRMW, Art 5 b)

Are considered as “*non-documented or in an irregular situation, if they do not comply with the conditions provided for in subparagraph (a)*”.

7. State of Origin⁴ (ICRMW, Art 6 a)

Means “*the State of which the person concerned is a national*”.

State of Employment (ICRMW, Art 6 b)

Means “*a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be*”.

State of Transit (ICRMW, Art 6 c)

Means “*any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence*”.

² There are no specific definitions in other instruments.

³ There are no specific definitions in other instruments.

⁴ - ILO R86 and C97 use the terms “Territory of Immigration” and “Territory of Emigration”, but do not define them. - ECMW uses the terms “State of Origin”, “State of Transit” and “Receiving State” but does not define them.

8. Torture ⁵ (ICRMW, Art 10)

- “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. (CAT, Art 1)

- "Torture" means “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”. (Rome Statue of the International Criminal Court, Art 7 (2e))

9. Slavery (ICRMW, Art 11, par 1)

- “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” (SC, Art 1)

10. Forced or Compulsory Labour (ICRMW, Art 11, par 2-4)

“1. No migrant worker or member of his or her family shall be held in slavery or servitude.

“2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

“3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

“4. For the purpose of the present article the term "forced or compulsory labour" shall not include: (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention; (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the

⁵*Cf. also ICCPR, Art 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*

*community; (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned”.*⁶

- Forced/compulsory labour – Shall mean “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. (ILO C29, Art 2 (1))

11. Children (ICRMW, Art 29, Art 30)

- “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. (CRC Art 1)

- “For the purposes of this Charter a child means every human being below the age of 18 years”. (African Charter on the Rights and Welfare of the Child, Art 2)

12. Recruitment (ICRMW, Art 66)

- The term Recruitment means – “(i) the engagement of a person in one territory on behalf of an employer in another territory, or (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants”. (ILO R86, Par. 1 b)

Cf. - Introduction - Means “any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of subparagraph (b)”. (ILO R86, Par. 1 c)

Cf. - Placing - Means “any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced”. (ILO R86, Par. 1 d)

⁶ Similar exclusions are expressed in the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950 (Art 4 (3)), in the American Convention on Human Rights "Pact of San Jose, Costa Rica", 1969 (Art 6 (3)), in the International Convention on Civil and Political Rights, 1966, Art 8, par 3c, and in ILO C29, 1930 (Art 2 (2)).

These instruments also exclude military service and its equivalent national service from the definition of forced or compulsory labour.

13. Illegal or clandestine movement and employment (ICRMW, Art 68)

Cf. - Trafficking – “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Art 3 a)

Cf. - Smuggling of migrants - Shall mean “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. (Protocol Against the Smuggling of Migrants, Art 3 a)

Cf. - Illegal entry - Shall mean “crossing borders without complying with the necessary requirements for legal entry into the receiving State”. (Protocol Against the Smuggling of Migrants, Art 3 b)

ABBREVIATIONS

- SC – Slavery Convention, 1926
- UDHR – Universal Declaration of Human Rights, 1948
- ICERD – International Conventions on the Elimination of All Forms of Racial Discrimination, 1965
- ICESCR – International Covenant on Economic, Social and Cultural Rights, 1966
- ICCPR – International Covenant on Civil and Political Rights, 1966
- CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- CRC – Convention on the Rights of the Child, 1989
- ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- ESC – European Social Charter, (Revised) 1996
- ECMW – European Convention on the Legal Status of Migrant Workers, 1997

DOCUMENTARY SOURCES

ILO CONVENTIONS AND RECOMMENDATIONS

- ILO Convention (No.29) on Forced Labour, 1930
- ILO Convention (No 97) on Migration for Employment Convention (Revised), 1949
- ILO Recommendation (No. 86) on Migration for Employment Recommendation (Revised), 1949
- ILO Convention (No. 100) on Equal Remuneration, 1951
- ILO Recommendation (No 100) Protection of Migrant Workers (Underdeveloped Countries), 1955

- ILO Convention (No. 105), on Abolition of Forced Labour, 1957
- ILO Convention (No. 111), on Discrimination (Employment and Occupation), 1958
- ILO Convention (No 143) on Migrant Workers (Supplementary Provisions), 1975
- ILO Recommendation (No 151) Migrant Workers Recommendation, 1975
- ILO Convention (No 163) on Seafarers' Welfare Convention, 1987

REGIONAL INSTRUMENTS

- American Declaration of the Rights and Duties of Man , 1948
- American Convention on Human Rights "Pact of San Jose, Costa Rica", 1969
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", 1988
- European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and its Protocols
- European Convention on The Legal Status of Migrant Workers, 1977
- European Convention on the Participation of Foreigners in Public Life at Local Level, 1992
- European Social Charter (Revised), 1996, and its Additional Protocols
- African Charter On Human And Peoples' Rights, 1981
- African Charter on the Rights and Welfare of the Child, 1990

UN CONVENTION AND DECLARATIONS

- Slavery Convention, 1929
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Declaration on the Human Rights of Individuals who are not nationals of the Country in which they live, General Assembly resolution 40/144 of 13 December 1985
- Convention on the Rights of the Child, 1989, and its optional protocols on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, 2000
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, General Assembly resolution 47/135 of 18 December 1992
- Rome Statute of the International Criminal Court, 1998
- Protocol Against the Smuggling of Migrants by Land, Sea And Air, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000
- UN Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 2000