

IDENTIFYING CORE RIGHTS OF CONCERN TO MIGRANTS

BACKGROUND PAPER

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1. INTRODUCTION

To leave one's own country and begin life anew elsewhere is a process often fraught with difficulties. Migration to another country may increase opportunities and contribute to an improvement in standards of living, but undeniably there will be obstacles and hardships along the way. Migrants often face discrimination, collectively and individually, and can be subject to hostility and exploitation. Today's magnitude of migration means that it is increasingly becoming a topic of concern to governments around the world. Often, migration is perceived negatively, by host governments and communities alike, potentially triggering a backlash against migrants and a denial of many of their basic rights. Increasing xenophobia provoked by recession and unemployment has also exacerbated hostilities against migrants, and further added to the difficulties that they encounter. Violations of rights, exploitation and abuse occur on a significant scale and continue to occur, despite the existence of national and international instruments on rights.

In an effort to promote respect for the rights of migrants, the content of these rights must be acknowledged by States. The aim of this paper is to present an overview of some of the relevant treaties and to identify core rights of migrants, by examining international instruments and customary international law. These are rights to which all migrants are entitled, irrespective of their legal status or length of stay. They comprise the very minimum standard to be accorded to migrants, and in all cases should be respected and promoted by States.

2. DEFINITIONS

Generally, the term "migrant" is thought to imply a migrant worker or economic migrant. "Migrant worker" has been defined as, "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."(1)

Within the category of "migrant", irregular or undocumented migrants must too be recognized, irregular migration being a phenomenon that is growing into a global crisis. From the above definition, it follows that "migrant" does not refer to refugees, exiles or others forced or compelled to leave their homes.

A refugee has traditionally and universally been defined as a person who is outside his or her country of nationality "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion".(2) As defined, however, a refugee is limited to the category of person who is facing individual persecution. The definition does not encompass the millions of persons world-wide who have fled their country due to internal strife, aggression, poverty or natural or man-made disasters. Regional instruments have thus been promoted which take into consideration the special circumstances and generalized violence in regions such as Africa and Latin America.(3) The United Nations High Commissioner for Refugees (UNHCR) considers persons who fall within these extended definitions as of concern to its office.(4)

The term "displaced person" is also frequently used, and broadly refers to persons who have not been individually exposed to persecution but have suffered as a result of generalized violence, armed conflict situations, or other man-made disasters.

Such categorization is becoming less and less applicable as the forces motivating migration change. For instance, in many parts of the world, social and economic deprivation have become so severe as to compel people to leave their homes, yet are these people "migrants" if the voluntary nature of the movement is questionable? (5) Furthermore, the definition of refugee may seem narrow, an individual fear of persecution cannot always be established. Nevertheless, as will be shown below, traditional categorizations are still significant in terms of the protection regime they offer to those falling within their parameters.

3. IDENTIFICATION OF MIGRANTS' RIGHTS

The fact that no single set of standards exists does not mean that there are no standards for the protection of persons who cross an international border. On the contrary, the international community has developed a number of bodies of rights that can be of relevance to persons involved in migration. The application of these rights largely depends on whether the person involved falls within one of the traditional categories of migrant or refugee. For example, international instruments on the status of refugees accord certain rights to those persons within the legal definition of refugee. Instruments concerned with migrant workers lay down basic rights which should be enjoyed by all persons employed outside their State of nationality. In addition, norms exist under international humanitarian law which guarantees certain rights to civilians in times of conflict, and human rights

instruments exist which guarantee basic rights to all human beings. The latter is a significant body of law, especially given the number of persons who do not fall within traditional categories of migration. This paper will give a brief overview of each source of law, identifying those rights of concern to persons who have crossed an international border, focusing mainly on human rights law and migrant workers' law.

3.1. Human Rights

"it is the recognition that all human beings differ from each other, and that each individual is unique, which underlies the concept of the integrity and dignity of the individual person which human rights law is primarily concerned to protect" (6)

All migrants are human beings who possess fundamental and inalienable human rights and freedoms. These rights have been universally acknowledged in international instruments such as the Universal Declaration of Human Rights. Adopted by the United Nations General Assembly in 1948, the Declaration was intended as "a common standard of achievement for all peoples and nations". Its thirty articles cover a wide range of human rights including the following:

- right to life, liberty and security of person (art. 3);
- prohibition of slavery or servitude (art.4);
- prohibition of torture or inhuman or degrading treatment or punishment (art. 5);
- prohibition on retroactive penal legislation (art.11);
- right to respect for private and family life, home and correspondence (art.12);
- right to leave any country and to return to one's own country (art.13);
- right to freedom of thought, conscience and religion (art. 18);
- right to freedom of expression (art. 19).

Article 2 enunciates the fundamental principle of non-discrimination, which guarantees that every human being is entitled to the rights and freedoms set forth in the Declaration without distinction of any kind, such as sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (CCPR) were adopted in 1966 in an effort to give legal form to the rights contained in the Declaration. Both have been widely ratified and are legally binding on States parties. (7) They are comprehensive instruments and enumerate a wide range of rights and freedoms. All human beings, including every person involved in the migration process, are entitled to the protection of the above instruments. Both have clauses obliging States Parties to guarantee the rights to all persons, without discrimination. Article 2(1) of the CCPR obliges a State to ensure the rights declared to "all individuals within its territory and subject to its jurisdiction." This anti-discrimination provision is widely drafted, including national or social origin, birth and other

status. By contrast, Article 4(1) which permits derogation in times of public emergency, contains a narrower statement of the principle of non-discrimination. In practice this would allow a distinction between nationals and aliens (although not on the basis of race, colour, sex, language or social origin), however, measures of derogation must be consistent with States' other obligations under international law. (8) Further, Article 2(3) of the International Covenant on Economic, Social and Cultural Rights provides that developing countries may determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals.

The above instruments guarantee many rights applicable to situations that are commonly experienced within the migration context. Indeed, the very factors motivating the movement from the country of origin often stem from violations or the denial of basic rights, be they civil, social, economic or other human rights, and discrimination in the application of rights. (9) Rights may also be jeopardized during the journey or upon arrival in the country of destination. (10)

Other international human rights instruments which offer guarantees which may be of relevance to migrants include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). This convention promotes the end of all torture and the infliction of other degrading treatment throughout the world, and extends the principle of non-refoulement to apply to all cases where there are substantial reasons to believe that a person would be tortured if returned to his or her own country.

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) is the fundamental international instrument in the quest against racial discrimination. It condemns racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms." (11)

Sections 2 and 3 of the Convention to some extent restrict this wide definition by allowing States parties to distinguish between citizens and non-citizens. However, article 5 contains a non-exhaustive list of rights that should be enjoyed without distinction as to race, colour, or national or ethnic origin. The Convention does not guarantee these rights as such, rather it provides that as far as these rights exist in national law, they are to be enjoyed without discrimination.

Many regional human rights instruments provide similar rights guarantees, and apply to all persons within the jurisdiction of the contracting parties. Thus, the instruments provide protection to both nationals and non-nationals within the

signatory countries. Such regional human rights treaties include the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights.

Human rights instruments provide many vital guarantees to all persons, including those persons who have crossed an international border. They are not, however, specifically focused upon the situations that may be faced by migrants and migrant workers within their host countries. Thus, to fully guarantee protection of these people, other international and regional instruments have been adopted.

3.2 Migrant Workers' Rights

The rights of migrant workers have been specifically enumerated in various international instruments. These instruments reflect an attempt by the international community to establish minimum standards for the treatment of migrant workers and their families, as it is acknowledged that these persons are often subject to discrimination and problems of integration. The International Labour Organisation (ILO) has been foremost in initiating international labour standards for the benefit of migrants. The principle instruments are the Migration for Employment Convention 1949 (No. 97), the Migration for Employment Recommendation 1949 (No. 86), the Migrant Workers Convention 1975 (No. 143) and the Migrant Workers Convention 1975 (No. 143). The former convention focuses upon recruitment and working conditions of migrant workers and establishes the equality of treatment principle. This is a fundamental principle underlying the ILO's work in the field of promoting standards for migrant workers. Namely, that in certain enumerated domains, migrant workers will receive equal treatment with nationals. The second convention is aimed at the elimination of illegal migration and illegal employment. It obliges State parties to take all necessary measures to suppress illegal migration and to pursue the organizers of illegal movements. The 1975 Convention also furthers the principle of equality of treatment and lays down the obligation to respect the fundamental human rights of all migrant workers.

The ILO has also promoted two conventions dealing with the social security entitlements of migrant workers (1962 and 1982), and has issued two recommendations pertaining to migration and developing countries (1955 and 1964). (12)

The most significant achievement in recent years as regards protection of migrants' rights has been the adoption in 1990 by the General Assembly of the United Nations of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention is an attempt to reaffirm and establish basic human rights norms and to embody them in an instrument applicable to migrant workers and their families. It was recognized

that this group of people is often in a vulnerable and unprotected position, especially given the added problems encountered from clandestine movements and trafficking in workers. Its underlying goal therefore, is to provide an instrument that protects those migrant workers and members of their families who are in an undocumented or irregular situation.

The Convention defines various categories of migrant workers and in Article 7 affirms that the rights enumerated in the Convention are to be respected without distinction of any kind. Furthermore, these rights are to be respected and ensured "in accordance with the international instruments concerning human rights". Although the Convention distinguishes between documented migrant workers and those who are undocumented or in an irregular situation, Part III of the Convention enumerates a comprehensive set of civil, political, economic, social and cultural rights applicable to all migrant workers and members of their families. These are largely restatements of the basic human rights found in other instruments, and include the following rights:

- right to leave any State, including their State of origin and the right to enter and remain in their country of origin (art. 8);
- right to life (art. 9);
- prohibition of torture or other cruel, inhuman or degrading treatment (art. 10);
- prohibition of slavery, servitude, forced or compulsory labour (art. 11);
- right to freedom of thought, conscience and religion (art. 12);
- prohibition of arbitrary or unlawful interference with the privacy, family, home, correspondence (art. 14);
- prohibition of arbitrary deprivation of property (art. 15);
- right to liberty and security of person and prohibition of arbitrary arrest or detention (art. 16);
- prohibition of collective expulsion (art. 22).

The principle of equality of treatment between all migrant workers and nationals is to be applied before the courts and tribunals (art. 18) and in respect of remuneration and other working conditions (art. 25). Equality is also to be respected in such fields as urgent medical assistance (art. 28) and access to education (art. 30).

Part IV of the Convention grants additional rights to those migrants who are documented or in a regular situation. For example, art. 39 grants documented migrant workers and members of their families the right of liberty of movement in the territory of the host state, and the right to form associations and trade unions is upheld in art. 40. This section also applies the principle of equality of treatment with nationals for documented migrant workers and their families in certain areas, for example in the field of access to education, housing and social services.

In Part VI, one of the major objectives of the Convention can be seen. This section seeks to prevent and eliminate illegal entry and illegal employment of migrant workers, and calls upon States Parties to take measures to achieve this goal.

Suggested measures include imposition of sanctions against persons who organize irregular movements and against employers of undocumented workers. (13) The section aims at promoting "sound, equitable, humane and lawful conditions" for migrant workers and article 64 mandates States to consult and cooperate in order to achieve this goal.

The Convention is a significant move by the international community in the recognition and promotion of migrants' rights. It reflects a growing awareness of the problems and discriminatory treatment that faces many migrant workers, as well as an acknowledgment of the enormity of the issue of irregular migration. In this way, the Convention is an important and worthy document. Now, however, the instrument and its provisions must be brought to life and given force by ratifications of States. Its implementation could significantly encourage basic humane treatment of all migrant workers. However, the number of ratifications is still disappointingly small. (14) There seems to be a lack of information about the Convention and many States may remain unaware of its details. Its sheer bulk, comprising 93 articles, could also be a cause of the delay in ratifications. Political realities cannot however be ignored. Many countries are opposed to what could be interpreted as a recognition and protection of clandestine and irregular workers. The recent resurgence of xenophobia and racism has led to anti-migrant sentiment, meaning that governments are exceedingly cautious in this area. (15)

3.3 international humanitarian law

The four Geneva Conventions of 1949 and Additional Protocols of 1977 reaffirm the principle that, in situations of armed conflict, those not participating in the hostilities shall be treated humanely. The 1977 Protocol I additional to the Geneva Conventions, in its Part IV dealing with the civilian population, contains a number of provisions to be observed in all circumstances, in addition to other applicable rules of international law. Its article 1.2 further stipulates that in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

This same general principle is recited in the Preamble to the second Protocol stating that in cases not covered by the law in force, the human person "remains under the protection of the principles of humanity and the dictates of public conscience." The Conventions and Protocols also set standards of treatment for aliens on the territory of a party to the conflict, (16) and prohibit the displacement of the civilian population unless imperative military reasons so demand. (17)

3.4 law of aliens

The law of aliens is mainly customary law, derived in part from decisions of international and national tribunals. The two basic standards upheld by the law of aliens are the equality of treatment principle, providing that aliens should receive equal treatment with nationals, with some exceptions such as political rights; and the principle that certain minimum international standards for humane treatment cannot be violated in relation to aliens. These concepts affirm the existence of basic rights to be enjoyed by all aliens. The principles and a number of other provisions in the law of aliens, concerning issues such as expulsion and conditions of admission, are applicable to migrants. The law of aliens, however, largely ignores the status of undocumented migrants, or those migrants in an irregular situation, and thus, does not fully apply to a large proportion of today's migrants.

4. IDENTIFICATION OF CORE MIGRANTS' RIGHTS

The body of human rights law is comprehensive and well-entrenched. There is a considerable number of conventions and treaties that specify obligations in detail and provide implementation mechanisms to promote compliance. However, a significant number of States have not yet adhered to many of the treaties and are not bound by the treaty obligations. Moreover, many migrants today do not fall within established categories, therefore are not protected under instruments such as migrant worker instruments. These people fall into the "gray area" of migration, and all too often are discriminated against, abused and ignored. All migrants, but particularly these people in irregular circumstances or outside traditional definitions, must be of concern to the international community. For effective protection, their rights need first to be identified and accordingly respected and promoted. It is therefore of use to establish whether there is a core of rights, so fundamental that they must be adhered to by all States. This has been the subject of juristic debate and disagreement for a number of years. (18) Nevertheless, it is generally accepted that a "hard core" of rights exists which constitutes the minimum guarantees to which all human beings, regardless of race, national origin or legal status, are entitled. The following rights have been identified as within this core:

•right to life; •prohibition against slavery/slave trade and servitude; •prohibition against torture or other cruel, inhuman or degrading treatment; •prohibition against retroactive penal measures; •right to recognition as a person before the law; •right to freedom of thought, conscience and religion.

These rights apply to all people, and thus to all categories of migrants, be they labour or economic migrants, stranded aliens, displaced persons or others. Indeed, such categorization is not necessary for entitlement to these rights. All people involved in the migration process, regardless of race, colour, national or ethnic origin, are guaranteed these fundamental rights.

In addition to the rights listed above, there are also a number of fundamental rights which have been defined as applicable to all migrants regardless of their status, as follows:

- right to leave any country and return to one's own country; (19)
- right to hold opinions without interference;
- prohibition of arbitrary or unlawful interference with privacy, family, home, etc;
- right to protection of property;
- right to liberty and security of the person;
- right to be treated, if deprived of their liberty, with humanity and with respect for the inherent dignity of the human person and for their cultural identity;
- right to equality with nationals before the courts;
- prohibition of measures of collective expulsion.

Evidently, States Parties to conventions such as those identified in the previous section are bound by treaty provisions, which in practice makes obligations toward migrants and other human beings, far more extensive.

Despite the existence of international instruments, and the acceptance of certain fundamental rights, discrimination, abuse and unfair practices still abound. National legislation must be adopted by the sending and receiving States, but just as importantly is the stimulation of awareness of rights and the provision of information to migrants as to their rights and obligations.

5. SPECIFIC ISSUES CONCERNING MIGRANTS AND HUMAN RIGHTS

Migration is a dynamic process, constantly subject to changing pressures and patterns, which call for new and dynamic responses. The growing phenomenon of migrants in an irregular situation and others who are not clearly protected by a legal regime, the sharp increase in trafficking of migrants, coupled with abuses of rights as a consequence of discrimination, indicate that the promotion of migrants' rights should be a priority concern for the international community. It is worth highlighting some of the specific issues relevant to migrants rights, both in international law and modern day practice.

5.1 freedom of movement

The right of freedom of movement, while long being accepted as a basic human right, has still some problematic aspects which hinder its translation into practice. Inherent in the concept of migration, the right is made up of three basic elements: the right to freedom of movement within the territory of a country; to leave any country; and the right of a person to return to his or her own country. (20) The right has been recognized long before the advent of the current human rights regime. Socrates, for example, regarded the right to leave one's own country as an attribute of Athenian liberty. The English Magna Carta of 1215 guaranteed the freedom "to go out of our kingdom, and to return safely and securely, by land or

water..." (21) Today, the right is enshrined in Article 13 of the Universal Declaration of Human Rights, which states:

(1) Everyone has the right to freedom of movement and residence within the border of each State.

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

Article 12 of the CCPR provides further information on the content of this right:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The abovementioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

The first aspect of the right to freedom of movement –that is, the freedom of movement and residence within the border of a State- applies to all persons without distinction as to nationality. However, it will only apply to persons lawfully within a territory of a State, and therefore, not to undocumented migrants or migrants in an irregular situation. It is a right which has been widely accepted both in theory and in practice, and it's application can facilitate the economic development of a country and the enjoyment of other human rights. (22)

The right to leave any country including one's own is the second aspect of the right to freedom of movement. This too applies to all persons without distinction. The Human Rights Committee has stated that while there is no right in the Covenant to enter any country except one's own, the right to leave and return should be interpreted in an expansive manner. It basically becomes, therefore, a right to travel and access to appropriate travel documents may be considered as an integral part of this right. (23) The major limitation of the right to freedom of movement is that, under international law, there is no corollary right to enter the territory of a country. Indeed, one of the most recognized principles of State sovereignty is the right for States to decide on conditions of entry.

The right to enter one's own country is the third element of this fundamental right. Its interpretation has been the subject of lengthy debate on such issues as whether nationality is a requirement. It is also rendered problematic in the absence of appropriate travel documentation or identification. The right is also linked to the issue of forced exiles or expulsions, which can deprive persons of their right to return.

It has also been argued that the right of freedom of movement necessarily implies a right not to move, or be displaced. War, civil strife, discriminatory policies or development projects can all cause displacement, thus infringing the right of freedom of movement, not only because the displaced are invariably restricted in their movements (for example, when confined to refugee camps or resettlement villages) but also because they cannot exercise their right to return to their home country or principal area. (24) The right of persons to remain in peace, in their own homes, on their own lands, and in their own countries, has also been affirmed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. (25)

5.2 Expulsion

Whether it is collective or individual, expulsion refers to "an act, or a failure to act, by an authority of the State with the intention and with the effect of securing the removal of a person or persons against their will from the territory of that State" (26)

The International Covenant on Civil and Political Rights treats the issue of expulsion in its Article 13: An alien lawfully in the territory of a State Party to the Present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

This provision extends its guarantees only to aliens who are lawfully residing within the territory of a State, thus not protecting undocumented or irregular migrants. However, if the legality of an alien's entry or stay is in dispute, any decision leading to expulsion should be conformity with article 13. (27) This universal prohibition of expulsions which are discriminatory or arbitrary applies equally to migrant workers, as can be seen by ILO conventions and recommendations, various regional instruments and the 1990 UN Convention on migrant workers. Despite the clear prohibition, however, expulsions whereby the rights of aliens are not protected or which are not subject to judicial review, continue to occur frequently.

5.3 Trafficking in Migrants

Trafficking in migrants is a form of irregular migration which has recently become a highly organized, highly lucrative "global business". The growth in trafficking is rapidly becoming of concern to the international community, not only because of the threat caused to orderly migration and national security, but also because of the exploitation, abuse and violations of rights suffered by the individual migrants.

Unabated demand for migration, coupled with stricter entry controls or requirements, has provided entrepreneurs with a potential for profit. The number of persons attempting to enter a country clandestinely has given rise to a market for services such as the provision of fraudulent travel documents, transportation, guided border crossings, accommodation and job brokering. Traffickers supply these services to would-be migrants for a fee.

The gravity of the potential consequences for the individual cannot be overstated. These migrants are in the grip of the traffickers and can suffer physical and mental abuse and violations of their basic human rights. In many cases, traffickers are linked with crime syndicates and are ruthless in their treatment of the migrants. In other cases, migrants are simply abandoned or put at risk because the traffickers fear being caught by the authorities. Often, the clandestine journeys are dangerous, with migrants being crammed into boats or trucks without enough air, water or food. Even at journey's end, these migrants may remain at the mercy of traffickers; forced into a situation of slavery or indentured servitude, kept as hostages for ransom or, as is often the case for women, raped and forced into prostitution. The activity of trafficking poses grave threats to the rights, health and even the very lives of migrants.

Trafficking in women for purposes of prostitution is an especially troubling element of migrant trafficking flows. Beyond the predictable abuse which is often part of any trafficking scheme, women trafficked for the purposes of prostitution must also endure sexual exploitation and all the physical, emotional and social damage such violence entails.

The continued growth of migrant trafficking presents a challenge to the international community. It poses a very real threat to migrants around the world, who are being deceived, exploited and robbed of their basic human rights and dignity. Addressing the issue calls for a recognition of the gravity of trafficking at both the national and international levels. Importantly, it should be recognized that the migrants involved are victims and should not be furthered punished by

authorities. Indeed, States must work together conscious that trafficking presents a serious obstacle to the effective protection of the human rights of migrants.

5.4 Employment and Social Security

The question of access to employment is of crucial economic and social importance to migrant workers and their families. The connection between restrictions on access of foreign workers to employment and their continuing low occupational status in society has been identified as one aspect of the "systematic institutionalized discrimination" ingrained into the temporary migration system. (28)

The international protection of migrant workers has been an aim of the ILO since its foundation. (29) It has elaborated a number of standards embodied in conventions and recommendation, as referred to above. The central principle of equality of treatment between nationals and non-nationals in the labour market covers recruitment, wages, social security and other working conditions. Yet, despite the existence of international standards against discrimination, and the equality of treatment principle enshrined in ILO and other international instruments, discrimination against migrant workers in the fields of employment and access to social security continues to be practiced in countries around the world. Exclusions or preferences concerning the types of jobs open to migrants, different standards applying to job tenure or contractual status, and inequalities in pay or grading, are some of the problems which migrant workers often face.

Such discrimination can also have negative impacts on the country of destination; access to, and equal treatment during, employment is the main avenue for integrating non-nationals. Thus, employment, and the working relations between migrants and members of the receiving country, can have a decisive effect on the relations of migrants with the host country.

Often, discrimination is of an informal nature. Recruitment practices may exclude migrants through inappropriate selection criteria; they may be treated as "inferior" by their work colleagues and subject to prejudices and discriminatory attitudes. In these cases, the existence of international standards and legislation cannot effectively address the problem. Rather, training on equal opportunities and anti-discrimination is also needed.

Further, unabated demand for foreign labour, coupled with strict entry controls in many countries, has increased the level of illegal migrant workers. Such undocumented labourers are even more open to abuse, discrimination and exploitation. Without status, a migrant can be a target of exploitation, obliged to

accept any kind of job, and any working and living conditions. At worst, the situation can be akin to slavery or forced labour. Undocumented migrant workers rarely seek justice or the enforcement of their rights for fear of exposure and expulsion.

6. SUPERVISION AND ENFORCEMENT

A number of the treaties mentioned in this paper have their own enforcement regime. For example, the two Covenants of 1966 obligate States Parties to report periodically to international bodies on measures they have taken, on progress they have made and on any difficulties they have encountered in living up to the Covenants. Individuals claiming to be the victim of human rights violations are also able to complain to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which will admit the complaint if there are reasonable grounds to believe that there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, whereby it will be referred to the Human Rights Commission. Isolated instances may also be examined under the complaints procedure of the Optional Protocol to the International Covenant on Civil and Political Rights.

Complaints procedures for individuals have also been established under the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In terms of the rights of migrant workers, each member country of the ILO must periodically report on the measures taken to apply, in law and in practice, the Conventions which it has ratified. Further, employers' and workers' organizations can lodge representations with the International Labour Office on a Member State's non-compliance with a Convention it has ratified. Complaints can also be lodged by a member country against non-compliance by another member-country.

7. CONCLUSION

Under international law, the rights of migrants stem from a number of sources. There are several international instruments whose provisions are applicable to all human beings, and therefore, also to migrants; and others which are specifically aimed at migrants. In addition, many of the applicable rights are part of customary law, and must be observed by all States and guaranteed to all persons.

As this paper has shown, there is no lack of international instruments and standards whose provisions guarantee rights to migrants. Nevertheless, violations of such rights, abuse and exploitation of migrants is a daily occurrence in all

countries around the world. The main challenge of the international rights regime, therefore, is to ensure compliance by States. Even before enforcement can be ensured, however, there must be adequate dissemination of information on migrants' rights. At a minimum, all authorities of a State must be aware of fundamental human rights and treaty obligations of a State toward migrants. All too often, such obligations are not respected, simply due to ignorance of their provisions or even of their existence, on the part of local or national authorities.

Discrimination is not only practiced at an official level, however, and human rights education is needed to be more widely encouraged, in order to make the general public aware of human rights and migrants' rights.

Finally, one of the most far-reaching and significant development in the protection of non-nationals is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Compliance with its provisions by countries around the world will have a dramatic effect on the treatment of migrants and the furtherance of respect for their rights. The ratification by States of this Convention is an important step toward ensuring the effective respect for the rights of migrants.

Notes:

*Paper prepared by R. Perruchoud and S. Vohra, IOM Legal Services.

1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2. 2. This definition is taken from the 1951 UN Convention Relating to the Status of Refugees and the subsequent Protocol of 1967 which are the major international instruments regulating the conduct of States in the treatment of refugees. UNHCR's mandate contains a definition of refugees which is substantially similar to the traditional definition. 3. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 extends the traditional definition of refugee to apply to those who flee from external aggression, occupation, foreign domination or events seriously disturbing public order. In order to address the specific circumstances in Latin America, the Cartagena Declaration on Refugees of 1984 was adopted: this declaration similarly extends the definition of refugee by considering other causes of forced dislocation such as massive violations of human rights. The criterion of crossing an international frontier is nevertheless maintained, as it is in the OAU convention. 4. Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms. UN Doc. E/CN.4/1993/35 at §68. 5. See further, Background Document in Report of IOM Round Table on The Movement of People: New Developments San Remo, May 1990 at 3. 6. P. Sieghart, *The International Law of Human Rights* at s1.10 (1983). 7. As at 31 December 1997, the International Covenant on

Economic, Social and Cultural Rights had been ratified by 137 States and the International Covenant on Civil and Political Rights had been ratified by 140 States. 8. Goodwin-Gill, Jenny and Perruchoud, "Basic Humanitarian Principles Applicable to Non-Nationals", 19 *International Migration Review* 556, n.10 at 558 (1985). 9. At the IOM Round Table on the Movement of People held in San Remo, May 1990, the Representative of the United Nations Centre for Human Rights said that,

Human rights are generally at issue in the country of origin ... where a lack of guarantees for the enjoyment of fundamental freedoms or acute economic or social inequalities may induce massive immigration.

10. P.A. Taran, "Safeguarding Migrants' Rights and Dignity In and Beyond the Smuggling Dilemma", Discussion Paper submitted at the Eleventh IOM Seminar on Migration, 26-28 October 1994, Geneva. 11. Article 1(1). 12. Recommendation No. 100 Concerning Protection of Migrant Workers in Underdeveloped Countries 1955 designated some third world countries where free movement of migrants was to be encouraged and others where it was to be discouraged in the interest of the country. The Recommendation on Employment Policy 1964 was aimed at achieving recognition of the interests of developing countries. 13. Article 68. 14. As of 31 December 1997, nine States (Bosnia and Herzegovina, Colombia, Egypt, Malawi, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda) had ratified or acceded to the Convention. Chile and Mexico had signed the Convention without ratifying it. Twenty States need to ratify the Convention for it to enter into force. 15. S. Hune, "Equality of Treatment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" in Cator and Niessen (ed.) *Papers Presented at the Seminar on The Use of International Conventions To Protect the Rights of Migrants and Ethnic Minorities* at 79, (1994). 16. Fourth Geneva Convention, Articles 35 to 46. 17. Protocol II, Article 17. 18. See further, O. Schachter, *International Law in Theory and Practice* at 336, (1991). 19. C. Mubanga-Chipoya, *Analysis of the Current Trends and Developments Regarding the Right To Leave Any Country Including One's Own, and to Return to One's Own Country, and Some Other Consideration Arising Therefrom* UN Doc. E/CN.4/Sub.2/1987/10 at 7. 20. Universal Declaration of Human Rights Art. 13. Note however, that there is debate whether this right falls into the category of fundamental rights as it has been given slight recognition by States. For a discussion of this issue see Goodwin-Gill, Jenny and Perruchoud, *supra* note 8, cf. C. Mubanga-Chipoya, *supra* n. 20, who states that this right is part of customary international law. 21. Hannum, *The Right to Leave and Return in International Law and Practice*, at 3 (1987). 22. Mubanga-Chipoya, *supra* n. 20 at §55. 23. Hannum *supra* n.23 at 20. 24. M. Stavropoulou, "The Right Not to Be

Displaced" in 9 American University Journal of International Law and Policy 1994, at 739. 25. At its 48th Session, Resolution 1996/9. 26. G.J.L. Coles, "The Problem of Mass Expulsion" Background Paper prepared for the Working Group of Experts on the Problem of Mass Expulsion convened by the International Institute of Humanitarian Law, San Remo, Italy (16-18 April 1983) at 2. See also R. Perruchoud, "L'expulsion en masse d'étrangers", *Annuaire Français de Droit International*, XXXIV, 677 (1988). 27. R. Plender, *Basic Documents on International Migration Law* 2nd revised ed., at 34 (1997). 28. R. Cholewinski, "Migrant Workers in International Human Rights Law" at 290 (1997). 29. The Treaty of Versailles which established the ILO in 1919 stated in article 427 that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein" and the Constitution enunciated among the priority aims of the ILO "the protection of the interest of workers when employed in countries other than their own". See further R. Zegers de Beijl, "Combating discrimination against migrant workers: International standards, national legislation and voluntary measures – the need for a multi-pronged strategy", background paper for the United Nations Seminar on Immigration, Racism and Racial Discrimination, Geneva, 5-9 May 1997.