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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

TEXT OF THE PREAMBLE AND ARTICLES OF THE INTERNATIONAL  
CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL  
MIGRANT WORKERS AND THEIR FAMILIES TO WHICH THE WORKING  
GROUP PROVISIONALLY AGREED DURING THE FIRST READING \*

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\* Square brackets indicate language upon which the Working Group did not reach agreement.

Preamble

The States Parties to this Convention,

- (1) [Reaffirming] [Taking into account] the [permanent validity] [the importance] of the principles [and standards] [norms] embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women,
- (2) [Reaffirming also] [Taking into account] the principles [and standards] [set forth in the relevant instruments] elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),
- (3) Reaffirming the importance of the principles contained in the Convention Against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,
- (4) Recalling [the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment,] the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,
- (5) Recognizing the importance of the work carried out in connexion with [migrant labour] [migrant workers and their families] in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, and in various regional organizations.

[(6) Recognizing that the principal objective of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, [that the ILO has thus been vested with special authority and responsibility to deal with the subject of migrant workers and that the ILO possesses unique competence, expertise, and experience in migrant worker matters] [and that the ILO has made a significant contribution to the promotion of the interests of migrant worker workers,]]

[(6) Recognizing the importance of the International Labour Organisation in the defence of the interests of migrant workers,]

(7) Recognizing the progress made by certain countries on a regional or bilateral basis, as well as the importance and usefulness of bilateral and multilateral agreements for the protection of the rights of migrant workers and their families,

(8) Realizing the importance and extent of the migration phenomenon which involves millions of people and affects a large number of countries in the international community,

[(9) Aware of the [positive] impact that the flows of migrant workers have on [the process of regional integration] and of the [important] role that such flows may play in the organization of the new international economic order,]

[(10) Considering that international flows of migrant workers originate in differences in degree of development and level of income between States of origin and States of destination, and that such flows are a reflection and part of the supply of and demand for labour at the international level,]

(11) Considering the situation of [vulnerability] in which migrant workers find themselves in the receiving societies [for reasons relating, among other things, to their absence from their country of origin and to the difficulties of their [insertion] [adaptation] [presence] in the receiving society] [for various reasons],

[(12) Bearing in mind the beneficial effects that labour mobility on an international scale has had and will continue to have on the economy of both States of origin and States of destination,]

[(13) Bearing [also] in mind on one hand the contribution of migrant workers to the economy of the receiving countries and on the other hand the social costs connected with the migratory process,]

(14) Recognizing the necessity to promote a balanced international economic development in order to minimize the [need for and] problems linked with international migration,

(15) Convinced that the status and fundamental rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

(16) Taking into account that often migration is the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

[(17) Considering, therefore, that the fundamental human rights and labour rights of all migrant workers and their families, including the rights of undocumented workers, who are even more defenceless because of their irregular status, require appropriate protection at the international level,]

[(17) Bearing in mind that the human problems involved in migration are even deeper in the case of illegal migration and that therefore appropriate action should be reinforced also at the international level in order to prevent and suppress illegal and clandestine movements and traffic of migrant workers, while at the same time assuring the protection of their fundamental human rights,]

(18) Considering that in most cases workers who are undocumented or in an irregular situation are employed under worse conditions of work than other workers including migrant workers in a regular situation, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

(19) Considering that the widest recognition of the rights of all migrant workers and the effective safeguarding of these rights will accordingly tend to discourage the seeking of migrant workers who are undocumented or in an irregular situation and to contribute to a reduction in irregular migration flows,]

(20) Considering however that, in order to discourage prospective migrants for employment from respecting the normal procedures established by the competent authorities of the country concerning the recognition of certain rights ought to be limited to migrant workers in a regular situation, including those whose situation has been regularized,]

(21) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

Have agreed on the following articles:

PART I

Scope and definitions

Article 1.

This Convention is applicable to all migrant workers and members of their families, except as otherwise provided hereafter and without distinction on grounds such as sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, [property], birth, marital or any other status.

Article 3.

For the purposes of this Convention, the term "members of the family" includes the spouse [or the companion who lives matrimonially with the worker if such a relationship is recognized by the laws] [governing the personal status of the worker] [of the State of employment or the State of origin], [the dependent [minor, unmarried] children], [the dependent parents of the worker or the spouse] and other persons who are recognized as members of the family for the purposes of this Convention by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned.

Article 5. Application during the process of migration

The rights, as set forth in this Convention, shall be recognized and guaranteed during the entire migration process, that is, during the preparation for emigration, on leaving from the State of departure, in the course of transit through a State, during the journey, during the entire period of stay, residence, employment or work in the State of employment and on return to the State of origin or the State of normal residence.

Article 6. Definition of the terms "State of origin", "State of employment", "State of return" and "State of transit"

For the purpose of this Convention:

(a) The term "State of origin" means the State of which [the migrant worker or the members of his family, as the case may be] [any persons to which this Convention is applicable], are nationals;

(b) The term "State of employment" means the State where the migrant worker is for the purpose of [employment] [or work] [and where members of his family have accompanied or joined him];

(c) The term "State of return" means the State to which the migrant worker [or members of his family] decides to return, whether it be his State of origin or the State in which he is normally resident;

(d) The term "State of transit" means any State through which the migrant worker [or members of his family] pass on their departure or return.

PART II

Fundamental human rights of all migrant workers  
and members of their families

Article 7. Each State Party to this Convention undertakes to respect and to ensure to all migrant workers and members of their families within its territory and subject to its jurisdiction the rights recognized in this part of the Convention without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national [ethnic] or social origin, nationality, age, property, birth [marital] or other status.

Article 8. (1) Migrant workers and members of their families shall be free to leave any country, including their country of origin. This right 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 other rights recognized in this part of the Convention.

(2) Migrant workers and members of their families shall have the right at any time to re-enter their country of origin.

Article 9. The right to life of migrant workers and members of their families shall be protected by law [under the same conditions as for citizens of the State concerned].

Article 10. Migrant workers and members of their families shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11. (1) Migrant workers and members of their families shall not be held in slavery or servitude.

(2) Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

(3) Paragraph (2) shall not be held to preclude, in countries 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 this article the term "forced or compulsory labour" shall not include:

(a) Any work or service, not referred to in paragraph (3), 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 community [in cases provided for by law];

(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12. (1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. [This right shall include freedom to have [or not to have] or to adopt [or not to adopt] a religion or belief of their choice, and freedom whether individually or in community with others and in public or private, to manifest their religion or beliefs in worship, observance, practice and teaching.]

[(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have [or not to have] or to adopt [or not to adopt] a religion or beliefs of their choice.]

(3) Freedom to manifest one's religion or [beliefs] [convictions] may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The States Parties to this Convention undertake to have respect for the liberty of migrant workers [to practice their religion and] to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions.

Article 13. (1) Migrant workers and members of their families shall have the right to hold opinions without interference.

(2) Migrant workers and their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas [of all kinds], regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14. Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence, or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

Article 15. Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the country of employment (receiving country), their assets are expropriated in whole or in part, they shall have the right to just compensation.

Article 16. (1) Migrant workers and members of their families shall have the right to liberty and security of person.

(2) Migrant workers and members of their families shall be entitled to [normal police] protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, nor be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest and, so far as possible in a language which they understand, of the reasons for their arrest and shall be promptly informed in a language which they understand of any charges against them.

(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release [in accordance with the penal procedure of the receiving State]. [It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.]

(7) (a) In the case of arrest or detention of a migrant worker or a member of his family [on a criminal charge], if he so requests, the diplomat or consular authorities of his country of origin, or representing the interests of that country, shall be informed without delay of the arrest or detention and of the reasons therefore. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

(b) The person concerned shall be informed without delay of the above-mentioned rights;

(c) The said diplomatic or consular authorities shall have the right to visit the person concerned during any period of detention [on a criminal charge] or imprisonment, to converse and correspond with him and to arrange for his legal



representation [in accordance with the terms of the Vienna Convention relating to consular relations].

(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. [In taking such proceedings, they shall have the free assistance of an interpreter if they cannot understand or speak the language used.]

(9) Migrant workers and members of their families who have been victims of unlawful arrest or detention [shall have an enforceable right to compensation] [shall have the right to bring an action for compensation] [for damages caused] [subject to domestic legislation].

Article 17. (1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

(2) If they are detained in custody while awaiting trial, they shall, [whenever possible,] [save in exceptional circumstances,] be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

[(3) Any migrant worker or a member of his/her family who is detained in a country of transit or in a receiving country [pending trial on a charge of] [for] violation of provisions relating to migration, shall be housed, in so far as practicable, separately from persons in detention pending trial for other offences.]

[(3) Any migrant worker or member of his family who is detained in the State of destination for infraction of the provisions concerning migration shall be housed in suitable accommodation [under judicial control] separate from the prisons or other centres of detention or imprisonment for offenders or criminals.]

(4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[(5) During detention or imprisonment, migrant workers or members of their families shall enjoy the right to visits by members of their family.]

[(6) In any case of application of sanctions, including pending proceedings for the expulsion or deportation of migrant workers or their families, the competent authorities of the State of destination shall pay special attention to the problems posed by the families of such workers, with particular reference to the specific needs of women and minor children.]

[(7) The fundamental human rights and the labour rights of migrant workers or their families shall not, in the event of their being subjected to any form of detention or imprisonment provided for by the laws in force in the State of destination, be limited or impaired merely because such workers or their families lack the required migration documentation. This provision shall apply at all times, including during any expulsion or deportation proceedings.]

[(8) All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.]

Article 18. [(1) Migrant workers and members of their families shall have the right to equality with citizens of the State concerned as regards access to and treatment by the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.]

(2) Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(3) In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of a [qualified] interpreter if they cannot understand or speak the language used in the proceedings;

(g) Not to be compelled to testify against themselves or to confess guilt.

(4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

(5) Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

(6) When migrant workers or members of their families have by a final decision been convicted of a criminal offence and when subsequently their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the persons who have suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to them.

(7) Migrant workers and members of their families shall not be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 19. (1) Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when the criminal offence was committed [nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed]. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty they shall benefit thereby.

[(2) In accordance with the principle of proportionality of penal sanctions, courts shall have regard, in imposing any sentence for criminal offences committed by migrant workers or members of their families, to any incidental sanctions or consequences affecting their right of residence or work including expulsion.]

(3) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to [the general principle of law recognized by the community of nations] [the legislation of the receiving State].

Article [20. Migrant workers and members of their families shall not be imprisoned, deprived of their authorization of residence or work permit, or expelled merely on the ground of [inability] [failure] to meet a contractual obligation.]

Article 21. It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. [It shall be a [serious] offence, and punishable accordingly, unlawfully to confiscate such documents or to destroy or attempt to destroy them.]

Article [22. (1) Migrant workers and members of their families shall not be subject to measures of [collective] [mass] expulsion.]

"[(1) Each case of expulsion shall be examined and decided individually.]"

[(2) Migrant workers and members of their families may be expelled from the territory of a State Party to this Convention only in pursuance of a judicial or administrative decision reached or dictated in accordance with law and stating the reasons for the decision.]

[(3) The decision shall be communicated to them in writing.]

[(4) Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal [to press its examination by a higher authority] against it. If the [appeal] [review] is not to be examined by a judicial authority, shall stay the execution of the decision except where the reasons stated therefore involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law.]

[(5) In case of expulsion, the person concerned shall be allowed a reasonable opportunity to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities, [and where this appears necessary for reasons of personal security, to seek entry to a country other than his country of origin.] Account shall also be taken of the person's family circumstances.]

[(6) Expulsion or departure from the receiving country shall not in itself prejudice any rights acquired under the law of a migrant worker or a member of his/her family.]

[(7) In any case of expulsion or deportation, the authorities of the State of destination [shall bear the costs incurred and] [shall refrain from exerting pressure on the persons concerned in any manner in order to obtain their agreement to summary procedures such as "voluntary exit", when such agreement is not spontaneously forthcoming from the persons concerned.]]

Article 23. (1) Migrant workers and members of their families shall have the right to seek consular [and diplomatic] protection [and appropriate assistance] from the authorities of their country or origin or those representing the interests of that country [and to receive from them legal advice and counsel] whenever the rights recognized in this Convention or their rights under the legislation of the country of employment [receiving country] are impaired.

[(2) The consular [or diplomatic] authorities of the country of origin or those representing the interests of that country shall be notified of any decision to expel a migrant worker or a member of his/her family [legally present in the State of destination] at least forty-eight hours before the expulsion is to take effect.]

Article 24. Every migrant worker and every member of a migrant worker's family shall have the right to recognition everywhere as a person before the law.

Article 25. (1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and any other conditions of work which, according to national laws or practice, are covered by this term;

(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment;

(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity.

Article 26. (1) The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

(a) To take part [freely] in [peaceful] meetings and activities of trade unions and of other associations [apart from political parties and organizations] [legally] established for the protection of economic, social, cultural and similar interests [subject only to the rules of the organization concerned];

(b) To join any trade union and any such association as aforesaid [, subject only to the rules of the organization concerned];

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

(2) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article [27. (1) (a) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving State in respect of social security. As regards migrant workers and members of their family who are undocumented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits, [that is, benefits the grant of which depends on direct financial participation by the migrant workers or their employer or on a qualifying period of economic activity.]

(b) Where the application of the preceding paragraph requires the conclusion of multilateral or bilateral agreements, such agreements shall, inter alia, make provision for the maintenance of acquired rights and of rights in the course of

acquisition and for the payment of benefits outside the national territory including provisions for transfer of pension, continuity of social benefits and accumulation of contributive rights. Where such agreements are required, the States Parties to the present Convention shall spare no effort to conclude them.

(c) In so far as migrant workers and members of their families are not specifically entitled to receive contributory social security benefits or to continue to receive such benefits, they shall be entitled to the reimbursement of the whole or such part of the contributions paid as may be appropriate.

(2) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered.]

Article [28. (1) All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the restoration of their health.

(2) Such emergency medical care shall not be refused to them by reason of any irregularity in their situation or in that of their parents with regard to stay or employment or by reason of the absence of any guarantee as to the payment of the expenses involved.]

Article [29. [Children of all migrant workers shall have the basic right of access to education.] [Access by children of any migrant worker to pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving State.]

Article [30. The irregularity of its own situation or of that of its parents shall not have the effect of depriving a child of its right to a name, to registration, or of the right to a nationality, with a view to reducing cases of statelessness.]

Article [31. The States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and their families and shall permit them to maintain their cultural links with their State of origin.]

Article [28. Emergency medical care required for the preservation of the life or the restoration of the health of migrant workers and the members of their families shall not be refused to them by reason of the irregularity of their situation or that of their parents with regard to stay or employment or by reason of the absence of a guarantee as to the payment of expenses involved.]

Article [31. All migrant workers and their families shall enjoy the right to maintain their cultural dignity.]

Article [31. The States Parties to the present Convention shall recognize the right of all migrant workers and their families to maintain their cultural identity.]

Article 32. Upon the termination of their stay in the receiving State all migrant workers and members of their families shall have the right to transfer any savings and to take with them all personal effects, working tools and other belongings.

Article 33. (1) Migrant workers and members of their families shall have the right to be informed by both the State of origin and the State of employment concerning:

(a) Their rights arising out of this Convention;

(b) The conditions of admission, their rights and obligations under the law and practice of the receiving State and such other matters as will enable them to comply with administrative or other formalities in that State.

(2) Each State Party to this Convention shall take the appropriate measures to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

(3) The said information shall be provided to migrant workers and to members of their families, wherever possible free of charge, upon request and in their own language or in a language which they are able to understand.

Article 34. None of the provisions of part II of this Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

Article 35

Migrant workers and members of their families who are in a [regular situation] [lawful status] in the State of employment as regards their admission, [duration of] stay and [type of] employment [or other economic activity] [and other matters related to their immigration and employment status], as well as those whose situation has [been regularized,] [become lawful since entry into the State of employment] shall enjoy the rights set forth in part III, in addition to those set forth in part II.

Article 36

[Each State Party to the present Convention shall be free to establish in its national legislation the criteria governing admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay, [and] employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]

[Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity, and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law].

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin and the State of employment of all conditions applicable to their admission and particularly those concerning the duration of the stay authorized, employment which they may take up and economic activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions.



Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent [for reasonably long periods] without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families [in particular those obligations stemming from their links with the State of origin].

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

(1) Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to liberty of movement in the territory of the State of employment [and freedom to choose their place of residence there.]

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

Article 40

1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment, including the right to form associations and trade unions, for the promotion and protection of their economic, social, occupational, cultural and other similar interests, [including the preservation of their [national identity], cultural identity and cultural and other similar links with the States of origin.]

2. No restrictions may be placed on the exercise of these rights other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order, (ordre public), [public health and morals] or for the protection of the rights and freedoms of others.

Article 41

[States of origin and States of employment shall collaborate with a view to facilitating, [without unreasonable restrictions,] [as provided for in their national legislation] the exercise by migrant workers and members of their families in a [regular situation] [lawful status] of the right:

- (a) To take part in the conduct of public affairs of their country of origin, directly or through freely chosen representatives;
- (b) To vote and to be elected at elections in their country of origin;
- (c) To have access, on general terms of equality, to public services in their country of origin.]

Article 42

(1) States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of the special needs, aspirations and obligations of migrant workers and members of their families.

(2) [States of employment shall facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.]

(2) [States of destination reserve the right to permit or not to permit, to the extent provided for in their internal legislation, the participation of migrant workers in public activities or in administrative decision-making.]

(3) [Migrant workers shall enjoy political rights in the State of destination only to the extent that that State, in the exercise of its sovereignty, may grant them such rights.]

Article 43

[ (1) Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

- (a) Access to educational facilities and institutions;
- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions;
- (d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;
- (e) Access to social and health services, [provided that the requirements for participation by nationals in schemes of the State of employment are met;]

[ (1) Migrant workers in a [regular situation] [lawful status] shall enjoy [equality of treatment with nationals of the State of employment] [subject to the national legislat[on of the State of employment] [subject to no limitations other than those provided for in the present convention], [in particular in article 50, para. 2 (a)] in respect of

- (a) Access to educational facilities and institutions, subject to the admission requirements and other regulations of the facilities and institutions concerned;
- (b) Access to vocational guidance and placement services, subject to the resources of the State of employment;
- (c) Access to vocational training and retraining facilities and institutions, subject to the resources of the State of employment;

(f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;

(g) Access to co-operatives and self-managed enterprises;

(h) Access to and participation in cultural life.

(2) States Parties to the present convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]

(d) Access to housing, [including social housing schemes,] and protection against exploitations in respect of rents;

(e) [Access to social and health services,] [provided that the requirements for participation in schemes of the State of employment are met;]

(f) The exercise of the right of freedom of association with others;

(g) Access to and participation in cultural life.

(2) States Parties to the present convention shall endeavour to facilitate effective equality of treatment to enable migrant workers in a lawful status to enjoy the the above-mentioned rights subject to the terms of their stay under the national legislation of the State of employment [including opportunities for advancement] [wherever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]]

#### Article 44

(1) State Parties to the present convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall take appropriate measures to ensure the protection of the unity of families of migrant workers in a [regular situation] [lawful status], equal to that given to nationals.

(2) Spouses and minor dependent unmarried sons and daughters [of migrant workers] shall be authorized to accompany or join migrant workers and to stay in the State of employment for a duration not less than that of the worker, subject to [procedures prescribed by] the [national] legislation of the State of employment or [applicable] international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The process of verifying that such conditions are met shall be completed within a reasonable period.

(3) States of employment shall [favourably] consider the admission of other [dependent] family members on humanitarian grounds.

Article 45

(1) Members of the family of migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

- (a) Access to educational facilities and institutions;
- (b) Access to vocational guidance and training facilities and institutions;
- (c) Access to social and health services;
- (d) Access to and participation in cultural life.

(2) States of employment, [provided that the requirements for participation in schemes of the State of employment are met,] [in accordance with their national circumstances and legal systems] shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at [facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language] [securing the same rights and opportunities enjoyed by children of the State of employment concerning access to all systems, forms and degrees of education by facilitating the learning of the local language].

(3) States of employment shall endeavour, as far as practicable and [where appropriate] in collaboration with States of origin, to facilitate for the children of migrant workers the teaching of their mother tongue and culture.

[(4)] States of employment shall provide, as far as practicable, special schemes of education in the mother tongue of children of migrant workers, at least at the primary level.]

Article 46

[(1) At the time of their admission to the territory of the State of employment or of the regularization of their situation, migrant workers and members of their families in a regular situation shall enjoy exemption from customs duties in respect of their personal effects and in respect of portable hand-tools and portable equipment of the kind normally required for the carrying out of their trade or occupation.]

[At the time of their initial admission to the territory of the State of employment, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State of employment as well as relevant international agreements, enjoy exemption from customs duties in respect of the equipment necessary to perform the trade or occupation for which they are admitted to the State of employment.]

(2) [The same exemption to migrant workers and members of their families shall be accorded by the State of return at the time of their final return.]

/...

Article 47

[The States Parties to the present Convention shall, as far as possible and in accordance with the arrangements laid down in their legislation and applicable agreements, authorize and provide facilities for the transfer to the country of origin or the country of normal residence of migrant workers and members of their families of such parts of their earnings and savings as they may wish to transfer. The transfer of sums required for the maintenance of members of the migrant worker's family shall on no account be prevented or restricted.]

[Migrant workers shall have the right subject to applicable currency laws and regulations, to transfer their earnings and savings from the State of employment to other States, in particular those funds necessary for the support of their families, and States of employment shall take appropriate measures to facilitate such transfers in accordance with procedures established by law.]

Article 48

Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. [They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants.]

Article 49

(1) Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in employment [or other economic activity]. [This provision does not apply to frontier workers].

(2) [In States of employment where migrant workers are free to choose any type of employment for any employer] without prejudice to article 36 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations.

[(3) In order to allow migrant workers referred to in paragraph (2) above sufficient time to find alternative employment, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.]

Article 50

[(1) Without prejudice to article 36 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

[In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work without prejudice to article 36 of the present Convention.]

(2) Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]

Article 51

(1) States of employment shall permit migrant workers in a [regular situation] [lawful status] freely to choose their employment [or other economic activity], subject only to such restrictions or conditions as are authorized by the following paragraphs of this article.

[ In States of employment whose laws and regulations provide that migrant workers lawfully present may freely choose their employer or employment after a certain period of lawful employment, only the restrictions or conditions set forth in the following paragraphs of this article shall be applicable:

(2) States of employment may  
(a) restrict access by migrant workers to limited categories of employment, functions services or activities where this is necessary in the interests of the State;

(1) A State of employment may:

(a) restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;

(b) restrict free choice of employment [or other economic activity] in accordance with regulations governing the conditions of recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

(b) restrict free choice of employment in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

(c) determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged in work on his own account.

(3) In the case of migrant workers in a [regular situation] [lawful status] whose permission to work is limited in time, States of employment may also

(a) make the right of free choice of employment [or other economic activity] subject to the condition that the migrant workers has lawfully worked in its territory for a continuous period not exceeding two years;

(b) limit access by a migrant worker to employment [or other economic activity] in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked for a continuous period exceeding five years;

(c) if the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals;]

(c) determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged to work on his own account.

(2) In the case of migrant workers lawfully in the territory of a State or employment whose permission to work is limited in time, a State of employment may in addition to the provisions of paragraph one:

(a) make the right of free choice of employment and employer subject to the condition that the migrant worker has lawfully worked in its territory continuously for a prescribed period;

(b) limit access by a migrant worker to employment in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked continuously for a prescribed period;

(c) if the State of employment is a developing country impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.]



Article 52

{(1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 51.

(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 44, the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment or [other economic activity] over other workers who seek admission to the receiving country.]

[52. (1) If specifically authorized by the State of employment, the spouse and children of a migrant worker lawfully present in the State of employment shall be permitted to engage in employment;

(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 44 the States Parties to the present Convention shall, subject to national laws and regulations and applicable bilateral and multilateral agreements, consider granting priority in respect of employment over other workers who seek admission to the State of employment.]

Article 53

[Without prejudice to the terms of their authorization of residence, migrant workers as defined in Article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 43, enjoy equality of treatment with nationals of the receiving State in respect of

(a) Security of employment;

(b) Access to relief work organized by a public authority;

(c) Subject to any conditions or restrictions imposed in pursuance of Article 51, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.]

Article 54

[Migrant workers as defined in article 2 (1) (b) who are in [a regular situation] [lawful status] shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession.]

[54. Migrant workers as defined in article 2 (1) (b), who are in a regular situation, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, except as provided otherwise by the laws and regulations of the State of employment.]

Article 56

[(1) Migrant workers and members of their families in [a regular situation] [lawful status] may not be expelled from a receiving country except

- (a) For reasons of national security, public order, or morals;
  - (b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;
  - (c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled.
  - [(d) In accordance with the applicable laws and regulations of the State of employment.]
- (2) [In accordance with applicable laws] any such expulsion shall be subject to the procedural safeguards provided for in Part II of this Convention.
- [(3) Before any expulsion or deportation be carried out, all fundamental rights of migrant workers must be legally safeguarded.]]

Part V    Promotion of sound and equitable conditions for international migration of workers and their families

Article 63

(1) The States Parties to the present Convention shall maintain appropriate government [agencies] [institutions] [entities] [and promote other services] to deal with questions concerning international migration of workers and their families. Their functions [shall] [should] include, inter alia:

- (a) The formulation of policies regarding such migration;
- (b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;
- (c) [The provision of information, [particularly to employers and their organizations as well as [to workers and] worker's organizations] on policies, laws and regulations relating to migration and employment, on agreements concluded with other States on migration for employment and other relevant topics and on conditions of work and life of migrant workers and members of their families in the States of employment;]
- (a) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, employment [and other economic activities] exit and return to the State of return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

[(e) Other measures which are necessary to facilitate the implementation of the present Convention.]

[(e) The recommending of legislation, regulations and other measures which are necessary to facilitate the implementation of the present Convention and to deal with matters relating to international migration and migrant workers.]

[(2) The States Parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.]

Article 64

[The recruitment [or placement] of workers for employment in another State may be carried out [in conformity with] [subject to] national laws and regulations and in accordance with applicable international agreements [solely] by:

(a) Governmental bodies of the State in which such recruitment takes place;

[(b) Governmental bodies of the State;

(c) A body established by virtue of a bilateral or multilateral agreement;

(d) A prospective employer or a person in his/her service, or private agencies, provided that [any required] approval and supervision for such operations is [solely] granted by the appropriate competent authorities of the State concerned.]

[ (1) Subject to the following paragraph, the right to undertake operations with a view to the recruitment [or placing] of workers in employment in another country shall be restricted to

(a) Public services or bodies of the country in which such operations take place;

(b) Public services or bodies of the receiving country, if authorized by agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

(2) National laws and regulations and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by

(a) The prospective employer or a person in his service acting on his behalf;

(b) Private agencies.]