

Promoting and Protecting the Rights of Migrant Workers

A UN Road Map

Second Edition



A Guide for Asian NGOs to the
International Human Rights System
and Other Mechanisms

Asian Migrant Centre
Ateneo Human Rights Center
Canadian Human Rights Foundation
Asia Pacific Forum on Women Law and Development

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Asia Pacific Forum on Women, Law and Development

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This volume builds on the original 2000 edition of the publication, *A UN Road Map*. Since then, there have been numerous developments in the international human rights system, and particularly in those areas related to migrant workers. For instance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families came into force on July 1, 2003 and 'Migrant Workers' was an item that was extensively discussed during the 92nd Session of the International Labour Conference of the ILO in June 2004.

This edition contains updates on the various UN and ILO instruments and mechanisms available to civil society working on the issue of migrant workers. Like the 2000 edition, it uses a methodology that allows NGOs to identify the international mechanisms available in cases of violations of human rights involving migrant workers. Given that NGOs have usually limited resources, it maps out the various requirements and options that are available, allowing one to consider the most feasible alternative in seeking redress to violations.

In preparing this edition, we took into consideration comments made by members of the NGO community who requested that it be made more user friendly, and we have also highlighted examples showing how NGOs can use the system.

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A Word from CHRF

This publication is part of the Canadian Human Rights Foundation's Migrant Workers Program series. *A UN Road Map, 2nd edition* is an update of the original year-2000 publication. We received invaluable input from participants, facilitators and resource persons who took part in the Regional Consultation on Migration: Accessing the UN System, 2000 in Thailand.

The Road Map is designed to suggest effective strategies which can be used by Asian NGOs working to better promote and protect the rights of Asian migrant workers, particularly the women. It identifies practical approaches which can be used both within and outside the formal mechanisms of the UN and ILO systems. Furthermore, we hope that the Road Map will serve as an educational tool in promoting awareness of migrant workers' issues.

We recognize that the international human rights system is constantly evolving and that new strategies and approaches are continuously emerging to make use of the UN and ILO mechanisms. To adapt to these changes, the CHRF plans to continue working on this Road Map and publish future editions. We would welcome all comments and suggestions so that we can ensure that the Road Map will be a practical and effective tool for the promotion and protection of migrant workers' rights.

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Introduction

Human rights are rights that all human beings possess by virtue of their humanity. They are not *given* to individuals by states, but are merely recognized by states. Human rights are recognized or *enshrined* in various documents and practices, among them national constitutions, regional agreements, international agreements and customary international law. This manual focuses on international human rights law, that is those human rights and freedoms which states are bound to respect.

International Human Rights Law

International law, more specifically, international human rights law, has been and continues to be dominated by States and their governments. This means that States are primarily responsible for formulating human rights standards and enforcing them. Moreover, States are only bound by international instruments to the extent that they consent to being bound. If they refuse to sign and ratify an international agreement or persistently object to a given international practice, they will not be bound by the obligations flowing there from. In the area of human rights, this has meant that States have been able to mistreat, torture, and execute their citizens (and even non-nationals on their territory) with virtual impunity. However, non-State actors such as individuals and non-governmental organizations are becoming increasingly influential in the field of international human rights law. Through a process referred to as the 'mobilization of shame', these non-State actors are pressuring States and their governments to respect certain minimum human rights standards. When States fail to meet these standards, individuals and NGOs can point to existing human rights instruments, and draw the attention of the international community to the human rights violations committed by these States. The purpose of this kind of action is to compel governments into complying with international human rights instruments, by exposing human rights violations perpetrated by governments, to international public scrutiny and condemnation.

Women Migrant Workers

Women migrant workers are faced with the double burden of being both women and migrants: two of the groups most vulnerable to human rights abuses. The experiences of these modern day pioneers who leave their homelands in search of a better life abroad for themselves and their families magnify the challenges that workers everywhere face in the age of globalization.

There are three main aspects of the experience of women migrant workers that set them apart from other workers:

- their status as women;
- their status as non-nationals; and
- the fact that many are compelled to migrate to escape poverty in their homeland.

These three characteristics make them particularly vulnerable to human rights abuses because they are indicia of powerlessness. This fact is increasingly being recognized at the international level, although much remains to be done. Two developments in particular are worth noting. First, it is now generally accepted in international law that women's rights are human rights. The fact that gender based persecution and abuses are now recognized as distinct types of human rights violations give women avenues of escape and redress they were once denied such as the ability to seek asylum on this basis. Second, the weakening of the distinction between the private and public spheres has led to the recognition of violence in the home, and other private contexts, as constituting a human rights violation. This recognition strengthens the call for greater state protection for women workers, especially those employed in the home (be it their own or that of their employer). While women workers face particular types of problems as both women and non-nationals, they also have particular needs as workers.

The Application of International Human Rights Standards to Non-Nationals, Including Migrant Workers

In general terms, the main universal human rights instruments and most ILO instruments protect the rights and freedoms of non-nationals (individuals who are not citizens of the state in which they are present) and nationals (citizens of the state in which they are present) alike. This means that migrant workers, who are non-nationals of the states in which they are employed, are also protected by international human rights instruments unless the instrument in question contains language excluding them and other non-nationals from such protection. This exclusionary language may be direct or indirect. An example of direct exclusion is a statement to the effect that only citizens enjoy certain human rights guarantees, while an example of indirect exclusion is a statement to the effect that nationality is not a prohibited ground of discrimination (meaning that states are permitted to discriminate against non-nationals). When an international instrument does not explicitly state whether or not it applies to non-nationals, one can assume that it does. This is especially the case where broad wording such as "Everyone has the right", "Workers

without distinction whatsoever” or “No one shall be” is used.¹ Another reason for assuming that international instruments apply to non-nationals unless they explicitly exclude them from protection is the treatment of non-nationals (or “aliens”) in international law. Historically, there was a debate between those who maintained that non-nationals should be treated in the same manner as nationals (the proponents of “equal treatment”) and those who maintained that non-nationals deserved to be treated in accordance with certain international minimum standards (and in some cases, better than nationals). It is safe to say that the debate has settled, as far as international human rights instruments are concerned, on the idea that when a state consents to be bound by an international human rights instrument, its obligations extend to both nationals and non-nationals on its territory regardless of which of these two approaches one accepts. The human rights guarantees should apply to non-nationals either because they should be treated on equal terms with nationals, or because they should be treated according to the international minimum standards that these international instruments embody.²

UN Instruments

It seems likely that most of the human rights standards embodied in UN treaties and declarations are as applicable to non-nationals as they are to nationals. In some cases, a particular provision will specify that it is applicable to “citizens”. In this case, it is clear that the provision is meant to apply only to nationals of the state that ratified or signed the instrument. In other cases, the language used is “everyone”, in which case the provision applies to anyone within the jurisdiction of the state concerned.

Nonetheless, there is a compelling argument in favour of applying human rights standards to nationals and non-nationals alike. This argument focuses on the binding nature of the Universal Declaration of Human Rights (UDHR) as part of customary international law. Because the UDHR does not distinguish between nationals and non-nationals, and because the rights enumerated in subsequent UN instruments have reflected the standards in the UDHR, it is arguable that those subsequent instruments should be interpreted as applying to everyone within the jurisdiction of the state concerned. That is, any suggestion that the human rights standards established in various UN instruments only apply to nationals must be met with the moral force of the UDHR.

ILO Instruments

According to R. Cholewinski,

...it is widely acknowledged that the majority of ILO labour standards, with few exceptions, apply to alien migrant workers and nationals equally. In a number of more general ILO Conventions, the standards are specified to apply to 'all persons employed', to 'every person employed', or to workers 'without distinction as to nationality', or 'without distinction whatsoever'. Notable exceptions to this principle are Convention No. 111 of 1958 concerning Discrimination in Respect of Employment and Occupation and the accompanying Recommendation No. 111. The non-discrimination provision in Article 1(1)(a) of Convention No. 111 does not include 'nationality' amongst the prohibited grounds of discrimination.³

Therefore, when determining whether or not a given ILO instrument applies to migrant workers, one must read the instrument as a whole and look for language excluding them from protection. Remember that this exclusionary language can be direct or indirect, that is, the instrument may only apply to nationals or it may allow states to discriminate against non-nationals in certain circumstances. If there is no such exclusionary language or, if on the contrary, broad wording is used, one can assume that the instrument does apply to migrant workers. Generally speaking, ILO instruments dealing with general conditions of work such as wages, hours of work, and occupational health and safety apply to migrant workers. This is also the case for the fundamental ILO Conventions on the abolition of forced labour, the elimination of child labour, and freedom of association. Those ILO instruments dealing with broader policy issues, social security benefits or social programs are more likely to exclude migrant workers from their protection or to limit protection to those migrant workers whose home states have also ratified the conventions in question (a condition known as "reciprocity").⁴ As for ILO instruments dealing specifically with migrant workers, some provisions only apply to documented workers.

The Methodology Developed for this Manual

Our aim was to develop a process whereby NGOs could identify the international mechanisms available in cases of human rights violations involving women migrant workers. Our premise was that merely identifying relevant human rights standards is not enough; NGOs must also evaluate the standards that are legally binding on the state concerned. This catalogue of legally binding standards will generate a corresponding list of UN or ILO mechanisms. NGOs must then identify which of these

mechanisms they can actually employ. Factors that may eliminate certain mechanisms include:

- the admissibility requirements;
- the remedy sought by the victim;
- the resources available to the victim; and
- the exclusive nature of certain mechanisms.

The strength of this approach is that it challenges NGOs to focus on mechanisms that they can actually use. NGOs that understand which of the mechanisms are available in practice will be less likely to waste valuable resources pursuing inadmissible claims and more effective in bringing victims' cases to the UN and ILO. Greater awareness at the international level of the pattern of abuse experienced by women migrant workers should translate into pressure for more effective protection and enforcement of human rights at both the national and supra-national levels.

The weakness of this approach is that it may deflect attention from the standards embodied in human rights instruments that are not legally binding on the state concerned. We have tried to remedy this potential defect by including suggestions for NGOs who find that the state concerned has either not ratified certain relevant instruments or has modified its obligations under those instruments. These suggestions highlight the use of non-binding standards as benchmarks or tools in domestic advocacy and lobbying.

The Concept of State Responsibility

Under international human rights law, states have negative and positive obligations. The negative obligations require that states refrain from doing certain things (such as committing acts of torture), while the positive obligations require that states actually do certain things (such as setting up a national system of workplace inspection). In respect to negative obligations, in order for a state to be held accountable for breaching its obligations under international law, one has to show that an individual acting on behalf of the state (called an 'agent of the state', a 'state actor' or a 'private individual') has acted contrary to those obligations.⁵ Therefore, states cannot be held accountable for the actions of individuals who are not authorized to act on their behalf, and the victims of human rights violations committed by such private individuals will usually have no recourse under international law. However, there are exceptions to this general rule, such as individual responsibility for war crimes and crimes against humanity (and the fact that International Criminal Court also has

jurisdiction over the actions of individuals who commit these types of crimes), but mostly, these do not apply in the context of migrant workers' rights.

However, when a state has a positive obligation to do something, fails to do it and this failure leads to the commission of a human rights violation by a private individual, the state may be held accountable under international law. This is because such a human rights violation can be tied back to the state's inaction. For example, a state may have ratified an ILO Convention on workplace inspection that requires it to establish an effective national system of workplace inspection. If that state does not establish such a system, but had it done so, an employer's safety violations would have been discovered and remedied before workers perished in a fire due to unsafe working conditions. Therefore, the state has breached one of its obligations, resulting in a private individual, i.e. the employer, violating the rights of the employees. The human rights violation can be tied to the state indirectly, and therefore the state can be held accountable for not establishing the system of workplace inspection.

In sum, it is not enough to simply establish that there has been a violation of a human right or freedom enshrined in an international instrument or accepted as part of customary international law. The human rights violation must be linked to a state's obligation to do something or refrain from doing something.

The Importance of Domestic Remedies

One of the most glaring weaknesses of international law is the limited number of formal enforcement mechanisms available in cases of human rights violations. For this reason, victims of human rights violations are well-advised to consult the constitution and legislation of the state in which the violations took place to determine whether or not they can obtain redress using remedies provided by the laws of that state. Such domestic remedies are often more accessible to individual complainants than international mechanisms, and national legal systems generally have more effective enforcement mechanisms. For example, the victim of a human rights violation committed in Canada can seek redress in the courts under the Canadian Charter of Rights and Freedoms (a constitutional document) or the Canadian Bill of Rights if the violator is a state actor. She may also approach provincial human rights commissions which administer human rights codes applying to private individuals in certain contexts such as employment and housing. The enforcement mechanisms available under these remedies range from judgments which strike down legislation violating human rights guarantees, to orders for compensation. In contrast, the international legal system depends on the consent of states and their willingness to be bound by certain standards.

For this reason, the only genuine enforcement mechanism in international law is a state's sensitivity to criticism of its human rights practices.⁶ Even in cases where the international community takes concrete action against a state such as expelling it from international organizations or imposing sanctions against it, as was done in the case of South Africa while it practiced apartheid, there is no guarantee that the state will be compelled to comply with its international obligations.

However, there are situations in which complainants may find it useful or necessary to resort to international mechanisms. First, there may be no effective domestic remedies available. For example, the state in question may have failed to implement the terms of a treaty it has ratified because a certain act or omission by a state actor is not an actionable violation in domestic law, even though it violates the state's obligations under that treaty. Second, the complainant may have accessed all available domestic remedies and carried them through to the end (a process known as the 'exhaustion of domestic remedies'), but the results have proved unsatisfactory. For example, a complainant pursues a domestic remedy through all the levels of a state's court system, but the highest court in the land does not find a violation of her rights or throws out the case on procedural grounds. Third, there are strategic reasons which make it desirable to pursue a case in an international forum. For example, the human rights violation in question is evidence of a larger pattern of abuses by a state, and the complainant's resources would be better spent drawing international attention to this fact, rather than in a domestic court whose impartiality may be cast in doubt.

Exhaustion of Domestic Remedies

There is another important point to be made with respect to domestic remedies and their relationship to international mechanisms. Certain international mechanisms require that the complainant exhaust (that is access and carry through to the end) the legal remedies available to her in the state where the alleged human rights violation took place. The rationale for this requirement is practical and ideological. Some of the practical considerations were discussed above, while the ideological reasons stem from the continuing importance of state sovereignty. The principle of 'exhaustion of domestic remedies' serves to protect state sovereignty by minimizing the possible intrusion of international bodies in a state's domestic affairs. However, this principle does not apply when the act complained of violates an international human rights norm binding the state in question but is not a breach of the local law.⁷ It is also inapplicable when there are no effective remedies available in the national system. Effective remedies are defined as all types of legal and administrative remedies which an individual has a right to access, but

does not include 'extra-legal' or 'discretionary remedies'. A remedy is effective if it is available 'as a matter of reasonable possibility' in the state concerned, and it does justice to the claim in the domestic courts. A remedy is ineffective if the domestic courts did not act independently of the executive.⁸

In order to determine whether a given UN mechanism requires exhaustion of domestic remedies before it can be invoked, refer to the section on that particular mechanism.

The exhaustion of domestic remedies is not required under the ILO procedures.⁹ However, the Committee on Freedom of Association does consider the extent to which domestic remedies have been accessed when examining complaints.

The Relationship between UN and ILO Mechanisms: Are They Exclusive or Concurrent?

Where more than one mechanism is available to solve a problem, complainants must determine whether they are exclusive or concurrent. An exclusive mechanism cannot be used in conjunction with another mechanism. However, a mechanism that is 'concurrent' can be used simultaneously with another procedure. If one of the mechanisms available to a complainant is exclusive, he or she must evaluate which is the better course of action. Factors to consider in making this decision include the remedy sought by the complainant and the resources available to the interested parties.

“The ILO procedures...may be invoked while another procedure is pending”.¹⁰ This applies to both the ILO's regular system of supervision, including the reporting mechanism, and its special system of supervision. Nonetheless, for practical reasons, the relevant ILO body may consider it advisable to wait for another procedure to run its course before examining a case. However, certain UN mechanisms are exclusive. The 'individual complaint mechanism', for example, cannot be used in relation to any matter which is already under another procedure of international investigation or settlement. The Human Rights Committee has interpreted this to mean "identical parties to the complaints advanced and the facts adduced in support of them". This definition probably encompasses any other UN or ILO mechanisms that would otherwise be available.

However, it is likely that the UN reporting mechanism is an exception to this rule. Treaty bodies do not investigate the information submitted in government reports, nor attempt to settle the dispute. Rather, they use the reports to monitor the progress of States Parties in fulfilling their treaty

obligations. Therefore, information about a human rights violation could probably be submitted as part of an individual complaint and/or as part of an NGO's 'shadow' or 'mini' report.

UN extra-conventional mechanisms also seek to avoid overlap with other procedures and the repeated submission of communications. Therefore, special rapporteurs and working groups are unlikely to investigate any communication that has also been submitted for investigation under another UN mechanism or ILO procedure. Again, the UN reporting mechanism is probably an exception to this rule.

The Limits of International Mechanisms

Victims of human rights violations should be aware that procedures available under the UN and ILO are limited by the failure of states to ratify relevant human rights instruments, strict admissibility requirements for complaints and a lack of enforcement mechanisms. Despite these weaknesses, NGOs must recognize the interface between international human rights standards and advocacy and lobbying at the national level. NGOs must work to create awareness of human rights standards at the national level by using outcomes at the international level as tools in domestic advocacy and lobbying. Reports by international bodies can be distributed to the media, local groups and individual citizens.

Public awareness of human rights standards can be used to create pressure for the ratification of UN and ILO instruments. Pressure at the domestic level must also be directed at the implementation of effective enforcement mechanisms for violations of human rights. Because the UN and ILO can only attempt to compel states to respect human rights, where such rights have been violated, it is at the national level where sanctions, enforcement and relief are most ideally sought.

End Notes

1. Cholewinski, R. *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment*. (Oxford: Clarendon Press, 1997) at 47-48.
2. *Ibid.* at 46.
3. *Ibid.* at 98-99.
4. *Ibid.* (footnotes 94, 96).
5. Examples of state agents are: government employees such as police officers, members of the armed forces; members of the judiciary such as judges and arbitrators; and members of the executive branch of government, such as ministers.
6. Women, Law & Development International and Human Rights Watch Women's Rights Project. *Women's Human Rights Step by Step: A Practical Guide to Using International Law and Mechanisms to Defend Women's Human Rights*. (Washington, D.C.: Women, Law & Development International) at 13.
7. I. Brownlie, *Principles of Public International Law*, 5th ed. (Oxford: Clarendon Press, 1998) at 497.
8. *Ibid.* at 499-500.
9. Da Fonseca, G. *How to File Complaints of Human Rights Violations: A Practical Guide to Inter-Governmental Procedures*. (Geneva: World Council of Churches, 1975) at 14-15.
10. Da Fonseca at 14-15.

Part I

Methodology

The section illustrates the steps, available options and possible results in approaching cases of violations of migrant workers' rights.

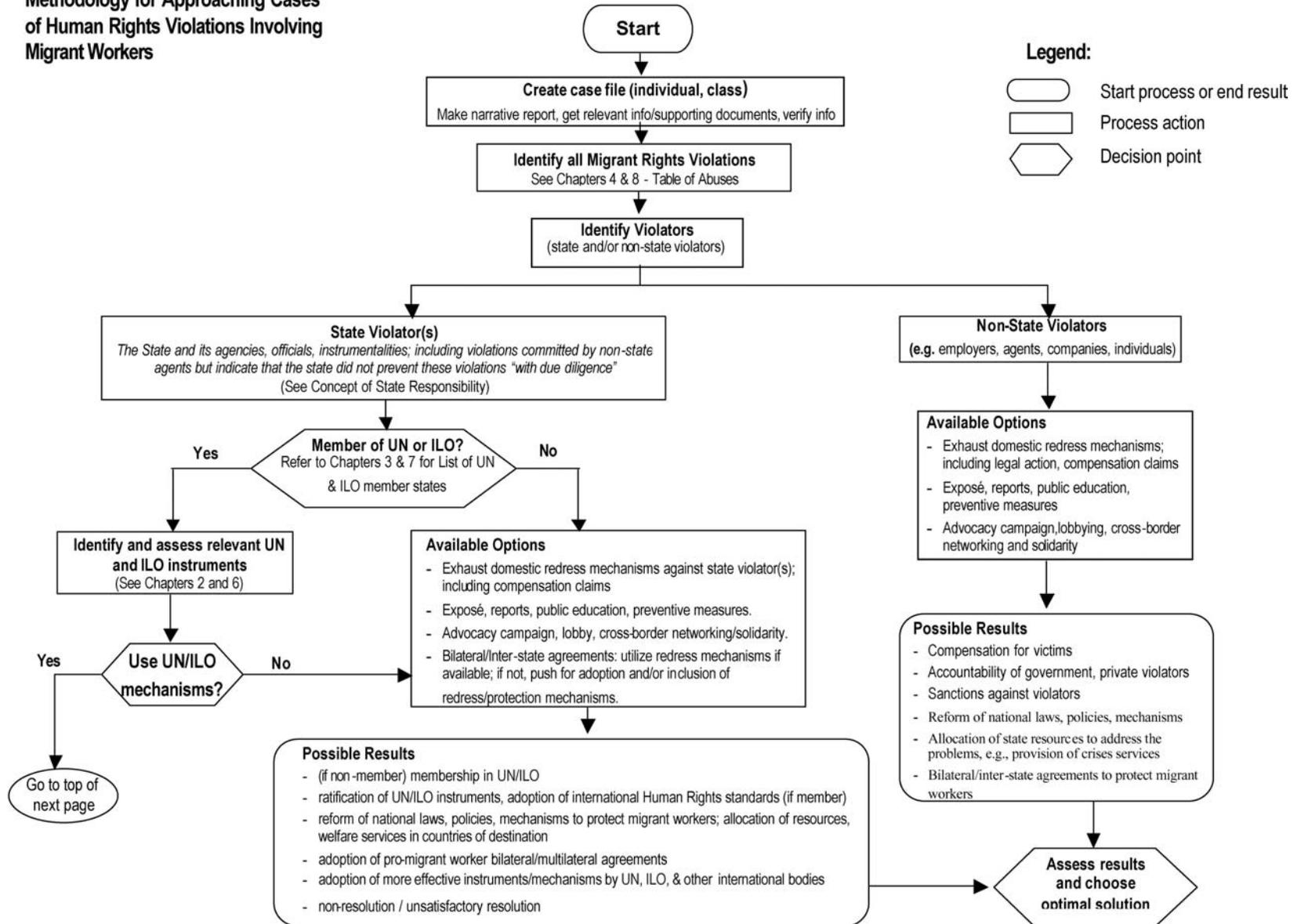
1

Methodology for Approaching Cases of Human Rights Violations Involving Migrant Workers

The flowchart in the following pages illustrates the steps, available options and possible results in approaching cases of violations of migrant workers' rights. Merely identifying relevant human rights standards is not enough. NGOs must also evaluate the standards that are legally binding on the State concerned and identify which of the related mechanisms they can employ. NGOs going through this approach are less likely to waste resources in pursuing inadmissible claims and are likely to be more effective in bringing their claims to the UN or the ILO.

This flowchart is to be used in conjunction with the other sections of this publication.

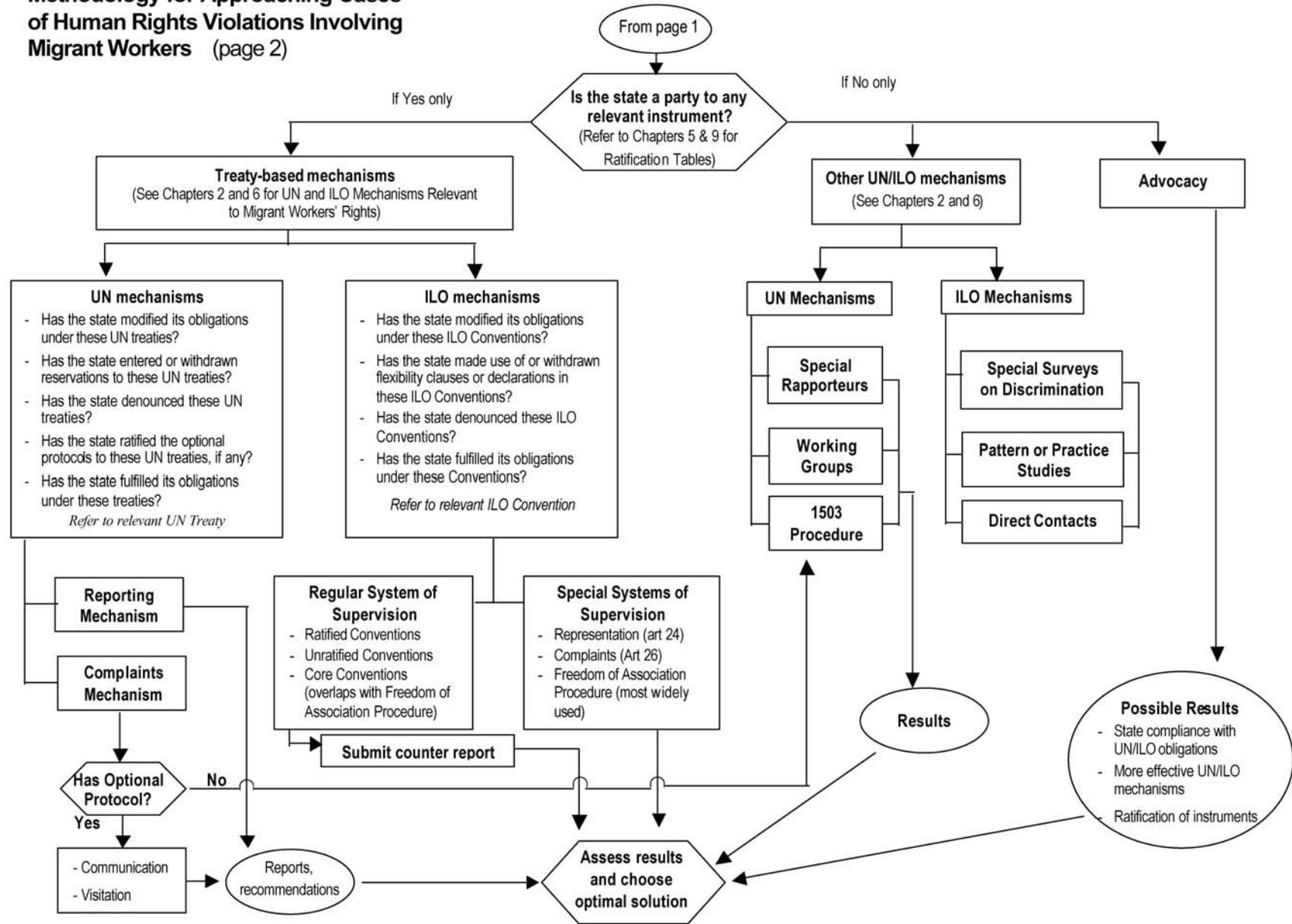
Methodology for Approaching Cases of Human Rights Violations Involving Migrant Workers



Legend:

-  Start process or end result
-  Process action
-  Decision point

Methodology for Approaching Cases of Human Rights Violations Involving Migrant Workers (page 2)



Part II

UN Instruments

This section focuses on the UN instruments and mechanisms that are relevant to migrant workers' rights. It includes a list of UN member states, abuses suffered by migrants and how these are addressed by the various instruments, as well as a list of States Parties ,i.e., States that have ratified the UN conventions.

2

UN Mechanisms Relevant to Migrant Workers' Rights

by Lindsey Anne Cameron

2.0. Introduction

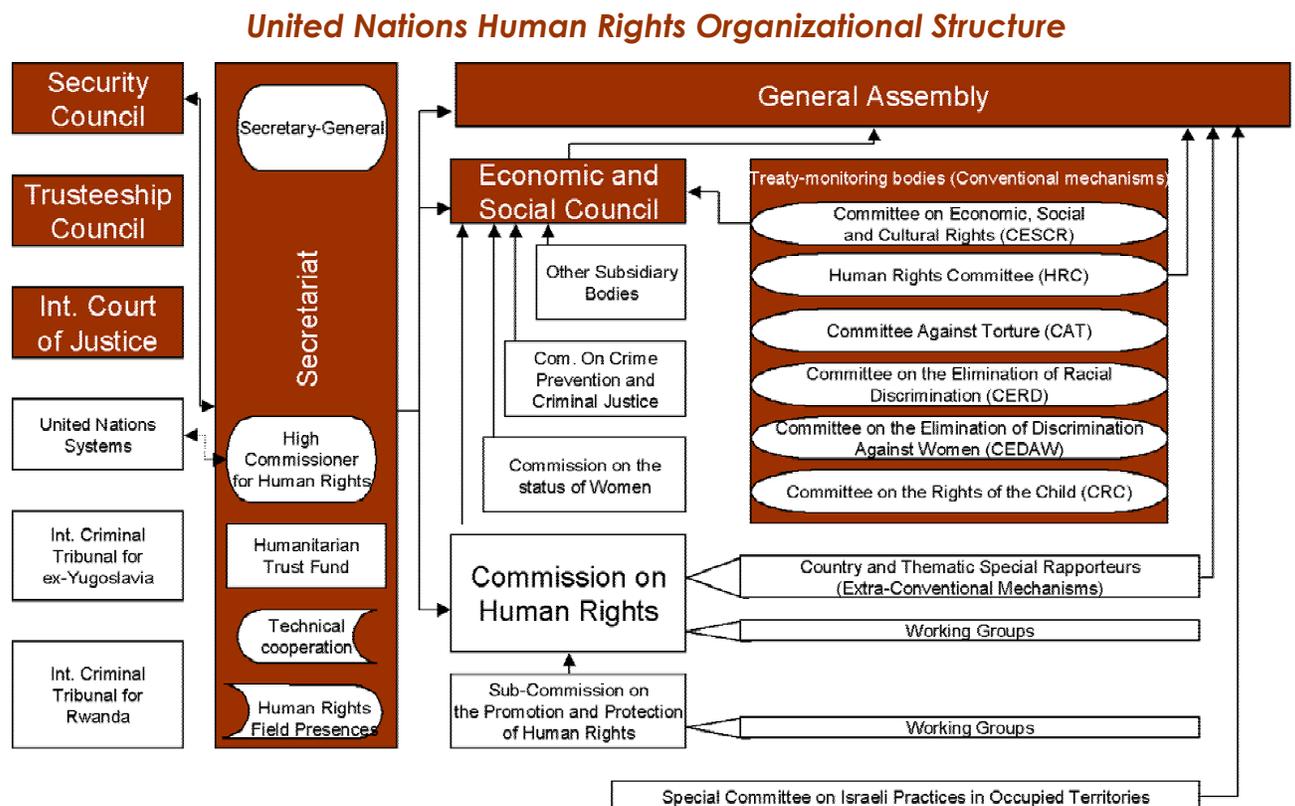
There are various mechanisms for bringing violations of human rights and fundamental freedoms to the attention of the UN system. These mechanisms can be divided into two categories: treaty-based and extra-conventional (also called charter-based). Both are relevant to women migrant workers.

The starting point for the treaty-based mechanisms is to ascertain whether or not a complaint can be linked to a specific human right or fundamental freedom in a UN treaty that is legally binding on the State concerned. Once this link is established, certain other admissibility requirements must also be satisfied. Admissible complaints are then dealt with by the relevant treaty body: the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture or the Committee on the Rights of the Child. Committee members are experts either in law or in the issues dealt with in the relevant treaty. The committees are non-political bodies because once the members are selected, they do not represent their governments.

Many complaints, however, are inadmissible under the treaty-based mechanisms. In this case, an alternative means of submitting information to the UN about human rights violations may be available through the extra-conventional mechanisms. These are established by non-treaty bodies of ECOSOC (Economic and Social Council), which includes: the Commission on Human Rights, its Sub-Commission on the Promotion and

Protection of Human Rights¹ and the Commission on the Status of Women. The diagram below links UN organs with responsibilities in the area of human rights.

In some cases, more than one mechanism may be available to address a problem. In this situation, complainants must evaluate which is the better course of action. However, in the majority of cases, the real effort will be in finding any applicable mechanism at all. NGOs will increase their chances of finding a way to submit complaints of violations of human rights and fundamental freedoms if they are familiar with both the treaty-based and the extra-conventional mechanisms. Knowing how to access these is key to the ability of women migrant workers to inform the UN about the culture of human rights violations that engulfs them. Women migrant workers must be able to get their stories across if they hope to create a groundswell of support for sanctions against those who violate their human rights.



¹ In 1999, the Economic and Social Council changed the title of the Subcommission on the Prevention of Discrimination and Protection of Minorities to the Sub-Commission on the Promotion and Protection of Human Rights (Council decision 1999/256 of 27 July 1999). The Commission on Human Rights also modified the mandate of the Subcommission (decision 2000/109 of 26 April 2000, annex, chap. IV) regarding some of its tasks and methods of work. Refer to: http://www.un.org/esa/coordination/ecosoc/sub_bodies.htm (5 November 2004).

2.1. Treaty-Based Mechanisms

2.1.1. Overview: Treaty-based Mechanisms in the context of the UN System of Human Rights

A treaty is an agreement entered into by states which is binding in international law.² It is sometimes called a covenant, convention, charter, protocol or agreement, but these different names do not change its legal significance. Many treaties, including the major UN human rights treaties discussed in this section, provide that they will not come into force until they have been 'ratified' by a certain number of the states that have signed them. A State that has ratified a treaty, called a State Party to the treaty, accepts it as legally binding.

States Parties are not necessarily bound by every provision of a treaty. In some cases, they make reservations, meaning that they opt out of certain provisions of the treaty, and are under no legal obligation to implement them.

In addition to treaties (or covenants, conventions, charters, protocols or agreements), there are also Declarations. The provisions of a Declaration may be binding, or may simply underscore certain international or universal aspirations. Some declarations may have maintained provisions that were not binding when first adopted, but with the passage of time, developed into customary international law, and thereby eventually became binding in character.³ The Universal Declaration of Human Rights offers such an example.

The major human rights treaties provide four mechanisms to deal with violations of human rights and fundamental freedoms. Not all mechanisms are available under all treaties. The Individual Complaint Mechanism deals with complaints, known euphemistically as 'communications', from individuals or groups of individuals about particular instances of human rights abuse. The Inquiry Procedure authorizes treaty bodies to conduct investigations in response to allegations of violations of human rights. Interstate Complaints are made between States Parties when one believes that the other is not meeting its treaty obligations. Finally, the Reporting Mechanism provides for monitoring by the treaty bodies of States Parties' progress in fulfilling their treaty obligations.

² Peter Hogg, *Constitutional Law of Canada*, Loose-leaf Edition (Toronto: Thomson Canada Limited, 1992) at 11-1.

³ <http://untreaty.un.org/English/guide.asp#reservation> (4 January 2004).

There are three hurdles to be overcome in submitting a Communication successfully under a treaty-based mechanism. First, the State alleged to have committed the human rights violation must have ratified the relevant treaty. Second, if that State is a State Party, it cannot have made reservations discharging its obligations under the provisions of the treaty relevant to the subject of the communication. Finally, the individual or group submitting a communication must satisfy any other admissibility criteria set out in the treaty.

Each of the following four sections is devoted to a different treaty-based mechanism. Each section explains where the mechanism can be found, its admissibility requirements and the procedure for admissible communications. It should be noted at the outset that the only sanction available under these mechanisms is shame. Shame can be a powerful tool in the application of pressure for domestic reform and in lobbying the international community for the enforcement of human rights standards. However, it may not provide a very satisfying remedy for the women migrant workers whose human rights have been violated.

In Summary: Treaty-Based Mechanisms

The major human rights treaties provide four mechanisms to deal with violations of human rights and fundamental freedoms.

- Individual Complaint Mechanism
- Inquiry Procedure
- Interstate Complaint Mechanism
- Reporting Mechanism
- Not all mechanisms are available under all treaties.

2.2. Individual Complaints Mechanism

The individual complaints mechanism covers isolated instances of alleged human rights violations. It is available to individuals or groups of individuals who believe that their human rights are being violated. This mechanism is most associated with the first Optional Protocol to the International Covenant on Civil and Political Rights. However, it is also available under three other conventions.

If a complainant can satisfy the admissibility criteria set out by the relevant treaty, then the individual complaint procedure may be a good course of action because the findings of the treaty body are ultimately made public. This publicity, and the embarrassment it may cause for the State Party who violated its treaty obligations, is a useful tool in domestic lobbying and advocacy for the enforcement of human rights.

2.2.1. UN Treaties with an Individual Complaint Mechanism

- International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (MWC). As of November 25, 2004, the procedure, outlined in art. 77 of the Convention that requires 10 declarations by State Parties, has not yet entered into force.⁴
- International Covenant on Civil and Political Rights (CCPR). The procedure has been available since 1977 under the first Optional Protocol of the Covenant (OPCCPR). Communications are submitted to the 18-member Human Rights Committee.
- International Convention on the Elimination of Racial Discrimination (CERD). The procedure has been available since 1982 under art. 14. Communications are submitted to the 18-member Committee on the Elimination of Racial Discrimination.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The procedure has been available since 1988 under Art. 22. Communications are submitted to the 10-member Committee Against Torture.
- Convention on the Elimination of All Forms of Discrimination Against Women. The procedure has been available since December 2000 under the Optional Protocol of the Convention (CEDAWOP). Communications are submitted to the 23-member Committee on the Elimination of Discrimination against Women.

2.2.2. Submitting a Communication

i. Initial Test for Admissibility of a Communication under OPCCPR⁵, CERD, CAT and MWC

- a) The States concerned must be parties to the OPCCPR or have made declarations under CERD, CAT or MWC.

Under OPCCPR art. 1, no Communication shall be received by the Human Rights Committee if it concerns a State Party to the Covenant which is not a party to the OPCCPR. The OPCCPR has 104⁶ States Parties.

Under CERD art. 14(1), CAT art. 22(1) and MWC art. 77(1), no communication shall be received by the Committee if it concerns a State Party which has not made a declaration recognizing the competence of the Committee to receive and consider communications

⁴ <http://www.unhchr.ch/html/menu2/6/cmwf/> (25 November 2004)

⁵ The process of determining the admissibility of a complaint under the Optional Protocol may take up to one year. Determining the merits of a case may take up to three years.

⁶ <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (18 December 2003).

from individuals or groups of individuals. Under CERD, 42 out of 169 States Parties have made declarations. Under the CAT, 54 out of 133 have made declarations. The MWC had 27 ratifications as of November 25, 2004. Art. 77, which provides for the individual complaint mechanism, will only come into force after 10 States have made the required declarations.⁷

The declaration requirement under CERD differs somewhat from the procedure under the CAT or MWC. Under art. 14(2) of CERD, any State Party which makes a declaration under art. 14(1) may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights in the treaty. It is in the event of failure to obtain satisfaction from the body established or indicated under art. 14(2) that the petitioner shall have the right to communicate the matter to the Committee on the Elimination of Racial Discrimination within six months (art. 14(5)). This is a bit different from the CAT or MWC, where the States Parties simply make declarations recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals.

b) All domestic remedies must have been exhausted.

Under OPCCPR art. 5(2)(b), CERD art. 14(7), CAT art. 22(5)(b) and MWC art. 77(3), all domestic remedies must have been exhausted before the Committee will consider any communication from an individual. This rule does not apply in cases where the application of the remedies is unreasonably prolonged.

The test for whether domestic remedies have been exhausted is two-fold⁸: (i) Does the section of the international instrument upon which the alleged violation is based correspond to a provision of a national law? , and (ii) Does the law work? That is, it is not enough that a law exists at the domestic level; it must also be effective.

c) The matter in question cannot be under another procedure of international investigation or settlement.

Under OPCCPR art. 5(2)(a), CAT art. 22(5)(a) and MWC art. 77(3), the Committee shall not consider any communication from an individual if the matter is being investigated under another procedure of international investigation or settlement. This has been interpreted

⁷ Ibid.

⁸ This definition was part of a presentation made by Mr. Ben Schonveld from the Organisation mondiale contre la torture at the Canadian Human Rights Foundation's 20th Annual Human Rights Training Program in Montreal, Canada.

narrowly by the Human Rights Committee to mean “identical parties to the complaints advanced and the facts adduced in support of them.”

- d) Communications cannot be anonymous, abusive or incompatible with the treaty.

Communications that are anonymous, abusive or incompatible with the provisions of the treaty are inadmissible under OPCCPR art. 3, CAT art. 22(2) and MWC art. 77(2).

ii. Additional Test for Admissibility of a Communication under the OPCCPR⁹

- a) The communication must satisfy the initial test for admissibility outlined in section 2.1.1. above.
- b) The individual or group of individuals must be directly affected by the violation.
- c) The violation must have occurred after the coming into force of the OPCCPR for the State Party in question, or the violation must have had a continuing effect after its coming into force.
- d) The applicant must have been subject to the jurisdiction of the State Party at the time of the violation. That is, they must have been present in the territory of the State Party, but they need not have been a resident.
- e) If the alleged victim(s) cannot submit a communication, another person who justifies his or her authority to act on behalf of the alleged victim(s) may submit one. Examples of justifications include a family relationship or other personal links with the alleged victim(s).

iii. Format of the Communication

The UNHCR website contains a “model communication” to the Human Rights Committee. There is a copy of this model at the end of this section which can be used for communications under the OPCCPR, CAT and CERD.

⁹ These additional admissibility criteria are based on the practice of the Human Rights Committee under the OPCCPR in receiving communications rather than found in the terms of the OPCCR itself. The application of these criteria would also be relevant to the practice of other treaty bodies such as CERD, CAT and MWC, which receive communications.

Model Communication

Model Complaint Form

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

Please indicate which of the above procedures you are invoking:

Date:

I. Information on the complainant:

Name:

First name(s):

Nationality:

Date and place of birth:

Address for correspondence on this complaint:

Submitting the communication:

on the author's own behalf:

on behalf of another person:

[If the complaint is being submitted on behalf of another person:]

Please provide the following personal details of that other person

Name:

First name(s):

Nationality:

Date and place of birth:

Address or current whereabouts:

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint

Or

If you are not so authorized, please explain the nature of your relationship with that person: and detail why you consider it appropriate to bring this complaint on his or her behalf:

II. State concerned/Articles violated

Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human Rights Committee) or has made the relevant declaration (in the case of complaints to the Committee against Torture or the Committee on the Elimination of Racial Discrimination):

Articles of the Covenant or Convention alleged to have been violated:



Model Communication cont'd

III. Exhaustion of domestic remedies/Application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:

.....

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:

.....

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.

.....

.....

Author's signature:

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

-Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization):



Model Communication cont'd

-Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful):

-Complaints to and decisions by any other procedure of international investigation or settlement:

- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights:

If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the

Secretariat, the consideration of your complaint may be delayed.

Ref: <http://www.unhcr.ch/html/menu6/2/annex1.pdf>

2.2.3. After the Communication has been Submitted

i. To the Committee on the Protection of the Rights of All Migrant Workers and Their Families under the MWC

- a) The Committee shall bring communications submitted to it to the attention of the State Party alleged to have violated the Convention (art. 77(4)).
- b) Within six months, this State Party must submit written explanations to the Committee clarifying the matter and the remedy, if any, that has been taken (art. 77(4)).
- c) The Committee shall consider communications received in light of all information made available to it by or on behalf of the individual and by the State Party concerned (art. 77(5)).
- d) The Committee shall hold closed meetings when examining communications (art. 77(6)).
- e) The Committee shall forward its views to the State Party concerned and to the individual (art. 77(7)).

ii. To the Human Rights Committee under the OPCCPR

- a) The Human Rights Committee will bring the complaint to the attention of the State Party alleged to have violated the Covenant (art. 4(1)).
- b) Within six months, this State Party must submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that has been taken (art. 4(2)).

- c) The author of the complaint is then given an opportunity to comment on the State Party's reply.
- d) The Committee then considers the communications received in light of all written information made available to it by the individual and the State Party concerned (art. 5(1)).

The Committee does no independent fact-finding. According to the UNHCHR website, the Committee has established in a number of cases¹⁰ "that the burden of proof cannot rest alone on the person who is complaining of the violation. The Committee also holds that it is not sufficient to make a refutation in general terms of a complaint of violation of a person's human rights."

- e) When examining communications, the Committee's meetings are closed (art. 5(3)). However, the Committee's findings on the merits of admissible communications and its decisions declaring communications inadmissible are always made public.
- f) The Committee then forwards its final views to the State Party concerned and to the author of the communication (art. 5(4)). In some cases, individual members of the Committee may add their opinions to the views expressed by the Committee.

In cases where the victim of the alleged human rights violation needs protection before the Committee can make its final views known, the Committee may give an interim judgment. This interim judgment is not a final determination on the merits of the complaint.

- g) The Committee shall include a summary of its activities under the OPCCPR in its annual report under art. 45 of the CCPR (art. 6).

iii. To the Committee on the Elimination of Racial Discrimination under CERD

- a) The Committee shall bring any communication referred to it to the attention of the State Party alleged to have violated the Convention (art. 14(6)(a)). The Committee keeps the identification of the author of the communication confidential (art. 14(6)(b)).
- b) Within three months, the State Party alleged to have violated the Convention must submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that has been taken (art. 14(6)).
- c) The Committee shall consider communications in light of all information made available to it by the State Party concerned and by the author of the communication (art. 14(7)).

¹⁰ These cases dealt with the right to life, torture and ill-treatment, and arbitrary arrests and disappearances.

- d) The Committee forwards suggestions and recommendations to the parties concerned (art. 14(7)).
- e) The Committee shall include a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own recommendations and suggestions in its annual report (art. 14(8)).

iv. To the Committee Against Torture under the CAT

- a) The Committee shall bring submissions to the attention of the State Party alleged to have violated the Convention (art. 22 (3)).
- b) Within six months, the State Party alleged to have violated the Convention shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that has been taken (art. 22 (3)).
- c) The Committee shall consider communications received under this article in light of all the information made available to it by or on behalf of the individual or by the State Party concerned (art. 22 (4)). The Committee's meetings will be closed when examining communications under this article (art. 22 (6)).
- d) The Committee shall forward its views to the State Party concerned and to the individual.
- e) The Committee shall submit an annual report on its activities under the Convention to the General Assembly (art. 24).

2.2.4. Sanctions and Enforcement

The anomaly of the UN system is that there are many standards, but no strict enforcement mechanisms. It is important to be realistic about the remedies available. The only sanction available is to highlight violations, and thereby compel change by means of “shaming” a State. The humiliation and harassment suffered by many NGOs in their home countries shows that for some governments, shame is a powerful sanction. For other governments, however, it is not a meaningful penalty.

For NGOs: Many Standards, No Enforcement Mechanisms

To overcome this anomaly, there is a need for creative interaction at both the national and international levels. NGOs must use available fora to shame, blame and create pressure for national solutions. The final decisions of the treaty bodies must be publicized and State responses monitored.

2.3. The Inquiry Procedure

The inquiry procedure allows treaty bodies to conduct confidential investigations in response to claims of human rights violations. The procedure is available where there is reliable information regarding “grave or systematic violations” of rights.¹¹

2.3.1. UN Treaties with an Inquiry Procedure

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under art. 20, communications are dealt with by the Committee Against Torture.
- Convention on the Elimination of All Forms of Discrimination Against Women. The procedure has been available since December 2000 under the Optional Protocol of the Convention (CEDAWOP). Communications are submitted to the 23-member Human Rights Committee.

2.3.2. Initiating an Inquiry Procedure

Article 20 of CAT and article 10 of CEDAWOP establish a two-step process that determines whether an inquiry procedure is to be conducted. The first step is the consideration of information wherein the Committee must receive reliable information furnished by individuals, organizations or arising from State reports. Submissions should clearly state that the information is being submitted to the Committee to conduct an investigation.¹² In contrast to the Individual Complaints Mechanism, the Inquiry Procedure does not require the exhaustion of domestic remedies to warrant an investigation.

i. Test for Admissibility of a Submitted Information under CAT and CEDAW Optional Protocol (CEDAWOP)

- a) The states concerned must be parties to the CAT, or CEDAW and CEDAWOP and have made no declaration opting out of the inquiry mechanism of CAT or CEDAWOP.

Under CAT art. 28 and CEDAWOP art. 10, the Committee may not consider submitted information if it concerns a State Party that does not recognize the competence of the Committee or that has made a declaration opting out of the inquiry mechanism.

¹¹ CEDAW Optional Protocol, art. 8; CAT, art. 20.

¹² http://www.bayefsky.com/complain/46_investigations.php/pfriendly/1 (November 1, 2004).

ii. “Examination” Phase

Under this procedure, once the Committee determines the reliability of the information it has received regarding the violation,¹³ it shall invite the State Party concerned to send its observations. After considering the State Party’s observations, the Committee may designate one or more of its members to conduct the inquiry and make a report. Visits may also be made to the State Party concerned with its consent. Additional information may be taken into account by the Committee, which may come from representatives of the State concerned, government organizations, non-governmental organizations and individuals.

2.3.3. Completion of the Inquiry

While the Inquiry Procedure is confidential in nature, confidentiality may end when the investigation is completed. After the Committee finalizes its findings, the same shall be forwarded through the Secretary-General to the State Party concerned, which shall submit its observations, comments and recommendations. Under CAT, the findings of the Committee may be included in its annual report to the Secretary-General. Under CEDAWOP, the Committee may require the State Party concerned to include in its country report the measures it has taken in response to the Committee’s findings.¹⁴ Six months after the transmittal of the final report of the inquiry, the Committee may make a follow-up (art. 9) with the State Party concerned to provide details of measures taken following an inquiry.

2.4. Interstate Complaints Mechanism

If a State Party believes that another State Party is not fulfilling its treaty obligations, it can send them a communication to this effect. The State receiving the communication is obliged to respond. If it fails to respond, either State may refer the matter to the relevant treaty body. The role of the treaty bodies is to find a solution acceptable to both States.

2.4.1. UN Treaties with an Interstate Complaints Mechanism

- International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC). Under art. 76, communications are dealt with by the Committee on the Protection of All Migrant Workers and Their Families. As of November 25, 2004, the procedure, outlined in art. 76 of the

¹³ In the case of CEDAW, the Committee may request the assistance of a Working Group to verify the information.

¹⁴ See the rules of Procedure to the Optional Protocols of CAT and CEDAW.

Convention that requires 10 declarations by State Parties, has not yet entered into force.¹⁵

- International Covenant on Civil and Political Rights (CCPR). Under art. 41, communications are dealt with by the Human Rights Committee.
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Under arts. 11-13, communications are dealt with by the Committee on the Elimination of Racial Discrimination.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under art. 21, communications are dealt with by the Committee Against Torture.

2.4.2. Submitting a Communication

i. Test for Admissibility of a Communication under the CCPR, CERD, CAT and MWC

- a) The states concerned must have made declarations under the CCPR, CAT or MWC or be parties to CERD.

Under CCPR art. 41(1), CAT art. 21(1) and MWC art. 76 (1), States Parties may declare at any time that they recognize the competence of the relevant Committee to receive and consider communications to the effect that another State Party is not fulfilling its obligations under the relevant treaty. A declaration may be withdrawn, but without prejudice to a complaint already in progress. A Committee will only consider a communication if (i) it is submitted by a State Party which has made such a declaration, and (ii) it concerns a State Party which has made such a declaration.

Such a declaration is not a requirement under CERD. Under CERD art. 11, the only requirement is that the states concerned be States Parties.

- b) All domestic remedies must have been exhausted.

Under CCPR art. 41(1)(c), CERD art. 11(3), CAT art. 21(1)(c) and MWC art. 76(1)(c) the treaty bodies shall deal with matters referred to them only after ascertaining that all available domestic remedies have been invoked and exhausted in the matter. This is not the rule where the application of remedies is unreasonably prolonged. The test for “exhaustion” is described in section 2.2.2.(b) above.

¹⁵ <http://www.unhcr.ch/html/menu2/6/cmw/> (25 November 2004)

For NGOs: How NGOs Can Play a Role in the Submission of Communications

The Interstate Complaints Mechanism has “never been used”. Despite its non-use and thus its limited application for NGOs, the latter can still play a role in the interstate complaint procedure. First, NGOs can pressure their government to make declarations under the CCPR and CAT. Second, they can advocate for ratification of CERD and MWC. Finally, NGOs can lobby their government to submit a complaint to the relevant treaty body when another State Party is not fulfilling its obligations under a treaty.

2.4.3. After the Communication Has Been Submitted

i. Procedure Under the CCPR, CAT and MWC

- a) Under the CCPR, CAT and MWC, a State Party communicates directly, i.e., in writing, to the State Party alleged to have violated the Covenant (i.e., the receiving State).
- b) The receiving State has three months to respond in writing. The response should refer to domestic procedures and remedies taken, pending or available in the matter.
- c) If the matter is not resolved within six months of the initial communication, then either State has the right to refer the matter to the relevant Committee. In this case, notice must be given to the Committee and to the other State. However, the Committee will not deal with complaints that do not satisfy the test for admissibility outlined in section 2.3.2.(i) above.
- d) The Committee’s meetings when examining communications are closed.
- e) If the complaint is admissible, the Committee will make available its good offices¹⁶ to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.
- f) The Committee may call upon the States Parties concerned to supply any relevant information. The States Parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
- g) The Committee shall submit a report within 12 months of receiving the notice in (c). If a friendly solution was reached through the good offices of the Committee, the content of that report shall be confined to a brief statement of the facts and the solution reached. Otherwise, the report shall contain a brief statement of the facts and written submissions and the record of the oral submissions made by the States

¹⁶ Good offices – influence, esp. as used to others’ benefit; connections. Source: *The Canadian Oxford Dictionary*. (Oxford University Press, Canada. 2001), p.603.

Parties concerned shall be attached. In every matter, the report shall be communicated to the States Parties concerned.

h) Additional procedure under the CCPR only:

If a matter referred to the Human Rights Committee is not resolved to the satisfaction of the States Parties concerned, then:

The Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission. The make up and rules of procedure of the Commission are described in articles 42(1)(b) - 42(5). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter.

The information gathered by the Committee shall be made available to the Commission. The Commission may also call upon the States Parties concerned to supply any other relevant information.

No later than 12 months after having received the complaint, the Commission shall submit to the Chair of the Committee a report for communication to the States Parties concerned. If the Commission has been unable to complete its consideration of the matter, then the report shall contain a brief statement of the status of its consideration of the matter. If an amicable solution has been reached, then the report shall contain a brief statement of the facts and of the solution reached. If no amicable solution has been reached, the report shall contain the Commission's findings on all questions of fact relevant to issues between the States Parties concerned, and its views on the possibility of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned. In the latter case, the States Parties concerned must notify the Chairman of the Committee within three months of the receipt of the report whether or not they accept its contents.

ii. Procedure Under CERD

- a) A State Party which believes that another State Party is not fulfilling its treaty obligations brings the matter to the attention of the Committee on the Elimination of Racial Discrimination, who then transmits the communication to the other State Party.
- b) The receiving State has three months to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken.
- c) If the matter is not resolved within six months of the receipt by the receiving State of the initial communication, then either State has the right to refer the matter again to the Committee by notifying the Committee and also the other State.

- d) The Committee may call upon the States Parties concerned to supply any relevant information. The States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.
- e) After the Committee has obtained and collated all the information it deems necessary, it shall appoint an ad hoc Conciliation Commission. The good offices of the Commission shall be made available to the States concerned with a view to an amicable solution of the matter.
- f) When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report on its findings on all questions of fact relevant to the issue and containing recommendations for the amicable solution of the dispute. The Chairman of the Committee shall communicate this report to each of the parties to the dispute. These States must inform the Chairman of the Commission within three months whether or not they accept the recommendations contained in the report.
- g) After this three-month period, the Commission's report and the declarations of the States Parties concerned are communicated to the other States Parties to CERD.

2.4.4. Sanctions and Enforcement

The recommendations issued by the treaty bodies are not legally binding. Again, the only sanction is shame. However, the Human Rights Committee has appointed a Special Rapporteur to follow-up on the Committee's recommendations in cases where victims claim that the State is not providing a remedy. This Rapporteur is empowered to communicate directly with governments and victims. The Rapporteur's activities are summarized in the Committee's annual report. The Special Rapporteur mechanism is explained in section 2.6.

2.5. Reporting Mechanism

A State Party to a U.N. convention must submit reports, concerning the fulfillment of its treaty obligations, for each instrument that it has ratified. The treaty body monitors each State's progress in fulfilling these obligations. This is done by a process of examination of the report, followed by questions and clarifications by the Committee members to the state bodies at a session before the Committee. This is done in a non-confrontational manner. The Committee's role is not to pass judgment. Rather, it is supposed to move the States Parties towards compliance.

Thereafter, the Committee submits its conclusions and recommendations. Typically, the Committee will identify and commend best practices followed in the preparation of the report, it will identify areas of persistent problems and it will direct specific recommendations regarding the specific fulfillment of the State's treaty obligations.

2.5.1. UN Treaties with a Reporting Mechanism

Reports are submitted to the Secretary-General of the United Nations, who transmits them to the appropriate treaty body.

- Under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), reports will be transmitted to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Reports are due within one year of entry into force of the MWC for the State Party concerned and thereafter, every five years or at the request of the Committee.
- Under the International Covenant on Civil and Political Rights (CCPR), reports are transmitted to the Human Rights Committee, which has 18 members. Reports are due within one year of entry into force of the CCPR for the State Party concerned and every five years thereafter.¹⁷
- Under the International Covenant on Economic, Social and Cultural Rights (ESCR), reports are transmitted to the Committee on Economic, Social and Cultural Rights, which has 18 members. The Committee members are elected by the United Nations Economic and Social Council (ECOSOC) from a list of candidates selected by the States Parties. Reports are due within two years of the Covenant coming into force for the State Party concerned and thereafter every five years.¹⁸
- Under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), reports are transmitted to the Committee on the Elimination of Racial Discrimination, which has 19 members. Reports are due within one year of entry into force for the State Party concerned (art. 9(1)(a)). After that, reports are due every two years or on the Committee's request (art. 9(1)(b)).
- Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), reports are transmitted to the Committee on the Elimination of Discrimination Against

¹⁷ UN Doc., CCPR/C/19/Rev.1.

¹⁸ ECOSOC resolution 1988/4, UN Doc. E/C.12/1989/4.

Women, which has 23 members, all of them women. Reports are due within one year of entry into force for the State Party concerned (art. 18(1)(a)). After that, reports are due every four years or on the Committee's request (art. 18(1)(b)).

- Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), reports are transmitted to the Committee Against Torture, which has 10 members. Reports are due one year after the coming into force of the Convention for the State Party concerned. Supplementary reports are submitted every four years on any new measures taken by the State. The Committee may also request the submission of supplementary reports.
- Under the Convention on the Rights of the Child (CRC), reports are transmitted to the Committee on the Rights of the Child, which has 10 members. Reports are due within two years of entry into force for the State Party concerned (art. 44(1)(b)). After that, reports are due every five years (art. 44(1)(b)).
- Under the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTP), States Parties shall communicate to the Secretary-General of the UN laws and regulations that have already been promulgated in their States. Following this, they shall communicate additional laws and regulations promulgated and all measures taken by them that are related to the application of the CSTP (art. 21). The information received shall be published periodically by the Secretary-General and sent to all members of the UN.
- United Nations Convention against Transnational Organized Crime (Convention supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air). Each State Party shall provide the Conference of the Parties (convened by the Secretary-General within one year following the entry into force of the Convention) with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention (art. 32.5)

2.5.2. Submission of the Report by the State Party

State Party reports are required to describe all legislative, administrative and other measures adopted to give effect to the rights recognized in the treaty. They must also indicate factors and difficulties affecting implementation of the treaty. Usually, the format of a State report follows the format of the relevant treaty. The report details, article-by-article, which laws are in place and how the State is moving towards compliance.

The Committee will examine the report carefully and frame questions and clarifications. In doing so, the Committee is limited by the information available to it because it cannot seek additional information except through questions asked to the State Party. Committee members have often acknowledged the importance of information received from NGOs. The role of NGOs is to provide alternative information on the domestic situation.

For NGOs: Role of NGOs in the Preparation of the Report by the State Party

NGOs should seek the opportunity to participate in the process of preparing of the State report. If an NGO with information or expertise knows that a report is due, there is nothing wrong with addressing a letter to the government asking to participate. If there is no response to this letter, the NGO can send the relevant information to the government. A record should be kept of this correspondence. If the information provided by the NGO is subsequently excluded from the report, this record can be sent to the relevant Committee to show that the information was available to the State at the time of the report's preparation.

In situations where the government is delaying submission of its report, NGOs can pressure the government to hurry up. However, there is no way to force a government to submit a report and there is no time limit. Nonetheless, if the government has delayed its report and there is an urgent problem area regarding the implementation of the treaty, the NGO can ask the Committee to urge the State to present an interim report.

2.5.3. When NGOs are not Given a Role in the Preparation of the State Report: 'Mini' Reports and 'Shadow' Reports

NGOs without an opportunity to participate in the process can prepare a 'Mini' Report or a 'Shadow' Report. Committee members can use these reports in framing and putting questions to the State Party. If the Committee is not satisfied with the State Party's response, they can probe further.

'Mini' or 'Shadow' Reports should be sent directly to individual members of the relevant Committee. Lists of Committee members for various treaty bodies are available from the International Service for Human Rights (hereinafter ISHR) INFO-PACK publication, which is updated every six months.

The ISHR can be contacted at:

P.O. Box 16
CH-1211 Geneva 20, Switzerland
Tel. (41 22) 733 51 23
Fax (41 22) 733 08 26

i. Mini Reports

Given the time-consuming nature of 'Shadow' Reports, a more realistic approach for an NGO with specific information on specific aspects that

deserve scrutiny would be to outline these in 'Mini' Reports. 'Mini' Reports are also well-suited to situations where the Committee has asked the State for particular information on specific issues. In this case, the NGO can mobilize quickly and submit the relevant information.

ii. 'Shadow' Reports

There are two possible formats for a 'Shadow' Reports. If the NGO has access to the State report, the format of the 'Shadow' Reports should be a paragraph-by-paragraph response to the State report. That is, the NGO report should critique the State report, following the same structure. However, if the State has adopted a structure intended to conceal the true nature of the situation, the NGO is not bound to follow it. Likewise, it will not be possible to follow the structure of the State report if the NGO does not have access to it. In this case, a good format is to go article-by-article through the relevant convention.

iii. Preparing a 'Shadow' Report

- a) Work as a coalition. Working as a coalition may offer more protection from the State. A State cannot denounce the entire civil society.

It is more difficult for a Committee to disregard information when it comes from a group. Likewise, if information is presented as one consolidated document, then it is more likely to be read by Committee members because its credibility will be greater.

- b) Check ratifications and reservations. States Parties may apply reservations, which inhibit the Committee's inquiry. NGOs can apply pressure on the State to remove its reservations.
- c) Check if the State has reported on time
- d) Obtain a copy of the State report. Normally, State reports should be available from the government. They are also available from UN offices and international NGOs (this is the fastest way to get them). An alternative source is the ISHR since their mandate is to facilitate things for NGOs in the UN system.
- e) Follow the *Basic Rules of Presentation* (outlined in the following section).
- f) In order to show balance, make sure to show both where the State has deviated from the treaty and where it has done a good job.
- g) Add constructive and *possible* suggestions. Give advice on how the government can improve. Show that you are professional.
- h) It is always a good idea to include a one-page summary of the recommendations in the 'Shadow' Report. This way, it is likely that at least the Committee will read the summarized version.

- i) Include a list of questions for the Committee to ask the State at the hearing.
- j) Once the Committee has made recommendations, focus on national change. Remember that the international system is just a mechanism or facilitator for national change.

iv. Basic Rules of Presentation

- a) Remember that your case is in competition. Think about who you are trying to reach.
- b) Reports should be easy to read and understand: use simple, short sentences.
- c) Include any relevant dates.
- d) Include only relevant information.
- e) Give context to case studies.
- f) Make sure the facts have been confirmed. Explain where the confirmation comes from.
- g) Avoid using nationally-based expressions or abbreviations.
- h) Avoid using personal or emotive language.

2.5.4. Speaking to a Member or Members of the Committee

It is not necessary to speak to the Committee as a whole. Rather, an NGO can approach one member and let them decide how to deal with the information.¹⁹ Approaching a single member means that the Committee does not have to be in session. An NGO can meet with a Committee member based in their own country or with a Committee member based in a country that they are visiting.

Alternatively, NGOs that have the opportunity to do so can go to a Committee meeting. Although, NGOs cannot speak at the actual meeting, they can attend the meeting and catch the Committee members during the break. Some Committees, for example the Committee on Economic, Social and Cultural Rights, have informal sessions with NGO representatives.

¹⁹ NGO information might be relevant not only in terms of how a committee deals with a state report, but may also influence the topic of a “general comment.” NGOs can also use available General Comments to inform themselves of the Committees’ interpretation of relevant treaty provisions. These general comments, also called general observations, are issued about once a year. For example, in a general comment, the Committee on the Elimination of Violence Against Women expanded the relevant provisions of the International Convention on the Elimination of Discrimination Against Women so that violence against women would constitute a breach of the treaty. General Comments are available at http://www.unhchr.ch_treaty database.

However, local NGOs may not have the opportunity to go to New York or Geneva. In this case, they may be able to partner up with a larger NGO such as the ISHR. They may also have the option of providing information to international NGOs that will be attending Committee meetings. In this case, local NGOs must ensure that international NGOs give them credit for this information. International and local NGOs should work together on a basis of equality.

2.5.5. Outcome of the Reporting Mechanism: The Committee's Final Report

The actual public hearing of the Committee is not the point of the reporting mechanism. Rather, the Committee drafts a series of recommendations for the State that outlines its strengths and weaknesses. In its final report, the Committee includes good practices, persistent problems and specific recommendations. It is important for NGOs to publicize both the State's report and the Committee's report. There is a need for public awareness. NGOs can accomplish this by:

- a) giving the reports to the media ;
- b) distributing the reports to various groups;
- c) pressuring the State to fulfill its obligations under the relevant treaty; and
- d) using the Committee's recommendations *actively* at the domestic level by monitoring and publishing information about the State's progress. Remember to monitor both progressive and regressive changes. For this, benchmarks need to be established.

For NGOs: Interface Between Reporting at UN Level and Advocacy and Lobbying at the Domestic Level

It is important for NGOs to look at human rights work in terms of three activities. These activities must necessarily go beyond the merely legal aspect because the legal system itself may not respect human rights.

1. **Monitoring:** The UN monitoring system is based on fact-finding and documentation. The role of NGOs is to make a case because the State may not willingly acknowledge their responsibility. This involves gathering as well as sharing information; the more rigorously documented the better. Develop benchmarks and indicators and monitor progressive and regressive changes. Draw attention to the gap between rhetoric and reality. Translate promise into performance.
2. **Education and Awareness Raising:** NGOs need to raise public awareness of human rights standards in order to mobilize enough support to make these rights a reality. Governments themselves may have a low awareness of human rights, lack the political will or simply be unwilling to listen.
3. **Advocacy and Lobbying:** Can be at the local, regional (e.g. ASEAN) or international (e.g. WTO, UN) level. Use international standards to develop and operate strategies at the national level. Enforcement, sanctions and relief for victims must be primarily found at the national level. At the same time, opportunities for lobbying at the regional or international levels should also be explored to bring international attention and gather support to cases and violations. Governments normally don't want to be embarrassed. Developing key parts of the international system at the national level can be done in three ways by advocating for:
 - National investigative mechanisms akin to rapporteurs.
 - National-level study groups that make public reports and national commissions
 - Development of effective enforcement mechanisms and sanctions at the national level for violations of human rights and fundamental freedoms.

2.6. Extra-Conventional Mechanisms

2.6.1. Overview: Extra-Conventional Mechanisms in the Context of the UN System of Human Rights

The Economic and Social Council has a threefold mandate: to promote higher standards of living, full employment and conditions of economic and social progress and development; to promote international cultural and educational cooperation and solutions to international economic, social, health and related problems, and to promote universal respect for, and observance of, human rights and fundamental freedoms.²⁰

The Commission on Human Rights, an intergovernmental commission reporting directly to ECOSOC, was established in 1947 to oversee the UN human rights system. Over the next two decades, it completed the process of drafting the Universal Declaration of Human Rights, the International

²⁰ Economic and Social Council, online: United Nations Human Rights Website <http://www.un.org/Overview/Organs/ecosoc.html#Subsidiary> (last updated 5 January 1999).

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These documents, which together are known as the International Bill of Rights, provide an authoritative statement of what human rights are. The International Bill of Rights, and the human rights treaties which have followed it, also established the formal complaint and reporting mechanisms discussed in section 2.1.

However, the UN also has non-treaty-based bodies that deal with human rights violations. In 1967, the Commission on Human Rights itself was specifically authorized by ECOSOC to deal with complaints about violations of human rights.²¹ Likewise, the Commission on the Status of Women (CSW), which also reports directly to ECOSOC²², is competent to hear individual complaints of human rights violations. The Sub-Commission on the Promotion and Protection of Human Rights, established by the Commission on Human Rights in 1947 as its main subsidiary body, also accepts communications from individuals.

The Commission on Human Rights, its Sub-Commission and the CSW have established mechanisms to monitor State compliance with international human rights law and investigate complaints of human rights violations. These mechanisms, unlike the treaty-based mechanisms, are extra-conventional. That is, they are established by resolutions, rather than by the terms of a treaty. These mechanisms are also referred to as charter-based, because they are directly or indirectly created by the Charter of the United Nations.²³ They provide alternative means of bringing specific human rights violations to the attention of the UN.

In contrast to the treaty-based mechanisms, extra-conventional mechanisms have no formal complaints procedure. However, communications must still satisfy certain minimum criteria. In addition, several of the bodies have developed model formats for individual communications of instances of human rights violations. Use of these model formats is not mandatory. Where appropriate, however, we have included examples of the model formats.

21 United Nations Commission on Human Rights, United Nations Human Rights Website <http://www.unhchr.ch/html/menu2/2/chr.htm>.

22 It is worth noting that pressure by NGOs played a role in the CSW's status as a commission. ECOSOC had initially decided to establish this body as a sub-commission of the Commission on Human Rights.

23 Schuler, M.A. and Thomas, D.Q., eds., *Women's Human Rights Step by Step* (Washington, D.C.: Women, Law & Development International and Human Rights Watch Women's Rights Project, 1997) at 13.

i. Advantages and Disadvantages of Extra-Conventional Mechanisms Relative to Treaty-Based Mechanisms

Relative to the treaty-based mechanisms, the extra-conventional mechanisms have both advantages and disadvantages. The main advantage of the extra-conventional mechanisms is that communications about violations of rights may be submitted against any member State of the United Nations. Recall that under the treaty-based mechanisms, communications can only be submitted concerning another State Party who (i) has not made any relevant reservations, and (ii) who, if required under the terms of the treaty, has made a declaration accepting the treaty body's competence to deal with complaints. Another advantage is that it is not necessary to exhaust domestic remedies before submitting a communication to a Rapporteur or Working Group.²⁴ To emphasize the severity and systematic character of certain human rights violations, the reports of Working Groups, Rapporteurs and Special Envoys can also be taken into account by Human Rights courts in deciding individual communications brought before it.²⁵

The disadvantage of the extra-conventional mechanisms is that the Special Rapporteurs and Working Groups, unlike a treaty body, are not required to take action or reach a determination on a communication. "[W]hether action of any sort is taken depends largely on success in building coalitions between various countries and regional groups. This requires presence at such meetings and familiarity with the procedures."²⁶ This being said, extra-conventional mechanisms still provide a way of bringing instances of specific human rights violations to the attention of the UN.

ii. Competing Jurisdictions: Can Extra-Conventional and Treaty-Based Mechanisms be Engaged Concurrently?

Extra-conventional mechanisms cannot be engaged concurrently with other mechanisms. OPCCPR art. 5(2)(a), CAT art. 22(5)(a) and MWC art. 77(3) state explicitly that the treaty bodies shall not consider any matter that is under another procedure of international investigation or settlement. This has been interpreted narrowly by the Human Rights Committee to mean "identical parties to the complaints advanced and the facts adduced in support of them."

²⁴ Margaret A. Schuler, *Claiming Our Place: Working the Human Rights System to Women's Advantage* (Washington, D.C.: Institute for Women, Law and Development, 1993) at 149.

²⁵ See *Velasquez Rodriguez Case*, Inter-American Court of Human Rights, July 29, 1988.

²⁶ Andrew Byrnes, "Toward More Effective Enforcement of Women's Rights Through the Use of International Human Rights Law and Procedures" in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives* (U.S.A.: University of Pennsylvania Press, 1994) at 210.

In addition, the United Nations Human Rights Website says that “[i]n principle, communications [under extra-conventional mechanisms] will not be considered if they are also submitted under ECOSOC resolution 1503 and/or the Optional Protocol of the International Covenant on Civil and Political Rights.”²⁷ Likewise, the *UN Fact Sheet No. 7/Rev. 1, Complaint Procedures* explaining the 1503 procedure states that this mechanism seeks to avoid overlapping with other UN system procedures and the duplication of complaints that are already dealt with by these procedures.

However, it is still a bit unclear whether communications can be submitted under more than one procedure. Author Margaret Schuler comments that it “does not appear that submission of a complaint to a Special Rapporteur prevents an individual from submitting the complaint under one of the individual complaints procedures.”²⁸

iii. ECOSOC and its Commissions: Consultation with and Representation of NGOs

Under the Charter of the United Nations, the Economic and Social Council’s responsibility includes the promotion of higher standards of living, full employment, and economic and social progress; the encouragement of universal respect for human rights and fundamental freedoms; the identification of solutions to international economic, social and health problems; and facilitation of international cultural and educational cooperation.²⁹

As part of its mandate, ECOSOC consults with NGOs. More than 2,500 NGOs have consultative status with ECOSOC. They are classified into three categories: category I or General Consultative Status is reserved for international NGOs with a broad geographical reach whose work covers most of the issues on the agenda of ECOSOC; category II or Special Consultative Status organizations have special competence in specific areas; and organizations on the Roster are those that can make an occasional contribution to ECOSOC, its subsidiary organs or other UN bodies.³⁰

NGOs in categories I or II may designate authorized representatives to sit as observers at public meetings of commissions and their subsidiary organs. Those on the Roster may have representatives present at such

27 Communications under Extra-Conventional Mechanisms, online.

28 Schuler at 149.

29 Economic and Social Council, online: United Nations Human Rights Website <http://www.un.org/esa/coordination/ecosoc/about.htm> (November 5, 2004).

30 *ibid.*

meetings when matters within their field of competence are being discussed.³¹

Commissions may consult with organizations in categories I or II either directly or through a Committee or Committees established for the purpose. In all cases, such consultations may be arranged on the invitation of the commission or at the request of the NGO. On the recommendation of the Secretary-General and at the request of the commission, organizations on the Roster may also be heard by the commission.³²

2.6.2. Extra-Conventional Mechanisms dealing with Human Rights Violations

The section that follows will focus on extra-conventional mechanisms applicable to violations of migrants' rights, i.e., the "Special Procedures" which include the Special Rapporteurs, the 1503 Procedure and the Commission on the Status of Women.

i. "Special Procedures" of the Commission on Human Rights and its Sub-Commission

"Special Procedures" is the general term given to the mechanisms established by the Commission on Human Rights to look at specific thematic issues or country situations. Resolutions of the Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights authorize experts or groups of experts to investigate particular thematic issues or country situations for a particular time.³³ These bodies are designated as either Special Rapporteurs or Working Groups. Although a Rapporteur or Working Group may not have a specific mandate to consider complaints of human rights violations, they may nonetheless receive these as part of the information gathering process.³⁴ The mandate of a Special Rapporteur or Working Group can be extended by a future resolution.

There are two excellent sources for information about the mandates of the Special Rapporteurs and Working Groups:

31 Rules of Procedure of the Functional Commissions of the Economic and Social Council, Part XIII, Rule 81.

32 Rules of Procedure of the Functional Commissions of the Economic and Social Council, Part XIII, Rule 76, subs. 1-2.

33 Please see attached list of Special Rapporteurs and Working Groups.

34 Byrnes at 208.

- The United Nations Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10, Switzerland
Tel.: (41 22) 917 9240 Fax: (41 22) 917 9012
www.unhchr.ch
- The ISHR INFO-PACK publication lists the names of the experts, their contact information, the commission resolutions which established or extended their mandates and the duration of their mandates.

ii Functions of Special Rapporteurs and Working Groups

Special rapporteurs are assigned to particular thematic issues or country situations. Working Groups are also organized thematically. Most Working Groups concentrate on ways of strengthening and clarifying existing human rights mechanisms. However, the functions of the Special Rapporteurs or Working Groups vary according to their mandate. Common functions include “the collection of information about the observance or violation of specific rights, the receipt and forwarding to governments of communications received from individuals or organizations alleging violation of the rights which fall within the relevant mandate (in some cases as a matter of urgent action), reporting on the extent and practice of the violations of the relevant rights, formulating policy recommendations and, in some cases, visiting individual countries at the invitation of those countries.”³⁵ Each Special Rapporteur and Working Group submits a report to its relevant commission. This report contains summaries of communications and government replies as well as other more general material.

In April 1999, the Commission on Human Rights created the mandate of the Special Rapporteur on the Human Rights of Migrants (Res. 1999/44) and appointed Ms. Gabriela Rodriguez Pizarro of Costa Rica as Special Rapporteur. The mandate was extended for another three years in 2002 during the Commission’s 58th session (Res. 2002/62).

iii. Special Rapporteurs and Working Groups Particularly Relevant to Women Migrant Workers

Special Rapporteurs and Working Groups of the Commission on Human Rights that are relevant to women migrant workers, include:

- Special Rapporteur on the Human Rights of Migrants

³⁵ Schuler at 148.

- Special Rapporteur on Elimination of Violence Against Women, Its Causes and Consequences
- Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography
- Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance
- Special Rapporteur on the Question of Torture
- Working Group on Draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Working Group on Enforced or Involuntary Disappearances
- Working Group on Situations (1503 Procedure)
- Working Group on the Effective Implementation of the Durban Declaration and Programme of Action
- Working Group on Contemporary Forms of Slavery
- Working Group on Communications (1503 Procedure)

iv. How NGOs Can Submit Information to a Special Rapporteur or Working Group

NGOs are an important source of information for both Special Rapporteurs and Working Groups. “The activities of the country or thematic mechanisms are based on communications received from various sources (the victims or their relatives, local or international NGOs, etc.) containing allegations of human rights violations.”³⁶

Communications can be mailed directly to the Special Rapporteur or Working Group. Alternatively, NGOs can arrange to meet with a Special Rapporteur or Working Group member if that individual is based in the NGO’s home country or if they are scheduled to visit that particular country. Communications can be submitted at any time, but to be included in the next annual report, they should be made to the relevant rapporteur by the end of October³⁷ and to the Working Group by the end of August³⁸. Submissions can be mailed

Good Source for Information

A good source for information on the Special Rapporteur on the Human Rights of Migrants can be found at:
<http://www.unhchr.ch/html/menu2/7/b/mmig.htm>

³⁶ Communications under Extra-Conventional Mechanisms, online.

³⁷ Schuler and Thomas at 33.

³⁸ Schuler and Thomas at 34.

directly to the relevant Rapporteur or Working Group care of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

v. Criteria for Communications Under Both Thematic and Country-Specific Mechanisms³⁹

- e) Communications should use clear and concise language to describe the facts of the incident and relevant details.
- f) Communications must contain:
 - the name of the alleged victim(s)
 - the name of the alleged violator(s)
 - the name of the person(s) or organization submitting the communications (anonymous communications are inadmissible) and
 - a detailed description of the circumstances of the incident in which the alleged violation occurred
- g) Other details may be required for the relevant mechanism, e.g. place of detention, names of witnesses to the alleged violation, domestic remedies undertaken.
- h) Communications containing abusive language or which are obviously and patently politically motivated are not considered.

vi. Model Formats/Questionnaires Provided by Some Bodies

Some bodies of the Commission and its Sub-Commission provide model formats, also called model questionnaires, for the submission of communications. Use of these models is not mandatory; communications are considered even when they are not submitted in this format.⁴⁰ (See “Questionnaire for Allegations of Violations of Migrants’ Human Rights” in the following pages.)

Again, the Office of the High Commissioner for Human Rights and the ISHR are good sources for this information. Model formats/questionnaires can be downloaded from the OHCHR website. Likewise, the ISHR INFO-PACK contains condensed versions of the questionnaires provided by various Special Rapporteurs and Working Groups.

³⁹ The source of the following list is Communications under Extra-Conventional Mechanisms, online.

⁴⁰ Communications under Extra-Conventional Mechanisms, online.

vii. The 1503 Procedure

In 1970, ECOSOC resolution number 1503⁴¹ established a procedure for dealing with Communications relating to situations that affect a large number of people over a prolonged period of time.⁴² The situation of women migrant workers reflects the kind of consistent pattern of human rights violations covered by the 1503 Procedure.⁴³

Given that the names of countries under examination by the Commission on Human Rights are released in a public session, the 1503 Procedure may provide a way to direct the attention of the world community to the problems of women migrant workers. However, it is important to understand that the role played by the UN in this process is mediational, rather than adversarial⁴⁴, and that the only available sanction is shame.

41 Resolution 1503 (XLVIII) of the Economic and Social Council.

42 Unlike the OPCCPR, which deals with individual complaints of specific human rights abuses.

43 *cf.* ILO Pattern or Practice Studies

44 Dias article.

Model Communication

GABRIELA RODRIGUEZ PIZARRO
SPECIAL RAPPORTEUR OF THE UNITED NATIONS ON THE HUMAN RIGHTS OF
MIGRANTS

QUESTIONNAIRE FOR ALLEGATIONS OF VIOLATIONS OF MIGRANTS' HUMAN
RIGHTS

1. The objective of this questionnaire is to have access to precise information on alleged violations of the human rights of migrants. The Special Rapporteur may raise her concerns about the incidents reported and request Governments to make observations and comments on the matter.
2. Please indicate whether the information provided is confidential (in the relevant sections).
3. Should the information you wish to provide relate to conditions/policies/practices or laws (i.e. more general situations), which affect the human rights of migrants, please do not use this form. A special form will be provided at a later date to address the issue of good practice and/or negative developments with regards to the protection of the human rights of migrants. Meanwhile you may send that type of information without completing a form to the contact numbers indicated at the end of the questionnaire.
4. Do not hesitate to attach additional sheets, if the space provided is not sufficient.

QUESTIONNAIRE:

1. GENERAL INFORMATION: (Please mark with an X when appropriate)

Does the incident involve an individual _____ or a group _____ ?

If it involves a group please state the number of people involved _____ and the characteristics of the group:

- Number of Men _____
- Number of Women _____
- Number of Minors _____
- Nationality of the victim(s) _____
- Country in which the incident took place _____



Model Communication cont'd

2. IDENTITY OF THE PERSONS CONCERNED:

Note: if more than one person is concerned, please attach relevant information on each person separately.

1. Family name: _____
2. First name: _____
3. Sex: __ male __ female
4. Birth date or age: _____
5. Nationality(ies): _____
6. Civil status (single, married, etc.): _____
7. Profession and/or activity (e.g. trade union, political, religious, humanitarian/solidarity/human rights, etc.) _____
8. Status in the country where the incident took place:
 - Undocumented _____
 - Transit _____
 - Tourist _____
 - Student _____
 - Work Permit _____
 - Resident _____
 - Refugee _____
 - Asylum seeker _____
 - Temporary protection _____
 - Other (please specify) _____

3. INFORMATION REGARDING THE ALLEGED VIOLATION

1. Date: _____
2. Place: _____
3. Time: _____
4. The nature of the incident: Please describe the circumstances of the incident:

5. Was any consular official contacted by the alleged victim or the authorities?
(Please explain) _____
6. Was the alleged victim aware of his/her right to contact a consular official of his/her country of origin? (Please explain) _____



Model Communication cont'd

4. AGENTS BELIEVED TO BE RESPONSIBLE FOR THE ALLEGED VIOLATION
- State Agents (specify) _____
 - Non - state Agents (specify) _____
 - If it is unclear whether they were state or non - state agents please explain why? _____
 - If the perpetrators are believed to be State agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.) and indicate why they are believed to be responsible; be as precise as possible: _____
 - If an identification as State agents is not possible, do you believe that Government authorities, or persons linked to them, are responsible for the incident, why? _____
5. STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANY ONE ELSE ON HIS/HER BEHALF
- (a) Indicate if complaints have been filed, when, by whom, and before which organ. _____
 - (b) Other steps taken: _____
 - (c) Steps taken by the authorities: _____
Indicate whether or not, to your knowledge, there have been investigations by the State authorities. If so, what kind of investigations? Progress and status of these investigations; which other measures have been taken.
In case of complaints by the victim or its family, how have the organs dealt with them? What is the outcome of those proceedings?



Model Communication cont'd

6. IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

- Institution _____
- Individual _____
- NAME _____
- Contact number or address (please indicate country and area code):

- FAX : _____
- TEL: _____
- Email: _____
- Date you are submitting this form: _____

The questionnaire should be sent to either of the following:

Special Rapporteur on the Human Rights of Migrants
Office of the High Commissioner for Human Rights
United Nations
1211 Geneva 10
Switzerland

Fax: (41 22) 917 90 06

Email: webadmin.hchr@unog.ch (please include in the subject box: Special Rapporteur HR Migrants)

viii. How the Procedure Works⁴⁵

- a) Invoking the Procedure. Any individual, group of individuals or NGOs may invoke the 1503 Procedure if they are the victims of human rights violations or have direct, reliable knowledge of violations so long as the case represents a consistent pattern of gross violations of human rights. The communications should be describing and be in accordance with recognized principles of human rights. Communications should be sent to:

Commission/Sub-Commission Team (1503 Procedure)
Support Services Branch
OHCHR-UNOG
1211 Geneva 10, Switzerland
fax: (41 22) 917 90 11
email: 1503.hchr@unog.ch

- b) Criteria of admissibility.⁴⁶ The following conditions must be satisfied for a complaint to be considered admissible. The complaint:
- Must reveal a consistent pattern of gross and reliably attested violations of human rights. It must draw attention to a “situation” rather than an individual case.
 - Should be submitted within reasonable time after exhaustion of domestic remedies and should include proof that said remedies were exhausted.
 - Must not be anonymous, nor contain abusive or politically motivated language.
 - Must be reliable and submitted in good faith.
 - Should not overlap with complaints submitted or already considered under other procedures in the UN System.
- c) Initial Screening.⁴⁷ All complaints are screened by the Secretariat with the Chairperson of the Working Group on Communications as they arrive. If the complaint passes the screening process, it will be acknowledged and forwarded to the Government concerned for comment. Government responses are confidential and are not communicated to the complainant.
- d) Meeting of the Working Group on Communications⁴⁸. The Working Group meets in late summer (usually August) to discuss complaints

45 Fact Sheet No. 7/Rev. 1, Complaints Procedures, <http://www.unhcr.ch/html/menu6/2/fs7.htm#1503> (25 October 2004).

46 Ibid., p. 16.

47 Ibid.

48 Ibid.

that passed initial screening and that have been forwarded to Governments concerned for comment at least 12 weeks before the meeting of the Working Group. It examines complaints and Government responses with the intention of bringing to the attention of the Working Group on Situations any situations that appear to have a consistent pattern of gross violations of human rights and fundamental freedoms.

The Working Group proceedings are confidential and are conducted on the basis of written documents, hence neither Governments nor complainants appear before the group. Governments are notified of the Working Group's decisions but the complainant is not.

- e) Meeting of the Working Group on Situations.⁴⁹ The Working Group on Situations meets early the following year (usually February) to examine material transmitted by the Working Group on Communications and recommends a course of action for each case. The Working Group has several options in dealing with situations which include: forwarding a situation to the Commission with specific recommendations, keeping a *situation pending*, or closing the file.

As with the Working Group on Communications, proceedings are kept confidential and only the Governments concerned are notified of the Working Group's decisions but not the complainant.

- f) Meeting of the Commission on Human Rights. About one month after the meeting of the Working Group on Situations, the Commission on Human Rights meets in closed session to consider the situations referred by the Working Group on Situations. The Commission may decide to take no further action, keep the situation under review or transmit the report to ECOSOC for further action. The State concerned has the right to be represented at this debate.

After the Commission's deliberations on the situations, the Chairperson announces the names of countries examined and those no longer dealt with under the 1503 procedure.

ix. Advantages and Disadvantages of the 1503 Procedure

Like all other procedures, the use of the 1503 has its advantages and disadvantages that one should consider in deciding which mechanism to use. Its advantages include: (a) a complaint may be submitted against any country regardless of its ratification of a particular treaty; (b) once a complaint is submitted, there is no need to respond at a later date with more information; (c) it is possible for a complaint to reach the highest level of the UN machinery, i.e., the Commission on Human Rights, which

⁴⁹ Ibid.

may result in considerable pressure on a State to change its laws, practices, etc. Its downside revolves around (a) confidentiality, i.e., the complainant is not informed of decisions during the entire process nor of the Government's responses to the complaints; and (b) the fact that it can be a long-drawn-out process.

x. The Procedure of the Commission on the Status of Women (CSW)

The mandate of the CSW is to prepare recommendations and reports to ECOSOC on promoting women's rights in political, economic, civil social and economic fields. The CSW also makes recommendations to ECOSOC on urgent problems in the field of women's rights.⁵⁰

- a) The Procedure. The confidential complaints procedure of the CSW was designed to identify global trends and patterns concerning women's rights⁵¹ and hence does not offer direct redress to victims of human rights violations.
- b) Receipt of Complaints. The CSW Secretariat receives communications from individuals or groups alleging human rights violations. Communications should be sent to:

Committee on the Elimination of Discrimination against Women
c/o Division for the Advancement of Women, Department of Economic
and Social Affairs
United Nations Secretariat
2 United Nations Plaza
DC-2/12th Floor, New York, NY 10017, USA
Fax: 1-212-963-3463

Following receipt of complaints, (a) the CSW Secretariat acknowledges receipt and informs the complainant of the procedure; and (b) summarizes the complaints and then sends them to the concerned Government for comments.

- c) Meeting of Working Group on Communications. Complaints are passed on to a Working Group which meets during the CSW's annual session. During its deliberation, the Working Group considers the complaints and Government responses with the aim of bringing the CSW's attention Communications that reveal a consistent pattern of "injustice and discriminatory practices against women."⁵²

50 Schuler and Thomas at 14.

51 Fact Sheet No. 7/Rev. 1, Communications Procedures, pp. 18-19.

52 Ibid.

- d) Meeting of CSW. Based on the Working Group's report, the CSW reports to the ECOSOC, making recommendations where it sees fit. It is not authorized to take further action.⁵³

⁵³ <http://www.ohchr.org/english/about/publications/docs/fs7.htm#1503>

Table 2-1. International Mechanisms Relevant to Migrants' Rights – A Summary

MECHANISMS	WHO CAN SUBMIT?	CONDITIONS	ADVANTAGE/ DISADVANTAGE	
1. Treaty-Based Mechanisms 				
<ul style="list-style-type: none"> • Individual Complaint Mechanism - International Covenant on Civil & Political Rights, first Optional Protocol. - International Convention on the Elimination of Racial Discrimination, Art. 14 - Convention on the Elimination of All Forms of Discrimination Against Women, Optional Protocol - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 22 - International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, Art. 77 (not yet enforced) 	<ul style="list-style-type: none"> • Individuals • Organizations on behalf of individuals 	State MUST have ratified individual complaints procedure under relevant treaty	MUST exhaust domestic remedies	<p>There is no appeal against Committee decisions and that, as a rule, the decisions are final.</p> <p>Each Committee has the facility to take urgent action to avoid irreparable harm if the case were to be examined in the usual course.</p>

MECHANISMS	WHO CAN SUBMIT?	CONDITIONS		ADVANTAGE/ DISADVANTAGE
1. Treaty-Based Mechanisms <div style="display: flex; justify-content: space-around; margin-top: 5px;"> → → → </div>				
<ul style="list-style-type: none"> • Inquiry Procedure - Convention on the Elimination of All Forms of Discrimination Against Women, Optional Protocol, Art. 10 - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 20 <p>Note: The Committee can also conduct an inquiry based on information from State Reports</p>	<ul style="list-style-type: none"> • Individuals • Organizations on Behalf of Individuals 	<p>MUST be grave or systematic violations of rights or fundamental freedoms</p> <p>State MUST have ratified CAT, or CEDAW and CEDAWOP</p>	<p>MUST have made no declaration opting out of the inquiry mechanism of the CAT or CEDAWOP.</p>	<p>There is no need to exhaust domestic remedies.</p> <p>The submission of a request for an inquiry procedure does not rule out the submission of an individual complaint.</p> <p>The confidentiality of the procedure may only end when the investigation is completed.</p>
<ul style="list-style-type: none"> • Interstate Complaint Mechanism - International Covenant on Civil & Political Rights, Art. 41. - International Convention on the Elimination of Racial Discrimination Art. 11-13. - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 21 - International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, Art. 76. (not yet enforced) 	<ul style="list-style-type: none"> • State Parties 	<p>MUST be parties under CERD</p>	<p>Under ICCPR, ICERD, and CAT, the communication may be submitted by a State Party concerning another State Party who declare their recognition of the relevant Committee's competence to deal with complaints.</p>	<p>Despite its non-use and limited application, NGOs can lobby their government to submit a complaint to the relevant treaty body when another State Party is not fulfilling its obligations under a treaty.</p>

MECHANISMS	WHO CAN SUBMIT?	CONDITIONS	ADVANTAGE/ DISADVANTAGE
1. Treaty-Based Mechanisms 			
<ul style="list-style-type: none"> • Reporting Mechanism - International Covenant on Civil & Political Rights - International Covenant on Economic, Social and Cultural Rights - International Convention on the Elimination of Racial Discrimination - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Convention on the Elimination of All Forms of Discrimination Against Women - Convention on the Rights of the Child - International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families 	<ul style="list-style-type: none"> • State Party to report on measures it has adopted in observance of what it has ratified • Organizations by submitting a 'Shadow' Report 	<p>MUST follow format specified in relevant treaty</p>	<p>The Committee is limited by the information available to it because it cannot seek additional information except through questions asked to the State Party. The 'Shadow' Report from NGOs provides Committee members with alternative information on the domestic situation.</p> <p>In its final report, the Committee includes the State's strengths and weaknesses and specific recommendations which could be used for public education.</p>

MECHANISMS	WHO CAN SUBMIT?	CONDITIONS		ADVANTAGE/ DISADVANTAGE
2. Extra-Conventional Mechanisms				
<ul style="list-style-type: none"> • Special Rapporteurs (Special Rapporteurs or Independent Experts) - Human Rights of Migrants - Elimination of Violence Against Women - Racism, Racial Discrimination & Xenophobia 	<ul style="list-style-type: none"> • Individuals • Groups • NGOs 	MUST fall within mandate of Special Rapporteur		RESPONSE may be immediate
<ul style="list-style-type: none"> • 1503 Procedure 	<ul style="list-style-type: none"> • Individuals • Groups • NGOs 	MUST be consistent or systemic pattern of gross violations	MUST exhaust domestic remedies	Individual complaints can ONLY be submitted if State has not ratified individual complaint procedure under relevant treaty

3

United Nations Member States

With the admission of Serbia & Montenegro (and the corresponding disappearance of Yugoslavia), Switzerland, Timor-Leste and Tuvalu, there are now 191 Member States of the United Nations. The Member States and the dates on which they joined the Organization are listed below:

Member – (*date of admission*)

A

Afghanistan – (19 Nov. 1946)
Albania – (14 Dec. 1955)
Algeria – (8 Oct. 1962)
Andorra – (28 July 1993)
Angola – (1 Dec. 1976)
Antigua and Barbuda – (11 Nov. 1981)
Argentina – (24 Oct. 1945)
Armenia – (2 Mar. 1992)
Australia – (1 Nov. 1945)
Austria – (14 Dec. 1955)
Azerbaijan – (9 Mar. 1992)

B

Bahamas – (18 Sept. 1973)
Bahrain – (21 Sept. 1971)
Bangladesh – (17 Sept. 1974)
Barbados – (9 Dec. 1966)
Belarus – (24 Oct. 1945)
On 19 September 1991, Byelorussia informed the United Nations that it had changed its name to Belarus.
Belgium – (27 Dec. 1945)
Belize – (25 Sept. 1981)
Benin – (20 Sept. 1960)

Bhutan – (21 Sept. 1971)
Bolivia – (14 Nov. 1945)
Bosnia and Herzegovina – (22 May 1992)
Botswana – (17 Oct. 1966)
Brazil – (24 Oct. 1945)
Brunei Darussalam – (21 Sept. 1984)
Bulgaria – (14 Dec. 1955)
Burkina Faso – (20 Sept. 1960)
Burundi – (18 Sept. 1962)

C

Cambodia – (14 Dec. 1955)
Cameroon – (20 Sept. 1960)
Canada – (9 Nov. 1945)
Cape Verde – (16 Sept. 1975)
Central African Republic – (20 Sept. 1960)
Chad – (20 Sept. 1960)
Chile – (24 Oct. 1945)
China – (24 Oct. 1945)
Colombia – (5 Nov. 1945)
Comoros – (12 Nov. 1975)
Congo – (20 Sept. 1960)
Costa Rica – (2 Nov. 1945)

Côte d'Ivoire – (20 Sept. 1960)
Croatia – (22 May 1992)
Cuba – (24 Oct. 1945)
Cyprus – (20 Sept. 1960)
Czech Republic – (19 Jan. 1993)
Czechoslovakia was an original Member of the United Nations from 24 October 1945. In a letter dated 10 December 1992, its Permanent Representative informed the Secretary-General that the Czech and Slovak Federal Republic would cease to exist on 31 December 1992 and that the Czech Republic and the Slovak Republic, as successor States, would apply for membership in the United Nations. Following the receipt of its application, the Security Council, on 8 January, recommended to the General Assembly that the Czech Republic be admitted to United Nations membership. The Czech Republic was thus admitted on 19 January as a Member State.

D

Democratic People's Republic of Korea – (17 Sept. 1991)
Democratic Republic of the Congo – (20 Sept. 1960)
Denmark – (24 Oct. 1945)
Djibouti – (20 Sept. 1977)
Dominica – (18 Dec. 1978)
Dominican Republic – (24 Oct. 1945)

E

Ecuador – (21 Dec. 1945)
Egypt – (24 Oct. 1945)
Egypt and Syria were original Members of the United Nations from 24 October 1945. Following a plebiscite on 21 February 1958, the United Arab Republic was established by a union of Egypt and Syria and continued as a single Member. On 13 October 1961, Syria, having resumed its status as an independent State, resumed its separate membership in the United Nations. On 2 September 1971, the United Arab Republic changed its name to the Arab Republic of Egypt.

El Salvador – (24 Oct. 1945)
Equatorial Guinea – (12 Nov. 1968)
Eritrea – (28 May 1993)
Estonia – (17 Sept. 1991)
Ethiopia – (13 Nov. 1945)

F

Fiji – (13 Oct. 1970)
Finland – (14 Dec. 1955)
France – (24 Oct. 1945)
Gabon – (20 Sept. 1960)
Gambia – (21 Sept. 1965)
Georgia – (31 July 1992)
Germany – (18 Sept. 1973)
The Federal Republic of Germany and the German Democratic Republic were admitted to membership in the United Nations on 18 September 1973. Through the accession of the German Democratic Republic to the Federal Republic of Germany, effective from 3 October 1990, the two German States have united to form one sovereign State.

G

Ghana – (8 Mar. 1957)
Greece – (25 Oct. 1945)
Grenada – (17 Sept. 1974)
Guatemala – (21 Nov. 1945)
Guinea – (12 Dec. 1958)
Guinea-Bissau – (17 Sept. 1974)
Guyana – (20 Sept. 1966)

H

Haiti – (24 Oct. 1945)
Honduras – (17 Dec. 1945)
Hungary – (14 Dec. 1955)

I

Iceland – (19 Nov. 1946)
India – (30 Oct. 1945)
Indonesia – (28 Sept. 1950)

By letter of 20 January 1965, Indonesia announced its decision to withdraw from the United Nations "at this stage and under the present circumstances". By telegram of 19 September 1966, it announced its decision "to resume full cooperation with the United Nations and to resume participation in its activities". On 28 September 1966, the General Assembly took note of this decision and the President invited representatives of Indonesia to take seats in the Assembly.

Iran (Islamic Republic of) – (24 Oct. 1945)

Iraq – (21 Dec. 1945)

Ireland – (14 Dec. 1955)

Israel – (11 May 1949)

Italy – (14 Dec. 1955)

J

Jamaica – (18 Sept. 1962)

Japan – (18 Dec. 1956)

Jordan – (14 Dec. 1955)

K

Kazakhstan – (2 Mar. 1992)

Kenya – (16 Dec. 1963)

Kiribati – (14 Sept. 1999)

Kuwait – (14 May 1963)

Kyrgyzstan – (2 Mar. 1992)

L

Lao People's Democratic Republic – (14 Dec. 1955)

Latvia – (17 Sept. 1991)

Lebanon – (24 Oct. 1945)

Lesotho – (17 Oct. 1966)

Liberia – (2 Nov. 1945)

Libyan Arab Jamahiriya – (14 Dec. 1955)

Liechtenstein – (18 Sept. 1990)

Lithuania – (17 Sept. 1991)

Luxembourg – (24 Oct. 1945)

M

Madagascar – (20 Sept. 1960)

Malawi – (1 Dec. 1964)

Malaysia – (17 Sept. 1957)

The Federation of Malaya joined the United Nations on 17 September 1957.

On 16 September 1963, its name was changed to Malaysia, following the admission to the new federation of Singapore, Sabah (North Borneo) and Sarawak. Singapore became an independent State on 9 August 1965 and a Member of the United Nations on 21 September 1965.

Maldives – (21 Sept. 1965)

Mali – (28 Sept. 1960)

Malta – (1 Dec. 1964)

Marshall Islands – (17 Sept. 1991)

Mauritania – (7 Oct. 1961)

Mauritius – (24 Apr. 1968)

Mexico – (7 Nov. 1945)

Micronesia (Federated States of) – (17 Sept. 1991)

Monaco – (28 May 1993)

Mongolia – (27 Oct. 1961)

Morocco – (12 Nov. 1956)

Mozambique – (16 Sept. 1975)

Myanmar – (19 Apr. 1948)

N

Namibia – (23 Apr. 1990)

Nauru – (14 Sept. 1999)

Nepal – (14 Dec. 1955)

Netherlands – (10 Dec. 1945)

New Zealand – (24 Oct. 1945)

Nicaragua – (24 Oct. 1945)

Niger – (20 Sept. 1960)

Nigeria – (7 Oct. 1960)

Norway – (27 Nov. 1945)

O

Oman – (7 Oct. 1971)

P

Pakistan – (30 Sept. 1947)
Palau – (15 Dec. 1994)
Panama – (13 Nov. 1945)
Papua New Guinea – (10 Oct. 1975)
Paraguay – (24 Oct. 1945)
Peru – (31 Oct. 1945)
Philippines – (24 Oct. 1945)
Poland – (24 Oct. 1945)
Portugal – (14 Dec. 1955)

Q

Qatar – (21 Sept. 1971)

R

Republic of Korea – (17 Sept. 1991)
Republic of Moldova – (2 Mar. 1992)
Romania – (14 Dec. 1955)
Russian Federation – (24 Oct. 1945)
The Union of Soviet Socialist Republics was an original Member of the United Nations from 24 October 1945. In a letter dated 24 December 1991, Boris Yeltsin, the President of the Russian Federation, informed the Secretary-General that the membership of the Soviet Union in the Security Council and all other United Nations organs was being continued by the Russian Federation with the support of the 11 member countries of the Commonwealth of Independent States.
Rwanda – (18 Sept. 1962)

S

Saint Kitts and Nevis – (23 Sept. 1983)
Saint Lucia – (18 Sept. 1979)
Saint Vincent and the Grenadines – (16 Sept. 1980)
Samoa – (15 Dec. 1976)
San Marino – (2 Mar. 1992)
Sao Tome and Principe – (16 Sept. 1975)
Saudi Arabia – (24 Oct. 1945)

Senegal – (28 Sept. 1960)
Serbia & Montenegro – (1 Nov. 2000)
Seychelles – (21 Sept. 1976)
Sierra Leone – (27 Sept. 1961)
Singapore – (21 Sept. 1965)
Slovakia – (19 Jan. 1993)
Czechoslovakia was an original Member of the United Nations from 24 October 1945. In a letter dated 10 December 1992, its Permanent Representative informed the Secretary-General that the Czech and Slovak Federal Republic would cease to exist on 31 December 1992 and that the Czech Republic and the Slovak Republic, as successor States, would apply for membership in the United Nations. Following the receipt of its application, the Security Council, on 8 January, recommended to the General Assembly that the Slovak Republic be admitted to United Nations membership. The Slovak Republic was thus admitted on 19 January as a Member State.
Slovenia – (22 May 1992)
Solomon Islands – (19 Sept. 1978)
Somalia – (20 Sept. 1960)
South Africa – (7 Nov. 1945)
Spain – (14 Dec. 1955)
Sri Lanka – (14 Dec. 1955)
Sudan – (12 Nov. 1956)
Suriname – (4 Dec. 1975)
Swaziland – (24 Sept. 1968)
Sweden – (19 Nov. 1946)
Switzerland – (10 Sept. 2002)
Syrian Arab Republic – (24 Oct. 1945)
Egypt and Syria were original Members of the United Nations from 24 October 1945. Following a plebiscite on 21 February 1958, the United Arab Republic was established by a union of Egypt and Syria and continued as a single Member. On 13 October 1961, Syria, having resumed its status as an independent State, resumed its separate membership in the United Nations.

T

Tajikistan – (2 Mar. 1992)

Thailand – (16 Dec. 1946)

The former Yugoslav Republic of Macedonia – (8 Apr. 1993)

The General Assembly decided on 8 April 1993 to admit to United Nations membership the State being provisionally referred to for all purposes within the United Nations as "The former Yugoslav Republic of Macedonia" pending settlement of the difference that had arisen over its name.

Timor-Leste – (27 Sept. 2002)

Togo – (20 Sept. 1960)

Tonga – (14 Sept. 1999)

Trinidad and Tobago – (18 Sept. 1962)

Tunisia – (12 Nov. 1956)

Turkey – (24 Oct. 1945)

Turkmenistan – (2 Mar. 1992)

Tuvalu – (05 Sept. 2000)

U

Uganda – (25 Oct. 1962)

Ukraine – (24 Oct. 1945)

United Arab Emirates – (9 Dec. 1971)

United Kingdom of Great Britain and Northern Ireland – (24 Oct. 1945)

United Republic of Tanzania – (14 Dec. 1961)

Tanganyika was a Member of the United Nations from 14 December 1961 and Zanzibar was a Member from 16 December 1963. Following the ratification on 26 April 1964 of Articles of Union between Tanganyika and Zanzibar, the United Republic of Tanganyika and Zanzibar continued as a single Member, changing its name to the United Republic of Tanzania on 1 November 1964.

United States of America – (24 Oct. 1945)

Uruguay – (18 Dec. 1945)

Uzbekistan – (2 Mar. 1992)

V

Vanuatu – (15 Sept. 1981)

Venezuela – (15 Nov. 1945)

Viet Nam – (20 Sept. 1977)

Y

Yemen – (30 Sept. 1947)

Yemen was admitted to membership in the United Nations on 30 September 1947 and Democratic Yemen on 14 December 1967. On 22 May 1990, the two countries merged and have since been represented as one Member with the name "Yemen".

Z

Zambia – (1 Dec. 1964)

Zimbabwe – (25 Aug. 1980)

Source:

UN Press Release ORG/1317 (26 September 2000),

<http://www.un.org/Overview/unmember.html>

Updated 24 April 2003

4

Abuses and Relevant Human Rights Standards in UN Instruments

The following list of abuses of the rights of Asian women migrant workers is organized to reflect the stages in the migration process, namely the period before departure from the sending country, the period spent in the receiving country, and departure from the receiving country. It also deals with abuses that span the entire migration process, such as contemporary forms of slavery. NGOs can use this list when analyzing cases of human rights violations against women migrant workers.

A. Abuses Suffered by Asian Women Migrant Workers

1.0.0 Pre-Departure Abuses

- 1.1.0 *Recruitment*: this section deals with abuses by recruitment and/or placement agencies or agents.
 - 1.1.1 Fees: the fees charged by recruiters are excessive.
 - 1.1.2 Information: the intentional provision of false or misleading information by the recruiter to the worker or by the employer to the recruiter or the worker.
 - 1.1.3 Non-deployment: failure to send the worker abroad as promised.

NB: For other abuses that include forced confinement and other slave like conditions as well as the provision of fraudulent travel documents, refer to 5.0.0 Abuses over the entire migration process.

2.0.0 On-Site Abuses

- 2.1.0 *Contract Violations*: the terms of the oral or written employment contract are not respected by the employer.
 - 2.1.1 Contract Substitution: the worker is forced to sign a new contract upon arrival in the receiving country. The new terms of the

contract may be unfavourable to the worker. For example, the new contract may involve a different position, employer, number of employers or work of a different nature from that stipulated in the original contract.

- 2.1.2 Additional Tasks: the worker is forced to perform tasks for which she was not recruited and/or which are not stipulated in her employment contract.
- 2.1.3 Hours: the worker has excessive or irregular working hours.
- 2.1.4 Leisure: the worker is given no or insufficient leisure time.
- 2.1.5 Wages: the worker is not paid for work performed or payment is delayed; the worker is underpaid based on wages promised or national minimum wage, where applicable.
- 2.1.6 Deductions: illegal deductions are made from the worker's salary (for e.g., to pay for placement fees or in the form of compulsory savings).
- 2.1.7 Benefits: worker is denied benefits to which she is entitled (for e.g., holidays with pay, sick leave with pay, and maternity leave).
- 2.1.8 Dismissal: worker is dismissed without cause, notice and/or benefits.
- 2.1.9 Other violations: other breaches of the employment contract (e.g. for live-in domestic workers this includes inadequate accommodation, food and other provisions).
- 2.2.0 *Occupational Health & Safety:*** the worker's physical and/or mental health are compromised by her working conditions.
- 2.2.1 Training & Information: the worker is not provided with occupational health and safety information or training in her own language; the information and training provided are inadequate.
- 2.2.2 Inspection: there is a lack of adequate workplace inspection.
- 2.2.3 Exposure to Risks: the worker is exposed to occupational risks which compromise her health and safety; the worker is not provided with protective gear or equipment.
- 2.2.4 Medical Care: medical care is not provided or is inadequate, health care information and services are inaccessible or not responsive to their needs.

2.3.0 *Psychological and Physical Abuse*

2.3.1 Psychological: psychological abuse, including verbal abuse and denial of the right to privacy.

2.3.2 Physical: physical abuse, including beatings, and forced drug consumption.

2.3.3 Sexual: sexual abuse and harassment, including rape and forced prostitution.

2.3.4 Mandatory Medical Testing: this includes testing for HIV/AIDS, pregnancy tests required of migrant workers before, upon their entry or on a regular basis during their contract in the receiving country.

2.4.0 *Discrimination*: particularly, discrimination on the basis of sex and national origin.

2.4.1 Employment: any distinction, exclusion or preference made on the basis of a prohibited ground of discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (e.g., inadequate provision for food, clothing and shelter); includes discrimination in the hiring process (e.g., mandatory pregnancy tests for female domestic workers).

2.4.2 Benefits & Services: the worker and/or her family are discriminated against in the provision of social security benefits (e.g., worker's compensation, unemployment benefits, and retirement pensions); worker and/or her family are denied access to social programs, such as education and health care, on the basis of a ground of discrimination prohibited under international law.

2.4.3 Application of National Standards: national standards such as the minimum wage and number of hours of work do not apply to migrant workers and/or their families.

2.4.4 Other: other forms of discrimination, including interference with the worker's religious and cultural practices; and racial profiling by immigration or law enforcement officers.

2.5.0 *Family Issues*

2.5.1 Family Responsibilities: the worker's conditions of employment do not take her family responsibilities into account.

- 2.5.2 Reunification: the receiving State disregards the right of the worker and her family members to live in the same State or to visit one another.
- 2.5.3 Status of Children: the legal status of children born in the receiving country and the status of the children accompanying the worker to the receiving country.
- 2.5.4 Children's Rights: general human rights and fundamental freedoms applying to children in international law.
- 2.6.0 *Mobility Rights:*** the worker's freedom of movement is infringed.
- 2.6.1 Forcible Confinement: the worker is physically confined to her place of work or other location.
- 2.6.2 Restricted Mobility: the worker is not allowed to move about freely (e.g., she is prevented from leaving the country to visit family).
- 2.6.3 Confiscation of Documents: confiscation and deprivation of the worker's passport and other travel or identity documents.
- 2.6.4 Choice of Employment: the worker is denied the right to change employer or employment.
- 2.6.5 Choice of Residence: the worker is denied the right to choose her place of residence.
- 2.6.6 Authorization of residence: Includes the right of the worker to receive, from the State in which she is working, the authorization of residence for the time that the worker is authorized to work in that State.
- 2.7.0 *Other Abuses***
- 2.7.1 Freedom of Association: the worker is denied the right to join or form a workers' organization.
- 2.7.2 Reproductive Rights: the worker's reproductive rights are infringed (e.g., the worker is forced to undergo pregnancy testing, use contraceptives or abort her pregnancy).
- 2.7.3 Name Change on Documents: the worker's real name is changed on identity, work and/or travel documents so that it is difficult to establish her whereabouts.

- 2.7.4 Freedom of thought, conscience and religion/opinion/ expression: The migrant worker is denied her right to her own religious beliefs and practices, and freedom to seek, receive and impart information and ideas of all kinds, subject to certain limitations, including the respect of public morals and national security.
- 2.7.5 Privacy: The migrant worker is subjected to arbitrary or unlawful interference with her right to privacy, family, home or other communication.
- 2.7.6 Property rights/ earnings/tax issues: The migrant worker is prohibited from transferring earnings and savings; higher taxes are imposed on migrant workers than on nationals; and migrant workers are not exempt from import/export duties and taxes for personal household effects.
- 2.7.7 Cultural identity: The right of the worker to have her cultural identity respected by the State in which she is working.

3.0.0 Difficulties in Exercising Legal Rights

- 3.1.0 *Legal Action*: the worker has difficulty pursuing legal action against her employer or recruiter.
- 3.1.1 Corruption: corrupt judiciary or law enforcement authorities impede the worker from exercising her legal rights.
- 3.1.2 Renewal of Documents: the worker has difficulty renewing visas or work permits. As a result, she may be unable to remain in the host country or support herself while the legal process is underway.
- 3.2.0 *Arrest and Detention*
- 3.2.1 Torture: the worker is subjected to torture and other cruel, inhuman or degrading treatment or punishment.
- 3.2.2 Legal Rights: the worker's legal rights are violated (e.g., her right to due process which includes the right to consult an attorney and to trial before an impartial body).

4.0.0 Final Departure

4.1.0 Repatriation and Reintegration

- 4.1.1 Expulsion: the worker is forcibly repatriated to her home country; she may be forced to pay the cost of deportation or repatriation back to her home country when she is not legally required to do so.

- 4.1.2 Reintegration: abuses pertaining to the worker's reintegration into her home country.
- 4.1.3 Regularization: In the case of migrant workers and members of their families, the State does not take appropriate measures to ensure that the situation does not persist.
- 4.1.4 Participation in public affairs of state of origin: The migrant workers is denied her right in her state of origin, to participate in public affairs, as well as the right to vote and to be elected to office.

5.0.0 Abuses Over The Entire Migration Process

5.1.0 *Contemporary Forms of Slavery*

- 5.1.1 Trafficking – “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art 3(a)).
- 5.1.2 Forced Labour or Debt Bondage: forced labour (also referred to as compulsory labour) refers to all work or service that is exacted from a person under the menace of any penalty and for which the said person has not offered herself voluntarily. Debt bondage occurs when a debtor pledges her services or those of a person under her control to work for a particular employer in order to pay off her debt while the value of the service is not applied to the debt or the length or nature of the service is not defined or limited. (Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1a).
- 5.1.3 Forced confinement and other slave-like conditions which occur onsite in the country of destination; in the home country while prospective migrant workers await deployment or complete their training; or in other phases of migration.
- 5.2.0 *Smuggling of migrants* is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the

illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” (Protocol Against the Smuggling of Migrants by Land, Sea and Air, art. 3a).

B. List of Relevant UN Treaties and Declarations

UN Treaties

MWC: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

CCPR: International Covenant on Civil and Political Rights

CCPR OPI: International Covenant on Civil and Political Rights First Optional Protocol

ESCR: International Covenant on Economic, Social and Cultural Rights

CERD: International Convention on the Elimination of All Forms of Racial Discrimination

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CEDAWOP: Convention on the Elimination of All Forms of Discrimination Against Women – Optional Protocol

CRC: Convention on the Rights of the Child

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*CSTP*⁵⁴: Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others

CATOC: Convention Against Transnational Organized Crime

⁵⁴ The preamble of the *CSTP* states that it is a consolidation of four earlier treaties and a draft 1937 convention. The four earlier treaties were the:

International Agreement for the Suppression of the White Slave Traffic (1904)

International Convention for the Suppression of the White Slave Traffic (1910)

International Convention for the Suppression of the Traffic in Women and Children (1921)

International Convention for the Suppression of the Traffic in Women of Full Age (1947)

PPSPTP: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention against Transnational Organized Crime)

PASMLSA: Protocol against the Smuggling of Migrants by Land, Sea and Air (Supplementing the United Nations Convention against Transnational Organized Crime)

UN Declarations

UDHR: Universal Declaration of Human Rights

DHRNN: Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live

Table 4-1. Abuses & Relevant Human Rights Standards in UN Instruments

NB: The numbers under each UN Treaty column, e.g. CCPR, refer to relevant articles in said treaty.

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
List of Abuses														
1.0.0 PRE-DEPARTURE ABUSES														
1.1.0	Recruitment													
1.1.1	Fees	37						20						
1.1.2	Information	37, 38, 65						20			3			
1.1.3	Non-deployment													
2.0.0 ON-SITE ABUSES														
2.1.0	Contract Violations													
2.1.1	Contract Substitution	25		2,3,6,7	2,5	11	32			23	8			
2.1.2	Additional Tasks	25		2,3,6,7	2,5	11	32			23,24	8			
2.1.3	Hours	25		2,3,7	2,5	11	32			23,24	8			
2.1.4	Leisure	25		2,3,7	2,5	11	32			23,24	8			
2.1.5	Wages	25		2,3,7	2,5	11	32			23	8			
2.1.6	Deductions	25		2,3,7	2,5	11	32			23	8			
2.1.7	Benefits	25,27,43		2,3,7,9,12	2,5	11	32			21-23,25	8			
2.1.8	Dismissal	25		2,3,7	2,5	11	32			23	8			
2.1.9	Other Violations	20,33, 43, 47, 54	2,3,11	2,3,6,7	2,5	11	32			23	8			
2.2.0	Occupational Health & Safety													
2.2.1	Training & Information	43	2,3,6,7		11,12,14	32	16,20			19	8			
2.2.2	Inspection	25	2,3,7,12		11	32					8			

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
List of Abuses														
2.2.3	Exposure to Risks	25	2,3,7,10,12	5	11	32				3	6,8			
2.2.4	Medical Care	25,28	2,3,7,12	5	11,12,14	32,39				3,21,25	8			
2.3.0	Psychological Physical & Sexual Abuse													
2.3.1	Psychological	10,16,17	2,3,6,7,9,10,17	2,3,7	5	GC1955	19,36,37,39		All	3,5	5,6		3,6	9,16
2.3.2	Physical	9,10,16,17	2,3,6-9,10,17	2,3,7	4,5	GC19	6,19,36,37,39		All	3,5	5,6		3,6	9,16
2.3.3	Sexual	10,16,17	2,3,6-9,10,17	2,3,7	4,5	6, GC 19	19,34,36,37,39	All	All	3,5	5,6		3,6	16
2.3.4	Medical Testing	10,14,16,25	2,3,7,9,10,17	2,3,7	4,5	11			16	3,12	5,6		3	
2.4.0	Discrimination													
2.4.1	Employment	1,24,25		2,3,7	All	All			1,2,7,23				6	
2.4.2	Benefits & Services	1,25,27,28,43,54		2,3,7,9,11,13	All	All	23,24,26	16,19	1,2,7,22,23,, 25	2,3,8	3,8		6	
2.4.3	Application of Nat'l Standards	18,25,27,43,45,54,55,70		2,3,7	All	All		5	2,7	2,3,4,8				
2.4.4	Other	1,7,12,13,17,18,25,31,33,37,42,54,55	2,3,16,18,19,20,27	2,3,7,13,15	All	All			1-3,7,12,14,16-19,22-28	2-5,7		16		
2.5.0	Family Issues													
2.5.1	Family Responsibilities	4,17,38,42,44,50	2,3,23	2,3,10,11		,11,13,14,16	18			16,25	5,7			

55 GC19 – General Comment 19 for CEDAW.

Instrument		MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
List of Abuses														
2.5.2	Reunification	44					7-10,20				5			
2.5.3	Status of Children	29	2,3,24	1	5	9,16	8,22	17		15	5			16
2.5.4	Children's Rights	10,11,17,18,30,45	2,3,24	2,3,10-14	5	16	All			3,25,26	5,7		3,6	16
2.6.0 Mobility Rights														
2.6.1	Forcible Confinement	8,16,39	2,3,9,12		5	6,15				3,12,13	5		3	
2.6.2	Restricted Mobility	8,38,39	2,3,9,12		5	6,15				3,12,13	5			
2.6.3	Confiscation of Documents	14,21	2,3,9,12,17		5	15				3,12,13	5			
2.6.4	Choice of Employment	51-53	2,3,12	2,3,6	5	11				23	5			
2.6.5	Choice of Residence	39	2,3,12,17		5	15				12,13	5			
2.6.6	Authorization of Residence	49												
2.7.0 Other Abuses														
2.7.1	Freedom of Association	26,40	2,3,21,22	2,3,8	5	14	15			20,23	5,6,8			
2.7.2	Reproductive Rights	14, 16	2,3,17			12				25	5,8			
2.7.3	Name Change on Documents	14,21	2,3,17				8			6,15	5			
2.7.4	Freedom of thought, conscience and religion/opinion/ expression	12,13	18,19,22	8	5		12-14			18,19	5,8			
2.7.5	Privacy	14					16			12	5		6	
2.7.6	Property rights/ earnings/tax issues	15,32,46-48			5	13,15,16				17	5,9	12-14		
2.7.7	Cultural identity	31,45,64			5	13	30,31			27	5			

Instrument	MWC	CCPR	ESCR	CERD	CEDAW	CRC	CSTP	CAT	UDHR	DHRNN	CATOC	PPSPTP	PASMLSA
List of Abuses													
3.0.0 DIFFICULTIES IN EXERCISING LEGAL RIGHTS													
3.1.0	Legal Action												
3.1.1	Corruption								8-11	5	8,9		
3.1.2	Renewal of Documents											8	
3.2.0	Arrest/Detention												
3.2.1	Torture	9,10,17	2,3,6,7,10		5	37,39		All	3,5,9	5,6			16
3.2.2	Legal Rights	16-19, 20,24,54	2,3,9-11 14-16,26		5,6	15	12,40	5	13,14,15	3,6-11	2,5,7	16,18,23, 24	6,14 2,5,9,14,1 6,19
4.0.0 FINAL DEPARTURE													
4.1.0	Repatriation & Reintegration												
4.1.1	Expulsion	8,20-23, 49,50,56	2,3,12,13					19	3	9, 13-15	7	16	7,8
4.1.2	Reintegration	71, 67			5	8,10,39	18,19			13			18
4.1.3	Regularization	69											
4.1.4	Participation in public affairs of state of origin	41								21			
5.0.0 ABUSES OVER THE ENTIRE MIGRATION PROCESS													
5.1.0	Contemporary Forms of Slavery												
5.1.1	Trafficking	11,16,68	2,3,8		6	11,34,35	1-4,16,17,20			3-5	5,6	All	2,5
5.1.2	Forced Labour or Debt Bondage	11,16	2,3,8	1,7	6	11,34,35,38	2-4			3-5,17	5, 9	All	
5.1.3	Forced Confinement, etc.												
5.2.0	Smuggling												All

5

Ratification of Relevant UN Instruments

The following table lists the UN instruments relevant to migrants, specifically women, and the countries that ratified or are signatory to these conventions.

Table 5-1. Ratification of Relevant UN Instruments

Country \ Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Entry into Force	2003	1976		1976	1969	1981		1989	1951	1987
Afghanistan		1983-A		1983-A	1983-A	2003-R		1994-R	1985-A	1987-R
Albania		1992-A		1992-A	1994-A	1994-R	2003-A	1992-R	1958-A	1994-A
Algeria		1989-R	1989-A	1989-R	1972-R*	1996-A		1993-R	1963-A	1989-R*
Andorra		2002-Si	2002-Si		2002-Si	1997-A	2002	1996-R		2002-Si
Angola		1992-A	1992-A	1992-A		1986-A		1991-R		
Antigua and Barbuda					1988-Su	1989-A		1993		1993-A
Argentina	2004-Si	1986-R	1986-A	1986-R	1969-R	1985-R	2000-Si	1991-R	1957-A	1987-R*
Armenia		1993-A	1993-R	1993-A	1993-A	1993-A		1993-A		1993-R
Australia		1980-R	1991-A	1976-R	1975-R*	1983-R		1991-R		1989-R*
Austria		1978-R	1988-R	1978-R	1972-R*	1982-R	2000-R	1992-R		1987-R*
Azerbaijan	1999-A	1992-A	2002-A	1992-A	1996-A*	1995-A	2001-R	1992-A	1996-A	1996-A*
Bahamas					1975 Su	1993-A		1991-R		

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Bahrain						1990-A	2002-A		1992-A		1998-A
Bangladesh		1998-Si	2002-A		1999-A	1979-A	1984-A	2000-R	1990-R	1985-A	1998-A
Barbados			1976-A	1976-A	1976-A	1972-A	1981-R		1990-R		
Belarus			1976-R	1992-A	1976-R	1969-R	1981-R	2004-R	1990-R	1956-A	1987-R
Belgium			1983-R	1994-A	1983-R	1975-R*	1985-R	2004-R	1992-R	1965-A	1999-R*
Belize		2001-A	1996-A		2000-R		1990-R	2002-A	1990-R		1987-A
Benin			1992-R	1992-A	1992-A	1967-R	1992-R	2000-Si	1990-R		1992-A
Bhutan						1973-Si	1981-R		1990-R		
Bolivia		2000-A	1982-A	1982-A	1982-A	1970-R	1990-R	2000-R	1990-R	1983-A	1999-R
Bosnia and Herzegovina		1996-A	1992-Su	1995-R	1992-Su	1993-Su	1993-Su	2002-R	1992- Su	1993- Su	1992- A*
Botswana			2000-R			1974-A	1996-A		1995-A		2000-R
Brazil			1992-A		1992-A	1969-R*	1984-R	2002-R	1990-R	1958-R	1989-R
Brunei Darussalam									1996-A		
Bulgaria			1976-R	1992-A	1976-R	1969-R*	1982-R	2000-Si	1991-R	1955-A	1987-R*

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Burkina Faso		2003-R	1999-A	1999-A	1999-A	1974-A	1987-A	2001-Si	1990-R	1962-A	1999-A
Burundi			1990-A		1990-A	1977-R	1992-R	2001-Si	1990-R		1993-A*
Cambodia		2004-Si	1992-A		1992-A	1986-R	1992-A	2001-Si	1992-R		1992-A
Cameroon			1984-A	1984-A	1984-A	1971-R	1994-R		1993-R	1982-A	1987-A*
Canada			1976-A	1976-A	1976-A	1970-R	1982-R	2002-A	1992-R		1987-R*
Cape Verde		1997-A	1993-A	2000-A	1993-A	1979-A	1981-A		1992-A		1992-A
Central African Republic			1981-A	1981-A	1981-A	1971-R	1991-A		1992-A	1981-A	
Chad			1995-A	1995-A	1995-A	1977-A	1995-A		1990-R		1995-A
Chile		1993-Si	1976-R	1992-A	1976-R	1971-R*	1990-R	1999-Si	1990-R		1988-R
China			1996-Si		2001-R	1982-A	1981-R		1992-R		1988-R
Colombia		1995-A	1976-R	1976-R	1976-R	1981-R	1982-R	1999-Si	1991-R		1988-R
Comoros		2000-Si				2000-Si	1994-A		1993-R		2000-Si
Congo			1984-A	1984-A	1984-A	1988-A	1982-R		1993-A	1977-A	2003-A
Democratic Republic of the Congo			1977-A	1977-A	1977-A	1976-A	1986-R		1990-R		1996-R

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
the Congo											
Cook Islands									1997-A		
Costa Rica			1976-R	1976-R	1976-R	1969-R*	1986-R	2001-R	1990-R		1993-R*
Cote d'Ivoire			1992-A	1997-A	1992-A	1973-A	1996-R		1991-R	1999-A	1996-A
Croatia			1991- Su	1996-A	1991- Su	1991- Su	1992- Su	2001-R	1991- Su	1992- Su	1991- Su*
Cuba						1972-R	1981-R	2000-Si	1991-R	1952-A	1995-R
Cyprus			1976-R	1992-R	1976-R	1969-R*	1985-A	2002-R	1991-R	1983-A	1991-R*
Czech Republic			1993- Su	1993-Su	1993- Su	1993- Su*	1993- Su	2001-R	1993- Su	1993-Su	1993- Su*
Denmark			1976-R	1976-R	1976-R	1972-R*	1983-R	2000-R	1991-R	1951-Si	1987-R*
Djibouti			2003-A	2003-A	2003-A		1999-A		1991-R	1979-A	2002-A
Dominica			1993-A		1993-A		1981-R		1991-R		
Dominican Republic			1978-A	1978-A	1978-A	1983-A	1982-R	2001-R	1991-R		1985-Si
Ecuador		2002-A	1976-R	1976-R	1976-R	1969-A*	1981-R	2002-R	1990-R	1979-R	1988-R*
Egypt		1993-A	1982-R		1982-R	1969-R	1981-R		1990-R	1959-A	1987-A

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
El Salvador		2003-R	1980-R	1995-R	1980-R	1979-A	1981-R	2001-Si	1990-R		1996-A
Equatorial Guinea			1987-A	1987-A	1987-A	2002-A	1984-A		1992-A		2002-A
Eritrea			2002-A		2001-A	2001-A	1995-A		1994-R		
Estonia			1992-A	1992-A	1992-A	1991-A	1991-A		1991-A		1991-A
Ethiopia			1993-A		1993-A	1976-A	1981-R		1991-A	1981-A	1994-A
Fiji						1973-Su	1995-R		1993-R		
Finland			1976-R	1976-R	1976-R	1970-R*	1986-R	2000-R	1991-R	1972-R	1989-R*
France			1981-A	1984-A	1981-A	1971-A*	1984-R	2000-R	1990-R	1960-A	-R*
Gabon			1983-A		1983-A	1980-R	1983-R		1994-R		2000-R
Gambia			1979-A	1988-A	1979-A	1979-A	1993-R		1990-R		1985-Si
Georgia			1994-A	1994-A	1994-A	1999-A	1994-A	2002-R	1994-A		1994-A
Germany			1976-R	1993-A	1976-R	1969-R*	1985-R	2002-R	1992-R		1990-R*
Ghana		2003-R	2000-R	2000-R	2000-R	1969-R	1986-R	2000-Si	1990-R		2000-R
Greece			1997-A	1997-A	1985-A	1970-R	1983-R	2002-R	1993-R		1988-R*

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Grenada			1991-A		1991-A	1981-Si	1990-R		1990-R		
Guatemala		2003-R	1992-A	2001-A	1988-A	1983-R	1982-R	2002-R	1990-R		1990-A
Guinea		2000-A	1978-R	1993-R	1978-R	1977-R	1982-R		1990-A	1962-A	1989-R
Guinea-Bissau		2000-Si	2000-Si	2000-Si	1992-A	2000-Si	1985-R	2000-Si	1990-R		2000-Si
Guyana			1977-R	1993-A	1977-R	1977-R	1981-R		1991-R		1988-R
Haiti			1991-A			1973-R	1981-R		1995-R	1953-A	
Holy See						1969-R			1990-R		2003-A
Honduras			1997-R	1966-Si	1981-R	2002-A	1983-R		1990-R	1993-R	1997-A
Hungary			1976-R	1988Su	1976-R	1969-R*	1981-R	2000-R	1991-R	1955-A	1987-R*
Iceland			1979-R	1979-A	1979-R	1969-R*	1985-R	2001-R	1992-R		1996-R*
India			1979-A		1979-A	1969-R	1993-R		1993-A	1953-R	1997-Si
Indonesia		2004-Si				1999-A	1984-R	2000-Si	1990-R		1998-R
Iran (Islamic Republic of)			1976-R		1976-R	1969-R			1994-R	1953-Si	
Iraq			1976-R		1976-R	1970-R	1986-A		1994-R	1955-A	

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Ireland			1990-R	1990-R	1990-R	2001-R*	1986-A	2000-R	1992-R		2002-R*
Israel			1992-R		1992-R	1979-R	1991-R		1991-R	1950-A	1991-R
Italy			1978-R	1978-R	1978-R	1976-R*	1985-R	2000-R	1991-R	1980-A	1989-R*
Jamaica			1976-R		1976-R	1971-R	1984-R		1991-R		
Japan			1979-R		1979-R	1996-R	1985-R		1994-R	1958-A	1999-R
Jordan			1976-R		1976-R	1974-A	1992-R		1991-R	1976-A	1991-R
Kazakhstan			2003-Si		2003-R	1998-A	1998-A	2001-R	1994-R		1998-A
Kenya			1976-A		1976-A	2001-A	1984-A		1990-R		1997-A
Kiribati							2004-A		1996-A		
Democratic People's Republic of Korea			1981-A		1981-A		2001-A		1990-R		
Republic of Korea			1990-A	1990-A	1990-A	1979-R*	1985-R		1991-R	1962-A	1995-A
Kuwait			1996-A		1996-A	1969-A	1994-A		1991-R	1968-A	1996-A
Kyrgyzstan		2003-A	1995-A	1994-A	1994-A	1997-A	1997-A	2002-R	1994-A	1997-A	1997-A

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Lao People's Democratic Republic			2000-R		2000-Si	1974-A	1981-R		1991-A	1978-A	
Latvia			1992-A	1994-A	1992-A	1992-A	1992-A		1992-A	1992-A	1992-A
Lebanon			1976-A		1976-A	1971-A	1997-A		1991-R		2000-A
Lesotho		2004-Si	1992-A	2000-A	1992-A	1971-A	1995-A	2004-R	1992-R		2001-Si
Liberia		2004-Si	1967-Si		1967-Si	1976-A	1984-R	2004-Si	1993-R	1950-Si	
Libyan Arab Jamahiriya		2004-A	1976-A	1989-A	1976-A	1969-A	1989-A	2004-R	1993-A	1956-A	1989-A
Liechtenstein			1999-A	1999-A	1999-A	2000-A	1996-A	2001-R	1996-R		1990-R*
Lithuania			1992-A	1992-A	1992-A	1999-R	1994-A	2004-R	1992-A		1996-R
Luxembourg			1983-R	1983-A	1983-R	1978-R*	1989-R	2003-R	1994-R	1983-R	1987-R*
The Former Yugoslav Republic of Macedonia			1991-Su	1995-A	1994-Su	1991-Su*	1994-Su	2003-R	1991-Su	1994-Su	1994-Su
Madagascar			1976-R	1976-R	1976-R	1969-R	1989-R	2000-Si	1991-R	2001-Si	2001-Si
Malawi			1994-A	1996-R	1994-A	1996-A	1987-A	2000-Si	1991-A	1965-A	1997-A
Malaysia							1995-R		1995-A		

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Maldives						1984-A	1993-A		1991-R		2004-A
Mali		2003-A	1976-A	2002-A	1976-A	1974-A	1985-R	2000-A	1990-R	1964-A	1999-A
Malta			-A	1990-A	1990-R	1971-R*	1991-A		1990-R		1990-A*
Marshall Islands									1993-R		
Mauritania						1989-R	2001-A		1991-R	1986-A	
Mauritius			1976-A	1976-A	1976-A	1972-A	1984-A	2001-Si	1990-A		1993-A
Mexico		1999-R	1981-A	2002-R	1981-A	1975-R	1981-R	2002-R	1990-R	1956-A	1987-R*
Micronesia, Federated States of									1993-A		
Republic of Moldova			1993-A		1993-A	1993-A	1994-A		1993-A		1995-R
Monaco			1997-R		1997-R	1995-A*			1993-A		1992-A*
Mongolia			1976-R	1991-A	1976-R	1969-R	1981-R	2002-R	1990-R		2002-A
Morocco		1993-R	1979-R		1979-R	1971-R	1993-A		1993-R	1973-A	1993-R
Mozambique			1993-A			1983-A	1997-A		1994-R		1999-A
Myanmar							1997-A		1991-A	1956-Si	

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Namibia			1995-A	1995-A	1995-A	1982-A	1992-A	2000-R	1990-R		1994-A
Nauru			2001-Si	2001-Si		2001-Si			1994-A		2001-Si
Nepal			1991-A	1991-A	1991-A	1971-A	1991-R	2001-Si	1990-R		1991-A
Netherlands			1979-R	1979-R	1979-R	1972-R*	1991-R	2002-R	1995-R		1989-R*
New Zealand			1979-R	1989-A	1979-R	1972-R	1985-R	2000-R	1993-R		1990-R*
Nicaragua			1980-A	1980-A	1980-A	1978-A	1981-R		1990-R		1985-Si
Niger			1986-A	1986-A	1986-A	1969-R	1999-A	2004-A	1990-R	1977-A	1998-A
Nigeria			1993-A		1993-A	1969-A	1985-R	2000-Si	1991-R		2001-R
Niue									1996-A		
Norway			1976-R	1976-R	1976-R	1970-R*	1981-R	2002-R	1991-R	1952-A	1987-R*
Oman						2003-A			1997-A		
Pakistan						1969-R	1996-A		1990-R	1952-R	
Palau									1995-A		
Panama			1977-R	1977-R	1977-A	1969-R	1981-R	2001-R	1991-R		1987-R

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Papua New Guinea						1982-A	1995-A		1993-R		
Paraguay		2000-Si	1992-R	1995-A	1992-A	2003-R	1987-A	2001-R	1990-R		1990-R*
Peru		2004-Si	1978-R	1981-A	1978-R	1971-R*	1982-R	2001-R	1990-R		1988-R*
Philippines		1995-R	1986-R	1089-R	1974-R	1967-R	-R	2003-R	-R	1952-R	1986-A
Poland			1977-R	1992-A	1977-R	1969-R*	1981-R	2003-A	1991-R	1952-A	1989-R*
Portugal			1978-R	1983-R	-R	1982-A*	1981-R	2002-R	1990-R	1992-A	1989-R*
Qatar						1976-A			1995-R		2000-A
Romania			1976-R	1993-A	1976-R	1970-A*	1982-R	2003-R	1990-R	1955-A	1991-A
Russian Federation			1976-R	1992-A	1976-R	1969-R*	1981-R	2004-R	1990-R	1954-A	1987-R*
Rwanda			1976-A		1976-A	1975-A	1981-R		1991-R		
Saint Kitts and Nevis							1985-A		1990-R		
Saint Lucia						1990-Su	1982-A		1993-R		
Saint Vincent and the Grenadines			1982-A	1982-A	1982-A	1981-A	1981-A		1993-R		2001-A
Samoa							1992-A		1994-R		

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
San Marino			1986-A	1986-A	1986-A	2002-R	2004-R		1991-A		2002-Si
Sao Tome and Principe		2000-Si	1995-Si	2000-Si	1995-Si	2000-Si	2003-R	2000-Si	1991-R		2000-Si
Saudi Arabia						1997-A	2000-R		1996-A		1997-A
Senegal		1999-A	1978-R	1978-R	1978-R	1972-R*	1985-R	2000-R	1990-R	1979-A	1987-R*
Serbia & Montenegro		2004-Si	1992-Su	2001-R	1992-Su	1992-Su*	1982-R	2003-A	1991-Su		1992-Su*
Seychelles		1994-A	1992-A	1992-A	1992-A	1978-A	1992-A	200-Si	1990-A	1992-A	1992-A*
Sierra Leone		2000-Si	1996-A	1996-A	1996-A	1969-R	1988-R	2000-Si	1990-R		2001-R
Singapore							1995-A		1995-A	1966-A	
Slovakia			1993-Su	1993-R	1993-Su	1993-Su*	1993-Su	2000-R	1993-Su	1993-Su	1993-Su*
Slovenia			1991-Su	1993-A	1992-Su	1992-Su	1992-Su	2004-R	1991-Su	1992-Su	1993-A
Solomon Islands					1982-Su	1982-Su	2002-A	2002-R	1995-A		
Somalia			1990-A	1990-A	1990-A	1975-R			2000-Si		1990-A
South Africa			1999-R	2002-A	1994-S	1999-R*	1996-R		1995-R	1951-R	1999-R*
Spain			1977-R	1985-A	1977-R	1969-A*	1984-R	2001-R	1991-R	1962-A	1987-R*

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Sri Lanka		1996-A	1980-A	1998-A	1980-A	1982-A	1981-R	2002-A	1991-R	1958-A	1994-A
Sudan			1986-A		1986-A	1977-A			1990-R		1986-S
Suriname			1977-A	1977-A	1977-A	1984-Su	1993-A		1993-R		
Swaziland			2004-A		2004-A	1969-A	2004-A		1995-R		2004-A
Sweden			1976-R	1976-R	1976-R	1972-R*	1981-R	2003-R	1990-R		1987-R*
Switzerland			1992-A		1992-A	1994-A*	1997-R		1997-R		1987-R*
Syrian Arab Republics			1976-A		1976-A	1969-A	2003-A		1993-R	1959-A	
Tajikistan		2003-R	1999-A	1999-A	1999-A	1995-A	1993-A	2000-Si	1993-A	2001-A	1995-A
United Republic of Tanzania			1976-A		1976-A	1972-A	1985-R		1991-R		
Thailand			1997-A		1999-A	2003-A	1985-A	2000-R	1992-A		
Timor-Leste		2004-A	2003-A		2003-A	2003-A	2003-A	2003-A	2003-A		2003-A
Togo		2001-Si	1984-A		1984-A	1972-A	1983-A		1990-R	1990-A	1987-R*
Tonga						1972-A			1995-A		

Country	Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Trinidad and Tobago			1979-A		1979-A	1973-R	1990-R		1992-R		
Tunisia			1976-R		1976-R	1969-R	1985-R		1992-R		1988-R*
Turkey		2004-R	2000-Si		2000-Si	2002-R	1986-A	2002-R	1995-R		1988-R*
Turkmenistan			1997-A	1997-A	1997-A	1994-A	1997-A		1993-A		1999-A
Tuvalu							1999-A		1995-A		
Uganda		1995-A	1995-A	1996-R	1987-A	1980-A	1985-R		1990-R		1987-A
Ukraine			1976-R	1991-A	1976-R	1969-R*	1981-R	2003-R	1991-R	1954-A	1987-R
United Arab Emirates						1974-A			1997-A		
United Kingdom of Great Britain and Northern Ireland			1976-R		1976-R	1969-R	1986-R		1992-R		1989-R*
United States of America			1992-R		1977-S	1994-R	1980-S		1995-S		1994-R*
Uruguay		2001-A	1976-R	1976-R	1976-R*	1969-R	1981-R	2001-R	1990-R		1987-R*
Uzbekistan			1995-A	1995-A	1995-A	1995-A	1995-A		1994-A		1995-A
Vanuatu							1995-R		1993-R		

Country \ Instrument	MWC	CCPR	CCPR OP1	ESCR	CERD	CEDAW	CEDAW OP	CRC	CSTP	CAT
Venezuela		1978-R	1978-R	1978-R	1969-R	1983-R	2002-R	1990-R	1968-A	1991-R*
Viet Nam		1982-A		1982-A	1982-A	1982-R		1990-R		
Yemen		1987-A		1987-A	1972-A	1984-A		1991-R	1989-A	1991-R
Zambia		1984-A	1994-A	1984-A	1972-R	1985-R		1992-R		1998-A
Zimbabwe		1991-A		1991-A	1991-A	1991-A		1990-R	1995-A	
TOTAL NUMBER OF STATE PARTIES	27	152	104	149	169	177	67	192	74	136

Legend:

Si= Signature

R= Ratification

A= Accession

Su= Succession

* Indicates that the State Party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under Article 14 of CERD or of the Committee Against Torture under Article 22 of CAT

NB: MWC Status of Ratifications source: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty25.asp>

CEDAWOP – source: <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> as of 5 October 2004.

For other treaties: Office of the UNHCHR. Status of Ratifications of the Principal International Human rights Treaties. 09 June 2004. <http://www.unhchr.ch/pdf/report.pdf> (October 31, 2004)

Part III

ILO Instruments

This section focuses on the International Labour Organization (ILO) instruments and mechanisms that are relevant to migrant workers' rights. It includes a list of ILO member States, abuses suffered by migrants and how these are addressed by the various instruments, and a list of States Parties, i.e., States that have ratified, to the various ILO conventions.

6

International Labour Organization Mechanisms Relevant to Migrant Workers' Rights

by *Alejandra M. Varela*

6.1. Introduction to the International Labour Organization (ILO)

6.1.1. Mandate

The International Labour Organization (ILO) is a specialized agency of the United Nations. The activities of the ILO are often overlooked by non-governmental organizations working in the area of human rights because it is assumed that the ILO's sole focus is international labour standards, not human rights. This assumption is incorrect. Labour rights *are* human rights, in the same way that women's rights are human rights. Labour rights are, for the most part, economic and social rights, and are as fundamental to the integrity and development of the individual as civil and political rights. In fact, the ILO's mandate, as stated in its Constitution and in the Declaration annexed to it (referred to as the *Declaration of Philadelphia*), is to promote social justice, labour rights and internationally recognized human rights.

6.1.2. Structure

The ILO is characterized by its tripartite structure, unique among international organizations. This means that three parties are represented on its main bodies and participate in the decision making, including the formulation of international labour standards and supervision of their implementation. These three parties are: governments of States that are members of the ILO; representatives of workers; and representatives of employers.

i. The International Labour Conference

The International Labour Conference (ILC) is held in June of each year, in Geneva, Switzerland. It is at this forum that labour and other social issues are discussed, and international labour standards are formulated and adopted.

The International Labour Conference is often called an *international parliament of labour*. It is akin to the UN General Assembly, but differs from it because of its tripartite structure. The Conference is composed of government, employer and worker delegates from ILO member States, accompanied by their technical advisors. Each member State is entitled to have two government delegates, a worker delegate and an employer delegate. The employer and the worker delegates also have speaking and voting rights and represent their respective organizations, not their states. They may disagree with their government's delegates or with each other. International organizations, including international NGOs, maintain observer status at the Conference.

ii The Governing Body

The Governing Body is the ILO's executive council and is elected by the International Labour Conference. The Governing Body formulates ILO policy, sets the agenda of the International Labour Conference, elects the Director-General, and establishes the ILO's draft programme and budget for submission to the International Labour Conference.

The Governing Body is composed of government, employer and worker representatives who meet three times a year in Geneva. The Governing Body has 56 titular members of which 28 are government representatives, 14 represent organizations of workers, and 14 represent organizations of employers. Ten of the government seats are permanently held by States of chief industrial importance, namely Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States. The Governing Body also has 66 deputy members, 28 being government representatives, 19 workers' representatives and 19 employers' representatives. The remaining titular government members and all deputy government members are elected by the International Labour Conference every three years, while the workers' and employers' representatives are elected by worker and employer delegates to the International Labour Conference.

The Governing Body has various Committees, of which the following are particularly relevant to migrant workers:

- Committee on Freedom of Association (CFA);

- Committee on Legal Issues and International Labour Standards (LILS);
- Subcommittee on Multinational Enterprises (MNE);
- Committee on Employment and Social Policy (ESP); and
- Working Party on the Social Dimensions of the Liberalization of International Trade (WP/SDL).

iii. The International Labour Office

The International Labour Office is the ILO's permanent secretariat. Its activities are overseen by the Governing Body and the Director-General. The Office's headquarters are located in Geneva, but it has some 40 field offices around the world. The ILO Regional Office for Asia and the Pacific (ROAP) is located in Bangkok, Thailand. The contact information is:

Regional Office for Asia and the Pacific (ROAP)
 United Nations Building, 11th Floor
 Rajdamnern Nok Avenue
 P.O. Box 2-349
 Bangkok 10200, Thailand
 Tel: (66) 2288 2224, 2288 1234
 Fax: (66) 2288 3056 (direct), 2288 3062
 Email: bangkok@ilo.org

6.1.3. Non-Governmental Organizations (NGOs) and the ILO

The ILO's unique tripartite structure offers non-state actors the opportunity to participate in its activities to a greater extent than do other international bodies. However, an individual complainant cannot access the ILO's procedures directly because only governments, organizations of workers and of employers, and delegates to the ILO can do so.

To gain access to the ILO's mechanisms, concerned individuals and organizations can either form their own trade unions or work in conjunction with national or international trade unions. They may also work with organizations of employers.

International non-governmental organizations may also submit a request to be represented at the International Labour Conference. In order to qualify for such representation, the NGO must meet certain conditions that include demonstrating the international nature of its composition and activities.

For more details please see the International Labour Conference Information Note on *Representation of non-governmental international*

organizations at the International Labour Conference⁵⁶ or contact the Official Relations Branch at:

Fax: ++ 41-22-799+8944;
E-mail: RELOFF@ilo.org

For NGOs: NGO Participation at the International Labour Conference¹

There are two (2) types of accreditation for NGOs who wish to participate in the ILC. One is the ILO Special List of NGOs, which basically grants an NGO permanent observer status, not only to the ILC but also to most of the major meetings of the ILO. The other is an accreditation limited to only the specific ILC session that the NGO wishes to attend. Both types of accreditation require a list of credentials that the NGO needs to submit. Essential among the requirements is the international nature and composition of its activities.¹

Thus, smaller NGOs and migrant workers associations that wish to participate in a specific ILC session but do not meet the requirements, can join with international NGOs who have accreditation status. In the case of migrant workers unions, they can come as part of their country delegation to the ILC or participate through their affiliation with their global union.

As the policy-making assembly of the ILO, the ILC is crucial in setting the policy agenda of the organization with regard to the treatment of migrant workers. Recently, of direct critical importance to migrant workers and NGOs working on migrants' rights was the 92nd ILC session held in June 2004, which included in its agenda a discussion on "Migrant Workers." The Conference established an Action Plan on Migrant Workers, which contains the following elements:¹

- Development of a non-binding multilateral framework for a rights-based approach to labour migration;
- Identification of relevant action for a wider application of international labour standards and other relevant instruments;
- Support for the implementation of the ILO Global Employment Agenda at the national level;
- Capacity building, awareness raising, and technical assistance;
- Strengthening social dialogue;
- Improving the information and knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their rights;
- Mechanisms to ensure ILO Governing Body follow-up on the plan of action and ILO participation in relevant international initiatives concerning migration.

The Action Plan was arrived at through a long and arduous process of deliberation by the tripartite Committee on Migrant Workers, purposely established by the Conference to deliberate on the agenda item and to prepare the conclusions for the Conference plenary. Throughout the debate, NGOs, who are generally considered outside of the tripartite system, cannot intervene except through the Committee's approval. In the experience of two migrant civil society organizations, namely Migrants Rights International and Migrant Forum in Asia, they found it extremely important to use their alliance with the workers' unions, such as the International Confederation of Free Trade Unions, which share the same objectives on migrants' rights.

⁵⁶ The ILC Information Note can be downloaded from <http://www.ilo.org/public/english/standards/relm/ilc/pdf/note.pdf>

For NGOs: NGO Participation at the International Labour Conference¹

This alliance enabled NGOs to gain access to intervention, to bring forth their advocacy issues, and in some cases, to offer proposed language for consideration in the debate. Likewise, a good working relationship characterized by an effective liaison and information exchange proved to be mutually beneficial to both the workers' unions and the NGOs.

At the same time, working with friendly government delegations that share the same concern for migrants' human rights was also a useful strategy. At the end of the day, the more allies that the NGOs won from the tripartite structure, the better it was for the defense of migrants' human rights.

Learning from this experience at the ILC, a successful ILC participation does not come overnight. NGOs need to consider a few important factors and to work on them if they wish to influence an ILC session. First, is the NGO's ability to access the information on what is happening inside the ILO, or with regard to the annual ILC, what are the important reports or agenda items that will be discussed. Second, is the ability, as in the case of local or national NGOs, to link up with international NGOs or trade union organizations to help them get accreditation to the Conference. Also included here is the ability to do groundwork and to build strong partnerships with trade unions, which have a direct voice in the tripartite nature of the ILO. Finally, a good advocacy agenda supported by as many allies within the tripartite structure really helps in bringing the migrants' rights agenda of the NGOs to be reflected in the final document of the Conference.

6.1.4. The ILO and Migrant Workers

i. The ILO's Long-Standing Commitment to Protecting Migrant Workers

The protection of migrant workers has been one of the ILO's priorities since its inception. The Preamble to the ILO Constitution states that the ILO's mandate includes the "protection of the interests of workers when employed in countries other than their own". This commitment to migrant workers was reiterated recently in the 1998 *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up*, the Preamble to which states that **"the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers."**

The ILO's concern for the plight of migrant workers stems from their particularly vulnerable position, both within the host country's society and in their own States. The social isolation faced by many migrant workers makes it difficult for them to effectively defend their interests, rendering them easy targets of discrimination and exploitation in host countries. Moreover, the governments of labour-exporting States are often reticent to protect the interests of their own nationals who migrate abroad for employment fearing that if they do so too vigorously, the labour receiving States will simply import workers from elsewhere.

The ILO has sought to protect migrant workers in various ways. Firstly, it is generally accepted that unless otherwise stated, ILO instruments apply to all workers, including migrant workers.⁵⁷ Therefore, migrant workers benefit from the ILO's general standard-setting activities as much as do other workers. Secondly, the ILO has also included provisions in general ILO instruments singling out migrant workers for special protection. Finally, in order to better protect the special interests of migrant workers, the ILO has adopted a number of Conventions and Recommendations dealing specifically with issues of particular concern to migrant workers. The four main such instruments are:

- *Migration for Employment Convention (Revised), 1949* (No. 97);
- *Migration for Employment Recommendation (Revised), 1949* (No. 86);
- *Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143); and
- *Migrant Workers Recommendation* (No. 151).

These instruments were the subject of a General Survey undertaken by the Committee of Experts on the Application of Conventions and Recommendations in 1998 and discussed during the International Labour Conference (87th Session) in 1999. During the Conference, it was agreed that a general discussion should be held at a future session on the future directions of these instruments as well as on possible standard setting activities.⁵⁸ These standards and the current context of international migration were the focus of a report discussed during the 92nd Session of the International Labour Conference in 2004.⁵⁹

ii. Who is a Migrant Worker for the Purposes of ILO Instruments?

The term “migrant for employment” is defined in the *Migration for Employment Convention (Revised), 1949* (No. 97) and the *Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143) as:

. . . a person who migrates from one country to another [or who has migrated from one country to another] with a view to being employed otherwise than on his [or her] own account and includes any person regularly admitted as a migrant for employment.

⁵⁷ The Committee of Experts on the Application of Conventions and Recommendations stated in para. 37 of its 1999 General Survey of four ILO instruments on Migrant Workers that “the Conventions and Recommendations adopted by the International Labour Conference are of general application, that is, they cover all workers, irrespective of citizenship”.

⁵⁸ Refer to ILO. General Survey on Migrant Workers, Report III (IB). This survey is available on the ILOLEX database, which can be accessed via the ILO's website at www.ilo.org.

⁵⁹ See ILO. *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI. 92nd Session, International Labour Conference.

Certain categories of workers are excluded from the scope of these two Conventions⁶⁰, but in general terms, this is the official 'ILO definition' of the term 'migrant worker'.

This means that the four aforementioned ILO instruments dealing specifically with migration:

- focus on migrants for employment rather than on migrants in general. However, refugees and displaced persons do fall within the scope of their provisions in their capacity as workers employed outside their home country. Moreover, certain provisions dealing with rights outside the confines of the employment relationship also apply to those family members who are legally entitled to accompany the migrant.
- only cover workers who cross international borders, and do not apply to those who move within a country for employment purposes.
- exclude migrant workers, whose status in the host-country is irregular, from the scope of certain provisions. This is the case for Convention No. 97, Recommendation No. 86 and Part II of Convention No. 143. However, Part I of Convention No. 143 and several provisions of Recommendation No. 151 seek to protect the rights of migrants whose status is irregular.
- do not distinguish between workers who intend to settle permanently in the host country and those who have migrated for short-term or seasonal employment, although the latter receive additional protection under certain provisions that only apply to them.⁶¹

6.2. The Supervisory System of the International Labour Organization⁶²

The ILO does not only establish human rights standards, but also monitors their implementation, using various mechanisms. The ILO's Supervisory System can be divided into three groups of mechanisms:

60 Convention No. 97 excludes frontier workers, the short term entry of members of the liberal professions and artistes, and seafarers from its scope, while Part II of Convention No. 143 excludes two further categories of workers, namely persons coming specifically for purposes of training or education and those admitted temporarily to a country at the request of their employer to undertake specific tasks or projects for a limited and set period of time, and who are required to leave the receiving country upon completion of said tasks or projects.

61 See for example article 8 of Convention No. 97 which seeks to protect migrant workers and their families from expulsion from the host country on the basis that the migrant is incapable of working.

62 <http://www.ilo.org/public/english/standards/norm/enforced/index.htm> (9 November 2004)

- regular system of supervision based on a review of periodic government reports on ratified and unratified ILO Conventions;
- special systems of supervision which include the filing of representations or complaints against States Parties to ILO Conventions, and the Freedom of Association procedures which apply to all ILO member States; and
- ad-hoc and informal mechanisms which tend to be issue and country specific.

6.2.1. Regular Supervisory System (Reporting System)

The ILO's regular system of supervision (or reporting system) is unique in that member States are required to submit reports not only on the measures taken to implement ratified Conventions, but also on:

- the measures taken to submit newly-adopted Conventions and Recommendations to the competent authorities,⁶³ and
- the position of a State's "law and practice" with respect to the matters dealt with in certain Recommendations and unratified Conventions.⁶⁴

Two ILO bodies are primarily responsible for supervising the implementation of all ratified and unratified ILO Conventions and Recommendations by ILO member States. They are:

- the Committee of Experts on the Application of Conventions and Recommendations and
- the Conference Committee on the Application of Conventions and Recommendations.

⁶³ Art. 19(5)(c) of the ILO Constitution.

⁶⁴ Arts. 19(5)(e) and 19(6)(d) of the *ILO Constitution*.

For NGOs: NGOs and the Reporting Process

NGOs can both contribute to the ILO's reporting process and benefit from this involvement. Firstly, NGOs have an important role to play in terms of information gathering and dissemination. They have sources of information at their disposal, such as first-hand accounts of human rights violations, that the bodies reviewing government reports often cannot access. Therefore, NGOs can collect pertinent information not otherwise accessible to the supervisory bodies and pass it on to them so that they get as complete a picture as possible of the situation in a given State. In this manner, NGOs can increase the chances that the supervisory bodies will make informed comments on the extent to which a given State is complying with its international obligations. Secondly, NGOs can focus the limited time, energies and resources of the supervisory bodies on particularly pressing, serious or key issues. This is because NGOs are closer to the grassroots level and are therefore better equipped to prioritize issues than are supervisory bodies which are usually far removed from the situation on the ground.

Moreover, NGOs can get as much (if not more) out of the reporting process as they put in. This is because involvement in reporting procedures serves as an important advocacy tool for NGOs. The information gathered through such involvement gives NGOs the opportunity to shame governments that are violating international law into complying with their obligations. The information contained in government reports or a government's non-compliance with its reporting obligations can be used to focus attention on human rights problems in a given country. Such reports can be used in campaigns designed to publicize certain issues, and engage the media's interest.

At the very least, NGOs can use the reporting process to stimulate public debate on human rights.

6.2.2. Newly Adopted Conventions and Recommendations

While a member State of the ILO is free to decide whether or not it will ratify an ILO Convention and thereby accept specific legal obligations, membership in the ILO itself implies certain obligations. More specifically, articles 19(5)(b), 19(6)(b) and 19(7)(b)(i) of the ILO Constitution are binding upon all ILO member States. These articles require that the government of an ILO member State bring new ILO Conventions or Recommendations "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action".

The 'competent authority' is the authority empowered to implement the instruments under consideration, as distinguished from the authority which is merely empowered to ratify Conventions or authorize their ratification, although they are often one and the same. The competent authority is usually, but not always, the legislature.⁶⁵

⁶⁵ Bartolomei de la Cruz at 46.

When submitting newly adopted instruments to the competent authority, the government is under no obligation to recommend their ratification or implementation. However, governments must endeavor to ensure that there will be an opportunity to debate the matter in the legislature or other competent authority.⁶⁶

Governments must discharge this obligation of submission within at most one year from the closing of the International Labour Conference session during which the Convention or Recommendation was adopted. This time frame may be extended by at most six months (for a total of 18 months) if 'exceptional circumstances' render it 'impossible' for the government to submit the new instruments to the competent domestic authorities within the one year period.⁶⁷ Federal states, such as Canada and Australia, also have 18 months from the closing of the Conference session to refer new Conventions and Recommendations "to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action".⁶⁸ Governments must also report back on how they fulfilled this Constitutional obligation and the decisions taken by the 'competent authority' as a result.⁶⁹ Their reports are reviewed by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations. The Committee of Experts reports on the extent to which states have complied with this obligation of submission as does the Conference Committee.⁷⁰

Article 30 of the ILO Constitution covers situations where the government of an ILO member State fails to submit ILO Conventions or Recommendations to the competent authorities, as required by article 19 of the ILO Constitution. Under article 30, "any other [ILO] Member shall be entitled to refer the matter to the Governing Body". If the Governing Body finds that the government in question has indeed failed to meet its obligations under the ILO Constitution, "it shall report the matter to the [International Labour] Conference". The ILO Constitution does not specify what action the International Labour Conference may subsequently take in response.

6.2.3. Ratified ILO Conventions

i. The Reporting Schedule

The current ILO reporting system provides for different types of government reports to be submitted at periodic intervals, as well as

⁶⁶ Ibid. at 47.

⁶⁷ Arts. 19(5)(b) and 19(6)(b) of the ILO Constitution.

⁶⁸ Art. 19(7) of the ILO Constitution.

⁶⁹ Arts. 19(5)(c) and 19(6)(c) and 19(7)(b)(iii) of the ILO Constitution.

⁷⁰ Chiarabini at 529.

reports to be submitted outside of these regular intervals when there are serious problems with the implementation of a ratified Convention in a given state. Government reports on ratified Conventions are due at the International Labour Office between June 1st and September 1st each year.

Governments must submit a first detailed report to the International Labour Office “on the measures which [they have] taken to give effect to the provisions of Conventions” they have ratified.⁷¹ This first report is due the year after the Convention comes into force in their state. A second detailed government report must follow not more than two years after the first report is due.

Thereafter, governments must periodically submit reports on ratified Conventions (either every two years or every five years depending on the nature of the Convention). The Committee of Experts may also request detailed government reports outside of this schedule.⁷²

More specifically, governments must submit detailed reports every two years on the following 10 ILO Conventions, which are considered priority Conventions:

- Conventions No. 87 and 98 on freedom of association;
- Conventions No. 29 and 105 on the abolition of forced labour;
- Conventions No. 100 and 111 on discrimination in employment;
- Convention No. 122 on employment policy;
- Conventions No. 81 and 129 on labour inspection; and
- Convention No. 144 on tripartite consultation.⁷³

Governments must submit simplified reports every five years on other Conventions they have ratified. However, the Committee of Experts may require the government to submit a detailed report if it feels it is necessary.⁷⁴

Finally, the Committee of Experts may request that governments submit detailed reports on the implementation of ratified Conventions outside of the regular intervals when:

- national or international organizations of employers or workers have submitted comments on their government’s compliance with

71 Art. 22 of the ILO Constitution.

72 ILO. Handbook of Procedures Relating to International Labour Conventions and Recommendations [hereinafter Handbook of Procedures].

73 Ibid.

74 Ibid.

ratified ILO Conventions to the Committee of Experts. The Committee of Experts may decide that a detailed government report is needed given the government's reply or lack of reply to these comments; and/or

- the government in question has failed to submit a report as required under the regular reporting schedule or has not replied to comments addressed to it by the supervisory bodies.⁷⁵

Under article 23(2) of the ILO Constitution, governments are obligated to send copies of their reports on the implementation of international labour standards to representative organizations of employers and workers, which may then communicate observations on the reports to their governments or directly to the ILO. Comments from organizations of employers or workers will usually lead the Committee of Experts to request a report from the government concerned prior to the next due date.⁷⁶

It is important for NGOs to determine when their governments must report on given Conventions so that they may become involved in the reporting process or at least publicize the extent to which their governments are complying with their reporting obligations.

ii. Content of the Reports

The type of information that governments must include in their reports varies depending on the Convention in question and on whether the report is detailed or simplified.

For detailed reports, the government must use the form approved by the Governing Body for each Convention. The type of information requested includes:

- the government's understanding of its obligations, specifically its interpretation of each of the Convention's articles;
- the impact of ratification on national law;
- government measures that have been taken or will be taken to implement the Convention's provisions, particularly laws and regulations;
- the text of such laws and regulations;
- information on the authorities responsible for enforcing government measures;

⁷⁵ Chiarabini at 529-530.

⁷⁶ *Handbook of procedures* at para. 34(c)(iii).

- any permitted exclusions, exceptions or other limitations to the Convention's application which the State intends to invoke;
- action taken, if any, in response to comments by the supervisory bodies;
- relevant decisions rendered by judicial or administrative bodies; and
- any comments submitted by organizations of workers or employers on their State's compliance with its obligations under the Convention or on any aspect of the government's report.⁷⁷

On the other hand, the information requested for simplified reports is less detailed and concerns:

- the general implementation of the Convention (specifically information required under the Convention);
- changes in legislation and practice, if any, which affect the Convention's implementation; and
- any comments submitted by organizations of workers or employers.⁷⁸

NGOs that wish to participate in the reporting process would be well-advised to collect the above information so that they may counter the erroneous or misleading information presented in official government reports.

iii. Review of Government Reports and Follow-Up⁷⁹

- a) Review of reports. Government reports on ratified Conventions are reviewed by the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts), which is comprised of independent specialists in labour conditions or administration.

The Committee's sources of information include: the government in question, publications, court decisions, collective agreements, the conclusions of other ILO bodies, and comments made by organizations of employers or workers. These comments may be included by the government with its report or sent directly to the ILO by the organization in question, in which case, the government is notified of the comments and given an opportunity to reply to them. Comments by organizations of employers or workers may bear on the application

⁷⁷ Chiarabini at 531.

⁷⁸ Ibid.

⁷⁹ The following information has been taken from the ILO's website at <www.ilo.org> and can also be found at Section VI. of the *Handbook of procedures*.

of ratified conventions or on any other aspect of international labour standards dealt with in the governments' reports.

- b) Committee of Experts' conclusion. If the Committee concludes that the government is not fully complying with its obligations under a ratified Convention or with its constitutional obligations regarding Conventions and Recommendations, it addresses a comment to the government pointing out problems in its implementation of obligations and requesting action to remedy the situation. These comments may take the form of observations or direct requests.

Observations are used for the more serious violations of obligations, and when comments have been sent by organizations of workers or employers. They are published in the Committee's report.

Direct requests are not published, and are merely sent to the governments and organizations concerned in cases involving minor shortcomings on the government's part or when the government has provided insufficient information.

- c) Committee of Experts' report. The Committee of Experts then submits its report to each annual session of the International Labour Conference, at which point it is dealt with by a tripartite Conference Committee on the Application of Conventions and Recommendations (Conference Committee). At this point, governments singled out in the Committee of Experts' report as not fully complying with their obligations under ratified Conventions may be invited to address the Conference Committee, and most opt to do so either orally or in writing.

The Conference Committee then drafts a report dealing with the most serious cases of governments failing to fully implement ratified Conventions, as well as government explanations (if any), and summaries of the discussions on individual cases (contained in the annexes). The report of the Conference Committee is submitted and presented to the International Labour Conference, where it is discussed by delegates in one or more plenary sittings. Once the report is adopted by the Conference, it is sent to governments.

6.2.4. Unratified ILO Conventions and Recommendations

The Governing Body may request reports on Recommendations and unratified Conventions from ILO member States under articles 19(5)(e) and 19(6)(d) of the ILO Constitution. The aim is to promote the continuing ratification and implementation of international labour standards. These reports bear on national law and practice with respect to standards embodied in ILO Recommendations and unratified Conventions, specifically, on the extent to which effect is or is proposed to

be given to such standards at the national level and “the difficulties which prevent or delay the ratification” of the Conventions in question.

The Governing Body may request government reports on specific Conventions and Recommendations or groups of such instruments on given subjects. The Committee of Experts on the Application of Conventions and Recommendations then carries out a 'General Survey' of specific instruments on the basis of the aforementioned reports, the reports submitted to the ILO by organizations of employers and workers, and other information available to the International Labour Office, such as legislation and other official documents. These 'General Surveys' are submitted to the Conference Committee on the Application of Conventions and Recommendations (as part of the Committee of Experts' report), which then discusses the 'General Survey' each year.⁸⁰

6.2.5. Core ILO Conventions⁸¹

In June of 1998, the International Labour Conference adopted the *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up*. This Declaration states that all ILO member States are bound “to respect, to promote and to realize, in good faith” four fundamental or core principles and rights, regardless of whether or not they have ratified the core Conventions enshrining them. This obligation flows from membership in the ILO and the voluntary acceptance by member States of the principles contained in the ILO Constitution and in the *Declaration of Philadelphia*.

The four core principles and eight associated core Conventions in issue are:

- **freedom of association and the right to collective bargaining**, enshrined in the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98);
- **the elimination of all forms of forced or compulsory labour**, enshrined in the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105);
- **the abolition of child labour**, enshrined in the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182); and

⁸⁰ ILO website at <www.ilo.org> and Handbook of procedures at para. 54(k).

⁸¹ See ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up.

- **the elimination of discrimination in employment**, enshrined in the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111).

The Follow-Up procedure annexed to the *Declaration on Fundamental Principles and Rights at Work* complements the ILO's regular system of supervision: it is not a substitute for it. This means that where an ILO member State has ratified one or all of the core Conventions, its compliance with the ratified Convention(s) will be monitored using the established supervisory mechanisms.

i. Applicability of the Follow-up Procedure

The Follow-Up procedure only applies to those ILO member States which have not ratified all the core Conventions and only in respect of the particular non-ratified Convention(s). The Follow-Up procedure is based on article 19(5) of the ILO Constitution which provides for government reports on unratified Conventions.

ii. The Process

- a) Submission and review of reports. It requires ILO member States that have not yet ratified all the core Conventions to submit annual simplified reports on any changes which may have taken place in their law and practice with respect to these Conventions and efforts to comply with the core principles they enshrine. These reports are reviewed by the Governing Body and experts appointed by it.
- b) Preparation of global report. In addition, a Global Report is prepared by the ILO each year, dealing with one of the four core principles in turn. This Global report is prepared on the basis of the annual reports submitted by States which have not yet ratified the core Conventions and on reports by ILO member States which have ratified the Conventions in question.

The Global Report is to be submitted to the International Labour Conference for tripartite discussion.

- c) Plan of action. The Governing Body then draws conclusions from the International Labour Conference's discussion as to what the priorities and plans of action for technical cooperation should be for the following four-year period.

6.3. Special Systems of Supervision

6.3.1. Article 24 Representation Procedure⁸²

Under article 24 of the ILO Constitution, “an industrial association of employers or of workers” may make a representation to the International Labour Office that an ILO Member “has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party...”

i. Receivability Requirements

According to article 2(2) of the *Standing Orders*, to be receivable, a representation:

- must be communicated to the International Labour Office in writing;
- must emanate from an industrial association of employers or workers;
- must make specific reference to article 24 of the ILO Constitution;
- must concern a member of the Organization (or former member which remains bound by the Convention in question);
- must refer to a Convention to which the ILO Member State against which it is made is a party; and
- must indicate in what respect it is alleged that the ILO member State against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention.

To determine whether or not the State has ratified the Convention in question, see the chapter with the Table of Ratifications of ILO Conventions or use the ILOLEX database found on the ILO website which contains copies of all ILO Conventions and links to ratification tables, listing the States that have ratified a given Convention, the date when they did so, and any flexibility the clauses invoked.

ii. The Process

- a) Submission of representation. A representation can be filed by trade unions and employers’ organizations. The representation should be submitted in writing to the Director-General of the International Labour Office in Geneva, Switzerland. The address is:

⁸² See *Standing Orders* concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization [hereinafter *Standing Orders*], which can be found on the ILO website www.ilo.org.

Director-General
International Labour Office
4, route des Morillons
CH 1211 Geneva 22 SWITZERLAND

- b) Acknowledgement of receipt. The International Labour Office acknowledges receipt of the representation, informs the government concerned and brings the matter before the Officers of the Governing Body.
- c) Determining receivability of representation. The Governing Body determines whether or not the representation meets the formal receivability requirements, based on the report of its Officers. The government concerned is invited to send a representative to take part in the Governing Body's private meetings/deliberations on this matter. This government representative has speaking rights, but no voting rights.

The Governing Body of the ILO alone determines whether or not an organization constitutes an "industrial association of employers or workers". Unless the organization filing the representation is well known, it is advisable for it to submit proof of its status as an 'industrial association' of either workers or employers. However, this does not mean that the organization must be officially registered in its country to qualify as an 'industrial association'.

A concrete example of the above points is found in the *Report of the Committee set up to examine the representation submitted by the National Trade Union Co-ordinating Council (CNS) of Chile under article 24 of the ILO Constitution, alleging non-observance by Chile of international labour Conventions Nos. 1, 2, 24, 29, 30, 35, 37, 38 and 111*. The Government of Chile requested that the representation filed by the CNS be declared 'irreceivable' on the basis that the CNS lacked the legal capacity to make the representation and was therefore not an 'industrial association' of workers. The CNS was an organization that existed in fact, but which was not officially recognized in Chile because it had not complied with the formalities required by Chilean law even though it was in a position to do so. The Committee set up to examine the representation concluded that it was for the Governing Body to determine whether or not the representation was receivable. The Governing Body had decided that the representation was receivable, and by implication, that the CNS was indeed an 'industrial association' of workers. The Committee had to accept this finding and the fact that the CNS was not a legal person under Chilean law did not render the representation 'irreceivable'.

There are no formal requirements as to the language of the representation. However, it is worth noting that the ILO's working

languages are English, French, Spanish, German, Russian and Chinese. So long as the language is a widely-used one, the representation should be receivable.

If the Governing Body determines that the representation is receivable, it will establish a special Ad-Hoc Tripartite Committee to examine the content of the representation. This Committee is “composed of members of the Governing Body chosen in equal numbers from the Government, Employers’ and Workers’ groups”. Representatives or nationals of the State against which the representation has been filed cannot be members of this Ad-Hoc Committee, nor can persons occupying an official position in the industrial association lodging the representation.⁸³

If the representation is receivable and deals with freedom of association, it may be referred to the Governing Body’s Committee on Freedom of Association (see below for more information).⁸⁴

- d) Examination of the representation. The Ad-Hoc Tripartite Committee (Ad-Hoc Committee) meets to examine the substance of the representation. All the steps taken in the procedure before it are confidential.⁸⁵ . At this stage in the process, it may:
- request further information from the association which has made the representation or the government concerned after it has responded;
 - communicate the representation to the government concerned without inviting it to respond; and/or
 - communicate the representation and any further information supplied by the industrial association to the government concerned and invite the government to respond to the representation; and/or

These various steps are subject to time-limits which may be extended by the Committee.⁸⁶

- e) Ad-Hoc Committee report. Once it has finished considering the substance of the representation, the Ad-Hoc Committee reports back to the Governing Body. The Ad-Hoc Committee’s report to the Governing Body describes the steps undertaken to examine the representation, sets out the Committee’s conclusions on the issues raised, and recommends a course of action.⁸⁷

83 *Standing Orders* at art. 3(1).

84 *Ibid.* at art. 3(2).

85 *Ibid.* at art. 3(3).

86 *Ibid.* at art. 4.

87 *Ibid.* at art. 6.

- f) Consideration of report by the Governing Body. The Governing Body considers the Committee's report in private, although the government concerned is invited to send a representative. The Governing Body determines the extent to which the allegations have been substantiated, and whether or not the government has adequately refuted the allegations or justified its actions.⁸⁸

The International Labour Office will communicate the Governing Body's decisions on the matter to the government concerned and the industrial association that filed the representation.⁸⁹

If the Governing Body accepts the government's explanations, the procedure is closed. The parties' allegations and replies *may* be published.⁹⁰

- g) Governing Body's decision and action. If the Governing Body finds the government's explanations for the allegations unsatisfactory, it *may* publish the representation with the government's reply and its own discussion of the case.

Therefore, the only sanction against the government in question is a finding of non-compliance with the Convention in issue and the possible publication of this conclusion.

The Governing Body may also decide to initiate a complaint based on the same case, using article 26 of the ILO Constitution (see below for more information).⁹¹

The ILO's regular system of supervision will usually conduct its own follow-up to the representation whether or not the Governing Body finds the government's explanations satisfactory. This means that the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations may raise questions that they consider merit further inquiry.

For more detailed information on the representation procedure see *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization*.

6.3.2. Article 26 Complaints Procedure⁹²

Under articles 26(1) and (4) of the ILO Constitution, "any of the [ILO] Members shall have the right to file a complaint with the International

⁸⁸ *Ibid.* at art. 7.

⁸⁹ *Ibid.* at art. 9.

⁹⁰ *Ibid.* at art. 8.

⁹¹ *Ibid.* at art. 10.

⁹² The following information has been taken from the ILO's website at www.ilo.org and Section XI. B. of the Handbook of procedures.

Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified... the Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.”

The complaints procedure is the most formal and far-reaching procedure among the ILO’s supervisory mechanisms. However, it has been used infrequently due to a variety of reasons. Firstly, the initiation of complaints’ proceedings or their threatened use has often led to the settlement of disputes. Secondly, organizations of employers and workers have, for the most part, opted to actively participate in the regular system of supervision rather than make use of these more formal procedures. This is because the examination of State reports is generally perceived as an effective means of ensuring government compliance with international labour standards. In addition, active participation in the reporting system is probably more cost-effective for these organizations than the use of complaints procedures. As for governments, they are deterred from filing complaints by the risk of counter-complaints being filed against them and their general fear of reprisals, as well as the significant cost of establishing a Commission of Inquiry. Therefore, the ILO complaints’ mechanisms tend to be used exceptionally - as a last resort in cases where a more thorough investigation than that possible under the regular supervisory machine is required.⁹³

A complaint is lodged against a State for breaching its obligations under a Convention it has ratified. To determine whether or not the State has ratified the Convention in question, see the chapter with the Table of Ratifications of ILO Conventions or use the ILOLEX database found on the ILO website.

Normally, the State in question will also be a member of the ILO. However, a complaint may be filed against a State that is no longer a member of the ILO as long as it retains obligations under the ratified Convention in question.

i. Who can file a complaint

Article 26 of the ILO Constitution states that a complaint may be filed by:

- an ILO member State which has also ratified the Convention in question and which alleges that another State Party to the Convention is violating its provisions; (Such a complaint was once lodged in 1986 by the Government of Tunisia concerning the observance by the Libyan Arab Jamahiriya of the *Protection of Wages*

⁹³ ILO website at www.ilo.org .

Convention, 1949 (No. 95), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). The complaint was filed following the expulsion of Tunisian and Egyptian migrant workers from Libya. However, the state filing the complaint or its nationals need not be directly prejudiced by the alleged offender's non-compliance with the Convention.)

- the Governing Body which may institute complaint proceedings in two ways: (a) of its own motion or (b) by transforming a representation into a complaint; (An example of the former are the complaints proceedings instituted by the Governing Body concerning the observance by Chile of the *Hours of Work (Industry) Convention, 1919 (No. 1)*, and the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, following a 1974 resolution by the International Labour Conference. An example of a representation becoming a complaint is the 1985 representation by the World Federation of Trade Unions alleging the failure by the Federal Republic of Germany to implement the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, which was then referred to a Commission of Inquiry under article 26 of the ILO Constitution following a request by Germany.)
- a delegate or group of delegates to the International Labour Conference, that is representatives of employers or workers at the Conference. In this case, the complaint will be made during the Conference session; (An example of such a complaint is that made in 1996 by delegates to the 83rd Session of the Conference concerning the non-observance by Myanmar of the *Forced Labour Convention, 1930 (No. 29)*.)

ii. The Process

- a) Filing the Complaint. A complaint must be submitted to the Director-General of the International Labour Office. The address is:

Director-General
International Labour Office
4, route des Morillons
CH 1211 Geneva 22 SWITZERLAND

There are no requirements as to the form and language of the complaint. However, it is worth noting that the ILO's working languages are English, French, Spanish, German, Russian and Chinese. So long as the language is a widely-used one, the complaint should be receivable.

- b) Determining the Complaints' admissibility. If the complaint is admissible, the Governing Body may begin its examination by

communicating the complaint to the State concerned and inviting the government to comment on the complaint.

If the complaint involves freedom of association, it may be referred to the Governing Body's Committee on Freedom of Association.

The Governing Body may appoint a Commission of Inquiry to investigate the complaint in a quasi-judicial fashion, that is, as a court would do. A Commission of Inquiry is independent and composed of three prominent persons appointed for their expertise.

Although the Governing Body is not required to appoint a Commission of Inquiry it has usually done so. An example of a complaint for which such a Commission was *not* appointed was that filed by the Tunisian government against the Libyan government in 1986. The Governing Body deferred the establishment of a Commission of Inquiry to allow the parties to conduct negotiations with the ILO's assistance. The Tunisian and Libyan governments came to an agreement and therefore, a Commission was never established.

- c) Commission of Inquiry Procedures. A Commission of Inquiry sets its own procedure for investigating the complaint and has the ability to collect its own evidence. This procedural flexibility is needed in order to examine effectively the usually complex and delicate cases. However, a Commission's procedures must be in accordance with the ILO Constitution and with the general guidance provided by the Governing Body. Moreover, certain practices have become more or less established through usage. These include:
- requests for written submissions, such as statements and documentary evidence, from both parties to the complaint. These requests are often made at several stages in the process;
 - the communication of such submissions to the other party to the complaint, which may then comment on them;
 - requests for information from non-governmental organizations (especially international organizations of employers and workers);
 - request for information from States bordering on or having close economic ties to those involved in the complaint, as provided for under article 27 of the ILO Constitution;
 - the hearing of the parties' representatives;
 - the calling and hearing of witnesses; and
 - the use of on-site visits to the countries involved so as to gather first-hand information.

A Commission of Inquiry fully considers the complaint by reviewing the evidence presented; makes findings of fact; draws conclusions from these facts; and may formulate recommendations to the parties.

A Commission of Inquiry's report will contain a conclusion as to whether or not a given state is in compliance with its international obligations as contained in the ratified Convention(s) in question. In a case where the state is found to have breached its obligations, the Commission's report can be used by NGOs as a tool to educate the public on the situation faced by workers in that State and to shame the government concerned. Even where the report contains findings favourable to the government concerned, it can be used as a means of fostering public discussion on the importance of promoting and protecting labour rights.

In addition, a Commission of Inquiry's report may contain recommendations as to how the government concerned can fulfill its obligations under the Convention in question, as well as a time-frame for their implementation. NGOs can use these recommendations as advocacy tools that legitimize their own demands because they come from an international body.

- d) Communicating the Commission of Inquiry's report. The Director-General communicates the Commission of Inquiry's report to the ILO's Governing Body, the complainant, and the government concerned. The report on the complaint is also published in the ILO's Official Bulletin.

Under article 29(2) of the ILO Constitution, a government concerned in the complaint may refer the complaint to the International Court of Justice (ICJ) if it does not accept the Commission's recommendations. According to articles 31 and 32 of the ILO Constitution, the ICJ may affirm, vary or reverse the Commission's findings or recommendations, and its decision is final. At present, no government has appealed a Commission report to the ICJ.

- e) Securing Compliance. If the government in question fails to implement the Commission of Inquiry's recommendations or those of the ICJ within the specified time, the Governing Body may recommend what it considers to be appropriate measures to the International Labour Conference in order to secure compliance. The language of article 33 of the ILO Constitution allowing such an action is broad and unrestricted. However, no such action has yet been taken against a recalcitrant State.

Article 34 of the ILO Constitution allows a type of appeal from any action instituted against a government under article 33 of the ILO Constitution. Under article 34, the 'defaulting government' may request that the Governing Body constitute a new Commission of

Inquiry to verify “that is has taken the steps necessary to comply with the recommendations” of the original Commission or with those of the ICJ, as the case may be. If the government in question is found to have complied with the recommendations made to it, the Governing Body will then “recommend the discontinuance of any action taken in pursuance of article 33”. Like article 33, article 34 of the ILO Constitution has not been used to date.

The 'complaints procedure' is also reinforced by the ILO's regular system of supervision. The State against which the complaint was filed must continue to submit periodic reports on the Conventions it has ratified, including information on the steps it has taken to implement the Commission's recommendations. These reports are reviewed by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations (see above for more information). In this manner, a government's progress towards compliance with its international legal obligations can be monitored.

6.3.3. Freedom of Association Procedures

The *Procedure for the examination of complaints alleging infringements of trade union rights*⁹⁴ (or the *Freedom of Association Procedure* for short) is the most widely used ILO grievance procedure. **It can only be used where the complaint concerns an alleged violation of freedom of association.**

While at first glance, this procedure might seem to be of little relevance to migrant workers, it can, in fact, be of great practical importance to them. This is because one of the ways in which migrant workers may lobby for the recognition of their rights as human beings and workers is by forming their own organizations and unions or by working with existing workers' organizations that are willing to lobby governments and employers on their behalf. Therefore, an important means of bettering the situation of migrant workers and promoting their rights is curtailed or impeded altogether if freedom of association in a given State is infringed or denied.

The complaints procedures concerning freedom of association were established so as to protect trade union rights. These rights are enshrined in the ILO Constitution and in ILO Conventions dealing with freedom of association such as the *Freedom of Association and Protection of the Right to Organize Convention, 1948* (No. 87) and the *Right to Organize and Collective Bargaining Convention, 1949* (No. 98).

A complaint alleging the infringement of trade union rights can be filed against an ILO member State regardless of whether or not that State has

94 Available on the ILO sebsite at www.ilo.org .

ratified Convention No. 87 or Convention No. 98. This flows from the fact that an ILO member State is bound to abide by the obligations contained in the ILO Constitution -- obligations which it freely consented to when joining the ILO. As previously mentioned, the ILO Constitution recognizes and adopts the principle of freedom of association as fundamental to its mandate.

Since the early 1950s, matters concerning violations of freedom of association have been referred to two specialized ILO bodies: the Governing Body's Committee on Freedom of Association (or CFA for short) and the Fact-Finding and Conciliation Commission on Freedom of Association (FFCC).

The CFA is a tripartite organ of the ILO's Governing Body, composed of nine of its members, nine substitutes, and an independent Chair. It receives complaints lodged directly by organizations of workers or employers and by governments, and reports back to the Governing Body. The CFA meets three times a year.⁹⁵

The FFCC may deal with complaints referred to it by the State concerned or by the Governing Body following the CFA's recommendation.⁹⁶ The FFCC also has the mandate to consider complaints lodged against States which are not members of the ILO but which are members of the United Nations when the UN Economic and Social Council (ECOSOC) refers such cases to the FFCC and the State in question consents to the referral.⁹⁷

i. The Committee on Freedom of Association (CFA)

A complaint submitted to the CFA must allege a specific violation (or specific violations) of freedom of association.

The principle of freedom of association is a broad one encompassing various sub-rights and freedoms. The CFA has considered the ILO Constitution, and ILO Conventions and Recommendations on freedom of association when interpreting the meaning of this freedom.⁹⁸ The principle of freedom of association binds all ILO member States, regardless of whether or not they have ratified the relevant instruments.

Freedom of association encompasses the following principles:

⁹⁵ Handbook of procedures at paras. 79, 81.

⁹⁶ These complaints may relate to member States which have ratified ILO Conventions on freedom of association and those which have not, provided they consent to the referral.

⁹⁷ Handbook of procedures at para. 82.

⁹⁸ In addition to Conventions No. 87 and 98, see Conventions No. 11, 135, 141, and 154. Also see the following ILO Recommendations: R91, R143, R149, and R163.

- the right to form organizations of workers and employers;
- the right of such organizations to exist and function independently;
- the right to join or become affiliated with larger groups, such as federations and confederations of trade unions;
- freedom from and protection against anti-union discrimination and harassment;
- the right to engage in collective bargaining;
- the right to strike; and
- the right to basic civic liberties, such as freedom of expression, without which trade union rights cannot be freely exercised.

a) Receivability Criteria

For a complaint to be receivable it must:

- come from an organization of workers or employers or from another government;
- concern an ILO member State, regardless of whether or not it has ratified the ILO's Conventions on freedom of association, and even without its consent (on the basis that this principle is enshrined in the ILO Constitution and therefore applies to all member States); and
- allege one or more specific violations of the principle of freedom of association, and include proof of these allegations.⁹⁹

The complainant need not exhaust all national remedies before the CFA will consider the complaint, although the use of national legal procedures is taken into consideration.¹⁰⁰

b) Who can file complaints to the CFA

1) *Organizations of workers or employers.* This includes three types of organizations:

- national organizations of workers or employers with a direct interest in the matter;
- international organizations of employers or workers having consultative status with the ILO¹⁰¹; and

⁹⁹ Handbook of procedures at paras. 79-81.

¹⁰⁰ Freedom of Association Procedure at paras. 31-33.

¹⁰¹ Examples of such organizations include the International Confederation of Free Trade Unions (ICFTU); the World Confederation of Labour (WCL); the World Federation of Trade Unions

- other international organizations of employers or workers (without consultative status) where the allegations pertain to matters directly affecting their affiliated organizations.¹⁰²

Unless the complainant organization has consultative status with the ILO or its status as an organization of workers or employers has been recognized by the CFA, it should furnish the CFA with documentation substantiating its status.

The CFA determines whether the organization filing the complaint qualifies as an 'organization of employers or workers'. The fact that a group is not registered or recognized by the government concerned is not determinative. The CFA may also accept complaints from organizations in exile or which have been dissolved by a government. However, the CFA may ask the organization filing the complaint to submit additional information on issues such as the size of its membership, its affiliations, and the content of its statutes to make this determination.¹⁰³

Complaints filed by bodies with which it is not possible to correspond, because no return address is provided with the complaint or the address or body is a temporary one, will not be examined.¹⁰⁴

2) Governments alleging violations of the principle of freedom of association by other governments.

The State of the government filing the complaint need not have ratified any of the ILO's Conventions on freedom of association. No government has yet filed a complaint against another government using this procedure.

The complaint may be lodged directly with the ILO or through the United Nations. Complaints lodged with the ILO must be submitted to the Director-General of the International Labour Office. The address is:

Director-General
International Labour Office
4, route des Morillons
CH 1211 Geneva 22 SWITZERLAND

Complaints must be in writing, signed by a representative of a workers' or employers' organization (or by a government representative if the

(WFTU); the Organization of African Trade Union Unity (OATUU); and the International Organization of Employers (IOE).

¹⁰² Handbook of procedures at para. 80(b).

¹⁰³ Freedom of Association Procedure at paras. 34-40.

¹⁰⁴ *Ibid.* at para. 45.

complainant is another government), and contain an official return address.¹⁰⁵

The allegations contained in the complaint should be as specific as possible (i.e. point to specific infringements of freedom of association), and the information adduced to substantiate them should be as detailed as possible.¹⁰⁶ The complainant only has one month (from the date on which receipt of the complaint is acknowledged by the Director-General) to send additional information supporting the complaint to the Director-General of the International Labour Office. This deadline may be extended if the complainant was not in a position to communicate the evidence in question within the one month period.¹⁰⁷

Complaints are classified as urgent or less urgent. Urgent cases involve human life or personal freedoms, changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency, and cases involving the dissolution of an organization. They are given priority of treatment as are cases on which a report has already been submitted to the Governing Body.¹⁰⁸

c) The Process

1) *Determination of receivability.* The CFA determines the receivability of the complaint. If it is receivable, the Committee will inform the government concerned of the complaint and ask it to provide written observations on the allegations. The complainant may be invited to respond to the government's observations.¹⁰⁹

The CFA may decide to hear one or both parties during its sessions so as to obtain more complete information. It may also contact government representatives during the annual International Labour Conference and ask representatives of the Director-General to conduct on-site visits so as to gather more evidence.¹¹⁰

2) *Examination of Complaint.* The CFA will examine the substance of the complaint on the basis of the above-mentioned written, oral and real evidence.

105 *Ibid.* at para. 43.

106 Handbook of procedures at para. 80(a).

107 Freedom of Association Procedure at para. 47 and Handbook of procedures at para. 81(b) and (c).

108 *Ibid.* at para. 55.

109 *Ibid.* at para. 54.

110 *Ibid.* at paras. 65-66.

The CFA may proceed with its examination of a complaint even if the complainant requests that it be withdrawn. The CFA will determine whether or not the request was made independently and ensure that it was not motivated by external pressure, such as threats made against the complainant(s).¹¹¹

3) *Conclusion.* If the CFA concludes that there has been no violation of freedom of association or that the alleged violation has ceased, it will stop examining the allegations.

If the CFA concludes that the allegations are substantiated and violations of the principle of freedom of association have taken place, it will formulate recommendations to the parties concerned so as to remedy the situation.¹¹²

For example, the CFA may recommend that the government concerned abandon or adopt certain practices or that it amend or repeal certain legislation. The complainant organization must also be prepared to receive recommendations since the CFA may suggest that it modify its activities if they have 'contributed to the problem'.¹¹³

4) *Recommendations and Follow-up.* The CFA's findings and recommendations are contained in a report that it submits to the Governing Body. After the report is approved, it is published in the ILO's Official Bulletin.¹¹⁴

The CFA may request that the government concerned continue reporting to it if it determines that the government needs assistance in meeting its obligation to respect and guarantee freedom of association.

The Committee of Experts on the Application of Conventions and Recommendations will conduct its own follow-up using the regular system of supervision in cases where the State concerned has ratified relevant ILO Conventions on freedom of association.¹¹⁵

Finally, the CFA may recommend that the Governing Body refer a given complaint of infringement of trade union rights to the Fact-Finding and Conciliation Commission on Freedom of Association (FFCC). This may be done in cases where the State concerned has ratified the Freedom of

111 *Ibid.* at para. 52.

112 Handbook of procedures at para. 81(f).

113 Swepston at 112.

114 Handbook of procedures at para. 81(g).

115 *Ibid.* at para. 81(h).

Association Conventions and even where it has not, although in the latter case, the consent of the State concerned is required for a referral.¹¹⁶

ii. Fact-Finding and Conciliation Commission on Freedom of Association (FFCC)¹¹⁷

The FFCC is composed of nine independent persons appointed by the Governing Body on an ad-hoc basis. The FFCC is essentially a fact-finding body and its mandate is to examine alleged violations of the principle of freedom of association.¹¹⁸ While this is also the mandate of the Committee on Freedom of Association (CFA; discussed above), the FFCC tends to examine the more serious allegations and the most politically sensitive. Unlike the CFA, the FFCC also has the mandate to enter discussions on the matters referred to it with the governments concerned, the objective being to settle the problems by agreement. The complaint referred to the FFCC must however concern freedom of association.

The FFCC's procedures cannot be directly accessed by individuals or non-governmental organizations. The FFCC only deals with cases that are referred to it and the only two parties that may refer a case to the FFCC are:

- the ILO's Governing Body; and
- the UN Economic and Social Council (ECOSOC).

For NGOs: Referring cases to the FFCC

NGOs may lobby these two parties to refer a case to the FFCC and provide them with information to support the case against the government concerned. As is the case with most ILO mechanisms, NGOs must learn to work within the limits of the ILO's tripartite structure. This requires ingenuity and perseverance, but above all, it requires a willingness to network with organizations of workers (and even those of employers where possible) that are represented at the International Labour Conference and more specifically, on the ILO's Governing Body.

The Governing Body may decide to refer a case to the FFCC based on the recommendation of the CFA (which has itself already dealt with the case in question) or of the International Labour Conference. It may also do so on the request of a government that is alleged to have infringed the principle of freedom of association.

ECOSOC can refer allegations to the FFCC against member States of the United Nations which are not members of the ILO. ECOSOC has done so

¹¹⁶ *Ibid.* at para. 81(f).

¹¹⁷ Unless otherwise indicated, the following information was taken from the ILO website at www.ilo.org and the Handbook of procedures.

¹¹⁸ Handbook of procedures at para. 82.

in cases involving Lesotho, the United States, and South Africa, all of which had ceased to be ILO members by the time the complaints against them were filed (all three States have since rejoined the ILO).

The complaint referred to the FFCC may pertain to the following States:

- ILO members which have ratified ILO Conventions on freedom of association, regardless of whether or not they consent to the referral;
- ILO members which have not ratified the relevant ILO Conventions *and* which consent to the referral; and
- those which are not members of the ILO but which are members of the UN *and* which consent to the referral by ECOSOC.

The procedure followed by the FFCC is similar to that followed by a Commission of Inquiry (see article 26(3) of the ILO Constitution).

The FFCC begins by requesting information from the complainants and government concerned, as well as from international and national organizations of workers and employers. The FFCC's secretariat then prepares an analysis of the relevant national legislation.

Afterwards, hearings of the parties' representatives and of witnesses are held in Geneva. The FFCC may call witnesses and it decides whether a witness will be heard and on what matters he or she will speak.

The FFCC may also conduct visits to the country concerned and meet with individuals of its choosing in order to obtain more information.

Once the process is complete, the Commission drafts a final report with its conclusions and recommendations for resolving the problems in question.

The FFCC has no powers to enforce its recommendations. However, compliance with such recommendations may be monitored by the CFA or using the regular system of supervision. Moreover, the International Labour Conference, the Governing Body, and ECOSOC (when it has referred a case to the FFCC) may also conduct their own follow-up.

6.4. Ad-Hoc Supervisory Mechanisms

The ILO may adopt other adhoc measures to enforce international standards when necessary. Many of these came as a result of International Labour Conference resolutions and/or Governing Body decisions.

6.4.1. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy¹¹⁹

Although voluntary in nature, the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy is the only universal document that relates to the labour and social aspect of the activities of multinational enterprises. With the advent of multinational enterprises and the globalization of the economy, the ILO has intensified its efforts in promoting the Declaration and at the same time encouraged the implementation of labour standards that are directly related.

Governments of ILO member States are asked to report to the Governing Body every three years on the effect given to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, adopted by the Governing Body in 1977. In the event of dispute over its application, governments, employers' or workers' organizations may request for an interpretation of the provisions of the Declaration.¹²⁰

6.4.2. Direct Contacts¹²¹

The government concerned or the ILO's supervisory bodies may request that "direct contacts" take place between the government and the ILO to help the former meet its obligations under ILO instruments or deal with obstacles to the ratification of given instruments.

Upon receiving such a request, the Director-General of the ILO appoints a representative to discuss the situation with the government in question and the tripartite partners in the country. This results in the suspension of the ILO's supervisory system vis-à-vis that State for one year in order to develop solutions to the problems raised. This procedure requires the government's consent.

The Director-General's representative reports back to the Committee of Experts on the information he has collected, the advice given, and any agreement reached. The Committee of Experts and the Conference Committee will continue to monitor the government's compliance with its obligations.

119 <http://www.ilo.org/public/english/employment/multi/> (9 November 2004).

120 For details, see

http://www.ilo.org/public/english/standards/norm/enforced/ad_hoc/mne_pro.htm (31 October 2004)

121 See para. 86 of the *Handbook of procedures*.

6.4.3. Special Studies on Discrimination

The Governing Body adopted this mechanism in 1974, but it has yet to be used successfully. As the name suggests, these Surveys involve the examination of broad discrimination issues related to government policy in a given State, not individual cases as such (only to the extent that they evidence a pattern of discrimination).

The Governing Body has stated that the Surveys might be based on the principles and definitions set out in the *Discrimination (Employment and Occupation) Convention, 1958* (No. 111). This Convention contains the following general definition of discrimination: “any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.

These Surveys are of particular relevance to women migrant workers who are at risk of being discriminated against on the basis of race, color, sex, and national extraction.

A Special Survey on Discrimination in Employment can be undertaken with respect to any ILO member State, regardless of whether or not it has ratified a Convention on discrimination, so long as the State in question consents to the Survey.

The following parties may submit a request for such a Survey to the Director-General of the International Labour Office:

- the government of the State in question;
- another State which has an interest in the situation;
- organizations of workers or employers with a direct interest in the matter or the affiliates of which are directly concerned; and
- organizations of workers or employers which have consultative status with the ILO.

The arrangements for conducting the Survey will be determined by the Director-General in consultation with the government of the State concerned. It is not yet clear what procedures will be used to carry out such surveys nor the type of action that may follow their completion.¹²²

¹²² Swepston at 114-115.

6.4.4. Pattern or Practice Studies¹²³ (of the exploitation of migrant workers not falling under Convention-based procedures)

Provision for these studies is made in article 3.1, Annex III of the *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration* which states as follows:

- Where widespread and persistent exploitative practices are known to the [International Labour] Office or brought to its attention by ILO constituents, the Director-General should additionally:
 - inform the government concerned and solicit its observations on the matter; and
 - inform the relevant Committee of the Governing Body of this matter with a view to proposing to the government concerned that a pattern or practice study be carried out in the territory of the member State under whose jurisdiction the exploitation is viewed as occurring.

Pattern and practice studies are independent of the provisions of ILO instruments, yet complement them. The procedure is triggered when allegations of persistent and widespread exploitation of migrant workers in a State are submitted to the ILO by organizations of workers or employers. Pattern and practice studies may also be initiated when a government requests advice on incidents involving migrant workers in its territory. The ILO then proceeds to investigate these allegations and/or incidents.

The findings and conclusions of such studies are submitted to an informal gathering of representatives of the government, and of workers' and employers' organizations for discussion.

Pattern and practice studies are characterized by their informality and less public nature. This can prove to be an advantage in certain situations where one or more of the ILO constituents in question might be alienated from the discussions by the initiation of the ILO's more formal and highly public Convention-based procedures.

6.5. Technical Cooperation and Technical Advisory Services¹²⁴

A substantial part of the ILO's activities in the area of migration involve assisting countries of emigration and immigration develop migration policies and relevant legislation that are in keeping with the standards set

123 Approved by the Governing Body at its 265th session in 1996.

124 The following information was taken from the ILO website at www.ilo.org.

out in ILO instruments. This includes assistance to formulate and implement measures to fight irregular migration and employment, and to protect the fundamental human rights of migrant workers.

Moreover, the ILO provides assistance on migration issues to organizations of employers and workers. Concrete examples of this work include a workers' seminar held in Tunisia for representatives of North and West African trade unions; helping Poland's Ministry of Labour and Social Policy to organize and host a regional conference on labour migration in Central and Eastern Europe; and visits to Costa Rica and Nicaragua in 1995 to advise these two Central American nations on the issue of irregular migration flows.

ILO's Supervisory System – A Summary

1. Regular System of Supervision.

Member States are required to submit reports on measures taken to implement ratified Conventions and newly adopted Conventions and Recommendations; and their position with respect to unratified Conventions.

2. Special Systems of Supervision.

a) Article 24 Representation Procedure.

Any national or international organization of workers or employers can file a "representation" when a member State has failed to implement a Convention it has ratified.

b) Article 26 Complaints Procedure.

A member State or any delegate to the International Labour Conference can lodge a complaint against another member State for breaching its obligations under a Convention it has ratified. The Governing Body may institute complaints proceedings of its own motion or by transforming a representation into a complaint.

c) Freedom of Association Procedures.

The complaint procedures concerning freedom of association were established so as to protect trade union rights which are enshrined in the ILO Constitution and in Convention No. 87 and Convention No. 98. A complaint alleging the infringement of trade union rights can be filed against an ILO member State regardless of whether or not that State has ratified these Conventions.

3. Ad-Hoc Mechanisms

When necessary, ad-hoc measures may be adopted by the ILO to enforce international labour standards.

- a) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Every three years, governments of ILO member States are asked to report to the Governing Body on the effect given to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.
- b) Direct Contacts. The government concerned or the ILO's supervisory bodies may request that "direct contacts" take place between the government and the ILO to help the former meet its obligations under ILO instruments or deal with obstacles to the ratification of given instruments.
- c) Special Studies on Discrimination. These Surveys involve the examination of broad discrimination issues related to government policy in a given State.

7

ILO Member States¹²⁵

Member – *date of admission* as of 7 October 2003 (177)

A

Afghanistan – 1934
Albania – *from 1920 to 1967 and since 1991*
Algeria – 1962
Angola – 1976
Antigua and Barbuda – 1982
Argentina – 1919
Armenia – 1992
Australia – 1919
Austria – *from 1919 to 1938 and since 1947*
Azerbaijan – 1992

B

Bahamas – 1976
Bahrain – 1977
Bangladesh – 1972
Barbados – 1967
Belarus – 1954
Belgium – 1919
Belize – 1981
Benin – 1960
Bolivia – 1919
Bosnia and Herzegovina – 1993
Botswana – 1978
Brazil – 1919

Bulgaria – 1920
Burkina Faso – 1960
Burundi – 1963

C

Cambodia – 1969
Cameroon – 1960
Canada – 1919
Cape Verde – 1979
Central African Republic – 1960
Chad – 1960
Chile – 1919
China – 1919
Colombia – 1919
Comoros – 1978
Congo – 1960
Costa Rica – *from 1920 to 1927 and since 1944*
Côte d'Ivoire – 1960
Croatia – 1992
Cuba – 1919
Cyprus – 1960
Czech Republic – 1993

D

Democratic Republic of the Congo – 1960

¹²⁵ <http://www.ilo.org/public/english/standards/relm/country.htm> (17 November 2004)

Democratic Republic of Timor-
Leste – 2003
Denmark – 1919
Djibouti – 1978
Dominica – 1982
Dominican Republic – 1924

E

Ecuador – 1934
Egypt – 1936
El Salvador – *from 1919 to 1939
and since 1948*
Equatorial Guinea – 1981
Eritrea – 1993
Estonia – *from 1921 to 1940 and
since 1992*
Ethiopia – 1923

F

Fiji – 1974
Finland – 1920
France – 1919

G

Gabon – 1960
Gambia – 1995
Georgia – 1993
Germany – *from 1919 to 1935 and
since 1951*
Ghana – 1957
Greece – 1919
Grenada – 1979
Guatemala – *from 1919 to 1938
and since 1945*
Guinea – 1959
Guinea-Bissau – 1977
Guyana – 1966

H

Haiti – 1919
Honduras – *from 1919 to 1938 and
since 1955*
Hungary – 1922

I

Iceland – 1945
India – 1919
Indonesia – 1950
Iran, Islamic Republic of – 1919
Iraq – 1932
Ireland – 1923
Israel – 1949
Italy – *from 1919 to 1939 and since
1945*

J

Jamaica – 1962
Japan – *from 1919 to 1940 and since
1951*
Jordan – 1956

K

Kazakhstan – 1993
Kenya – 1964
Kiribati – 2000
Korea, Republic of – 1991
Kuwait – 1961
Kyrgyzstan – 1992

L

Lao People's Democratic
Republic – 1964
Latvia – *from 1921 to 1940 and
since 1991*
Lebanon – 1948
Lesotho – *from 1966 to 1971 and
since 1980*
Liberia – 1919
Libyan Arab Jamahiriya – 1952
Lithuania – *from 1921 to 1940 and
since 1991*
Luxembourg – 1920

M

Madagascar – 1960
Malawi – 1965
Malaysia – 1957
Mali – 1960

Malta – 1965
Mauritania – 1961
Mauritius – 1969
Mexico – 1931
Moldova, Republic of – 1992
Mongolia – 1968
Morocco – 1956
Mozambique – 1976
Myanmar – 1948

N

Namibia – 1978
Nepal – 1966
Netherlands – 1919
New Zealand – 1919
Nicaragua – *from 1919 to 1938 and since 1957*
Niger – 1961
Nigeria – 1960
Norway – 1919

O

Oman – 1994

P

Pakistan – 1947
Panama – 1919
Papua New Guinea – 1976
Paraguay – *from 1919 to 1937 and since 1956*
Peru – 1919
Philippines – 1948
Poland – 1919
Portugal – 1919

Q

Qatar – 1972

R

Romania – *from 1919 to 1942 and since 1956*
Russian Federation – *from 1934 to 1940 and since 1954*
Rwanda – 1962

S

Saint Kitts and Nevis – 1996
Saint Lucia – 1980
Saint Vincent and the Grenadines – 1995
San Marino – 1982
Sao Tome and Principe – 1982
Saudi Arabia – 1976
Senegal – 1960
Serbia and Montenegro – 2000
Seychelles – 1977
Sierra Leone – 1961
Singapore – 1965
Slovakia – 1993
Slovenia – 1992
Solomon Islands – 1984
Somalia – 1960
South Africa – *from 1919 to 1966 and since 1994*
Spain – *from 1919 to 1941 and since 1956*
Sri Lanka – 1948
Sudan – 1956
Suriname – 1976
Swaziland – 1975
Sweden – 1919
Switzerland – 1919
Syrian Arab Republic – 1961

T

Tajikistan – 1993
Tanzania, United Republic of – 1962
Thailand – 1919
The former Yugoslav Republic of Macedonia – 1993
Togo – 1960
Trinidad and Tobago – 1963
Tunisia – 1956
Turkey – 1932
Turkmenistan – 1993

U

Uganda – 1963
Ukraine – 1954
United Arab Emirates – 1972
United Kingdom – 1919
United States – *from 1934 to 1977
and since 1980*
Uruguay – 1919
Uzbekistan – 1992

V

Vanuatu – 2003
Venezuela – *from 1919 to 1957 and
since 1958*
Viet Nam – *from 1950 to 1976,
1980 to 1985 and since 1992*

Y

Yemen – 1990

Z

Zambia – 1964
Zimbabwe – 1980

Source: <http://www.ilo.org>
<http://www.ilo.org/ilolex/english/mstatese.htm>

For further information, please contact the International Labour Standards and Human Rights Department (NORMES) at Tel: +41.22.799.7126, Fax: +41.22.799.6926 or by email: infleg@ilo.org

8

Abuses and Relevant Human Rights Standards in ILO Instruments

The following list of abuses of the rights of Asian women migrant workers is organized to reflect the stages in the migration process, namely the period before departure from the sending country, the period spent in the receiving country, and departure from the receiving country. It also deals with abuses that span the entire migration process, such as contemporary forms of slavery. NGOs can use this list when analyzing cases of human rights violations against women migrant workers.

A. Abuses Suffered by Asian Women Migrant Workers

1.0.0 Pre-Departure Abuses

- 1.1.0 *Recruitment*: this section deals with abuses by recruitment and/or placement agencies or agents.
 - 1.1.1 Fees: the fees charged by recruiters are excessive.
 - 1.1.2 Information: the intentional provision of false or misleading information by the recruiter to the worker or by the employer to the recruiter or the worker.
 - 1.1.4 Non-deployment: failure to send the worker abroad as promised.

NB: For other abuses that include forced confinement and other slave like conditions as well as the provision of fraudulent travel documents, refer to 5.0.0 Abuses over the entire migration process.

2.0.0 On-Site Abuses

- 2.1.0 *Contract Violations*: the terms of the oral or written employment contract are not respected by the employer.
 - 2.1.1 Contract Substitution: the worker is forced to sign a new contract upon arrival in the receiving country. The new terms of the

contract may be unfavourable to the worker. For example, the new contract may involve a different position, employer, number of employers or work of a different nature from that stipulated in the original contract.

- 2.1.2 Additional Tasks: the worker is forced to perform tasks for which she was not recruited and/or which are not stipulated in her employment contract.
- 2.1.3 Hours: the worker has excessive or irregular working hours.
- 2.1.4 Leisure: the worker is given no or insufficient leisure time.
- 2.1.5 Wages: the worker is not paid for work performed or payment is delayed; the worker is underpaid based on wages promised or national minimum wage, where applicable.
- 2.1.6 Deductions: illegal deductions are made from the worker's salary (for e.g., to pay for placement fees or in the form of compulsory savings).
- 2.1.7 Benefits: worker is denied benefits to which she is entitled (for e.g., holidays with pay, sick leave with pay, and maternity leave).
- 2.1.8 Dismissal: worker is dismissed without cause, notice and/or benefits.
- 2.1.9 Other violations: other breaches of the employment contract (e.g. for live-in domestic workers this includes inadequate accommodation, food and other provisions).
- 2.2.0 *Occupational Health & Safety***: the worker's physical and/or mental health are compromised by her working conditions.
- 2.2.1 Training & Information: the worker is not provided with occupational health and safety information or training in her own language; the information and training provided are inadequate.
- 2.2.2 Inspection: there is a lack of adequate workplace inspection.
- 2.2.3 Exposure to Risks: the worker is exposed to occupational risks which compromise her health and safety; the worker is not provided with protective gear or equipment.
- 2.2.4 Medical Care: medical care is not provided or is inadequate, health care information and services are inaccessible or not responsive to their needs.

2.3.0 *Psychological and Physical Abuse*

2.3.1 Psychological: psychological abuse, including verbal abuse and denial of the right to privacy.

2.3.2 Physical: physical abuse, including beatings, and forced drug consumption.

2.3.5 Sexual: sexual abuse and harassment, including rape and forced prostitution.

2.3.6 Mandatory Medical Testing: this includes testing for HIV/AIDS, pregnancy tests required of migrant workers before, upon their entry or on a regular basis during their contract in the receiving country.

2.4.0 *Discrimination*: particularly, discrimination on the basis of sex and national origin.

2.4.1 Employment: any distinction, exclusion or preference made on the basis of a prohibited ground of discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (e.g., inadequate provision for food, clothing and shelter); includes discrimination in the hiring process (e.g., mandatory pregnancy tests for female domestic workers).

2.4.2 Benefits & Services: the worker and/or her family are discriminated against in the provision of social security benefits (e.g., worker's compensation, unemployment benefits, and retirement pensions); worker and/or her family are denied access to social programs, such as education and health care, on the basis of a ground of discrimination prohibited under international law.

2.4.3 Application of National Standards: national standards such as the minimum wage and number of hours of work do not apply to migrant workers and/or their families.

2.4.4 Other: other forms of discrimination, including interference with the worker's religious and cultural practices; and racial profiling by immigration or law enforcement officers.

2.5.0 *Family Issues*

2.5.1 Family Responsibilities: the worker's conditions of employment do not take her family responsibilities into account.

- 2.5.2 Reunification: the receiving State disregards the right of the worker and her family members to live in the same State or to visit one another.
- 2.5.3 Status of Children: the legal status of children born in the receiving country and the status of the children accompanying the worker to the receiving country.
- 2.5.4 Children's Rights: general human rights and fundamental freedoms applying to children in international law.
- 2.6.0 *Mobility Rights***: the worker's freedom of movement is infringed.
- 2.6.1 Forcible Confinement: the worker is physically confined to her place of work or other location.
- 2.6.2 Restricted Mobility: the worker is not allowed to move about freely (e.g., she is prevented from leaving the country to visit family).
- 2.6.3 Confiscation of Documents: confiscation and deprivation of the worker's passport and other travel or identity documents.
- 2.6.4 Choice of Employment: the worker is denied the right to change employer or employment.
- 2.6.5 Choice of Residence: the worker is denied the right to choose her place of residence.
- 2.6.6 Authorization of residence: Includes the right of the worker to receive, from the State in which she is working, the authorization of residence for the time that the worker is authorized to work in that State.
- 2.7.0 *Other Abuses***
- 2.7.1 Freedom of Association: the worker is denied the right to join or form a workers' organization.
- 2.7.2 Reproductive Rights: the worker's reproductive rights are infringed (e.g., the worker is forced to undergo pregnancy testing, use contraceptives or abort her pregnancy).
- 2.7.8 Name Change on Documents: the worker's real name is changed on identity, work and/or travel documents so that it is difficult to establish her whereabouts.

- 2.7.9 Freedom of thought, conscience and religion/opinion/ expression: The migrant worker is denied her right to her own religious beliefs and practices, and freedom to seek, receive and impart information and ideas of all kinds, subject to certain limitations, including the respect of public morals and national security.
- 2.7.10 Privacy: The migrant worker is subjected to arbitrary or unlawful interference with her right to privacy, family, home or other communication.
- 2.7.11 Property rights/ earnings/tax issues: The migrant worker is prohibited from transferring earnings and savings; higher taxes are imposed on migrant workers than on nationals; and migrant workers are not exempt from import/export duties and taxes for personal household effects.
- 2.7.12 Cultural identity: The right of the worker to have her cultural identity respected by the State in which she is working.

3.0.0 Difficulties in Exercising Legal Rights

- 3.1.0 *Legal Action*: the worker has difficulty pursuing legal action against her employer or recruiter.
- 3.1.1 Corruption: corrupt judiciary or law enforcement authorities impede the worker from exercising her legal rights.
- 3.1.2 Renewal of Documents: the worker has difficulty renewing visas or work permits. As a result, she may be unable to remain in the host country or support herself while the legal process is underway.
- 3.2.0 *Arrest and Detention*
- 3.2.1 Torture: the worker is subjected to torture and other cruel, inhuman or degrading treatment or punishment.
- 3.2.2 Legal Rights: the worker's legal rights are violated (e.g., her right to due process which includes the right to consult an attorney and to trial before an impartial body).

4.0.0 Final Departure

4.1.0 Repatriation and Reintegration

- 4.1.1 Expulsion: the worker is forcibly repatriated to her home country; she may be forced to pay the cost of deportation or repatriation back to her home country when she is not legally required to do so.

- 4.1.5 Reintegration: abuses pertaining to the worker's reintegration into her home country.
- 4.1.6 Regularization: In the case of migrant workers and members of their families, the State does not take appropriate measures to ensure that the situation does not persist.
- 4.1.7 Participation in public affairs of state of origin: The migrant workers is denied her right in her state of origin, to participate in public affairs, as well as the right to vote and to be elected to office.

5.0.0 Abuses Over The Entire Migration Process

5.1.0 *Contemporary Forms of Slavery*

- 5.1.1 Trafficking – “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art 3(a)).
 - 5.1.2 Forced Labour or Debt Bondage: forced labour (also referred to as compulsory labour) refers to all work or service that is exacted from a person under the menace of any penalty and for which the said person has not offered herself voluntarily. Debt bondage occurs when a debtor pledges her services or those of a person under her control to work for a particular employer in order to pay off her debt while the value of the service is not applied to the debt or the length or nature of the service is not defined or limited. (Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1a).
 - 5.1.3 Forced confinement and other slave-like conditions which occur onsite in the country of destination; in the home country while prospective migrant workers await deployment or complete their training; or in other phases of migration.
- 5.2.0 *Smuggling of migrants* is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the

illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” (Protocol Against the Smuggling of Migrants by Land, Sea and Air, art. 3a).

B. List of Relevant ILO Conventions

- C19* Equality of Treatment (Accident Compensation) Convention, 1925
- C26* Minimum Wage-Fixing Machinery Convention, 1928
- C29* Forced Labour Convention, 1930
- C81* Labour Inspection Convention, 1947
- C87* Freedom of Association and Protection of the Right to Organize Convention, 1948
- C88* Employment Service Convention, 1948
- C95* Protection of Wages Convention, 1949
- C96* Fee-Charging Employment Agencies Convention (Revised), 1949
- C97* Migration for Employment Convention (Revised), 1949
- C100* Equal Remuneration Convention, 1951
- C103* Maternity Protection Convention (Revised), 1952
- C105* Abolition of Forced Labour Convention, 1957
- C111* Discrimination (Employment and Occupation Convention), 1958
- C117* Social Policy (Basic Aims and Standards Convention), 1962
- C118* Equality of Treatment (Social Security Convention), 1962
- C122* Employment Policy Convention, 1964
- C131* Minimum Wage Fixing Convention, 1970
- C132* Holidays with Pay Convention (Revised), 1970
- C138* Minimum Age Convention, 1973
- C142* Human Resources Development Convention, 1975
- C143* Migrant Workers (Supplementary Provisions Convention), 1975

- C155* Occupational Safety and Health Convention, 1981
- C156* Workers with Family Responsibilities Convention, 1981
- C157* Maintenance of Social Security Rights Convention, 1982
- C158* Termination of Employment Convention, 1982
- C168* Employment Promotion and Protection against Unemployment Convention, 1988
- C177* Home Work Convention, 1996
- C181* Private Employment Agencies Convention, 1997
- C182* Worst Forms of Child Labour Convention, 1999
- C183* Maternity Protection Convention, 2000
- C184* Safety and Health in Agriculture Convention, 2001

Table 8.1. Abuses & Relevant Human Rights Standards in ILO Conventions (C19-100)

The numbers under each convention column refer to relevant articles in said ILO Convention, e.g., 1 under C88 is article 1 of Convention 88.

Convention		C19	C26	C29	C81	C87 & C98	C88	C95	C96	C97	C100
List of Abuses											
1.0.0 PRE-DEPARTURE ABUSES											
1.1.0	Recruitment										
1.1.1	Fees						1		All	2, 7 (I) 4, 6; (II) 4	
1.1.2	Information						All			1-4, 7; Annex (I) 5, 7; (II) 6-8	
1.1.3	Non-deployment									4 Annex (II) 10, 11	
2.0.0 ON-SITE ABUSES											
2.1.0	Contract Violations										
2.1.1	Contract Substitution			1-6				14		Annex (I) 5; (II) 6	
2.1.2	Additional Tasks			1-6							
2.1.3	Hours			13, 18	1, 3, 24					6	
2.1.4	Leisure			13						6	
2.1.5	Wages		1-5	14	1, 3, 24			All		6; Annex (II) 6	All
2.1.6	Deductions			14				8,9		6	
2.1.7	Benefits			15, 17				7		6	
2.1.8	Dismissal										
2.1.9	Other Violations			19-21, 25						Annex (II) 6	

Convention		C19	C26	C29	C81	C87 & C98	C88	C95	C96	C97	C100
2.2.0	Occupational Health & Safety										
2.2.1	Training & Information			16						6	
2.2.2	Inspection				All						
2.2.3	Exposure to Risks	1-4		15,16,17	1, 3, 9, 13, 14, 16-18, 24						
2.2.4	Medical Care	1-4		16,17						5	
2.3.0	Psychological Physical & Sexual Abuse										
2.3.1	Psychological										
2.3.2	Physical										
2.3.3	Sexual										
2.3.4	Medical Testing									8	
2.4.0	Discrimination										
2.4.1	Employment						7				All
2.4.2	Benefits & Services	1-4								5, 6	
2.4.3	Application of Nat'l Standards	1-4								6	
2.4.4	Other			8							
2.5.0	Family Issues										
2.5.1	Family Responsibilities			11,17						5-7; Annex (II) 7	
2.5.2	Reunification			17							
2.5.3	Status of Children										
2.5.4	Children's Rights			11	3		8			6	
2.6.0	Mobility Rights										
2.6.1	Forcible Confinement										

Convention		C19	C26	C29	C81	C87 & C98	C88	C95	C96	C97	C100
List of Abuses											
2.6.2	Restricted Mobility										
2.6.3	Confiscation of Documents										
2.6.4	Choice of Employment			All							
2.6.5	Choice of Residence										
2.6.6	Authorization of Residence										
2.7.0	Other Abuses										
2.7.1	Freedom of Association					All				6	
2.7.2	Reproductive Rights										
2.7.3	Name Change on Documents										
2.7.4	Freedom of thought, conscience and religion/opinion/ expression										
2.7.5	Privacy										
2.7.6	Property rights/ earnings/tax issues			14				6		6-9 Annex (II) 7 Annex (III) 1-2	
2.7.7	Cultural identity										
3.0.0 DIFFICULTIES IN EXERCISING LEGAL RIGHTS											
3.1.0	Legal Action			25				15			
3.1.1	Corruption										
3.1.2	Renewal of Documents										
3.2.0	Arrest/Detention										
3.2.1	Torture										
3.2.2	Legal Rights									6	

Convention		C19	C26	C29	C81	C87 & C98	C88	C95	C96	C97	C100	
List of Abuses	4.0.0 FINAL DEPARTURE											
	4.1.0	Repatriation & Reintegration										
	4.1.1	Expulsion								Annex (II) 5, 8, 9		
	4.1.2	Reintegration								Annex (II) 9-11		
	4.1.3	Regularization										
	4.1.4	Participation in public affairs of state of origin										
	5.0.0 ABUSES OVER THE ENTIRE MIGRATION PROCESS											
	5.1.0	Contemporary Forms of Slavery										
	5.1.1	Trafficking									(I) 8; (II) 13	
	5.1.2	Forced Labour or Debt Bondage			All							
	5.1.3	Forced Confinement, etc.										
	5.2.0	Smuggling										

Table 8.2. Abuses & Relevant Human Rights Standards in ILO Conventions (C103-142)

The numbers under each convention column refer to relevant articles in said ILO Convention, e.g., 1 under C88 is article 1 of Convention 88..

Convention		C103	C105	C111	C117	C118	C122	C131	C132	C138	C142	
List of Abuses	1.0.0 PRE-DEPARTURE ABUSES											
	1.1.0	Recruitment										
	1.1.1	Fees										
	1.1.2	Information										
	1.1.3	Non-deployment										
	2.0.0 ON-SITE ABUSES											
	2.1.0	Contract Violations										
	2.1.1	Contract Substitution										
	2.1.2	Additional Tasks										
	2.1.3	Hours	5									
	2.1.4	Leisure								All		
	2.1.5	Wages				7, 10-12, 14			1-5			
	2.1.6	Deductions				11,12						
	2.1.7	Benefits	3,4,5			5	2,3,4			All		
	2.1.8	Dismissal	6									
2.1.9	Other Violations											
2.2.0	Occupational Health & Safety											
2.2.1	Training & Information			3	10,11,14-16					3, 6	1-5	
2.2.2	Inspection											

Convention		C103	C105	C111	C117	C118	C122	C131	C132	C138	C142
2.2.3	Exposure to Risks									3, 7	
2.2.4	Medical Care				5	2,3,4					
2.3.0	Psychological Physical & Sexual Abuse										
2.3.1	Psychological										
2.3.2	Physical										
2.3.3	Sexual										
2.3.4	Medical Testing										
2.4.0	Discrimination										
2.4.1	Employment	6		All	14		1				1
2.4.2	Benefits & Services			All	14	All					
2.4.3	Application of Nat'l Standards			All	8, 14	3-6		1			
2.4.4	Other		1	All							
2.5.0	Family Issues										
2.5.1	Family Responsibilities	3,4,5		5	3,5, 6, 14	2,4,6					
2.5.2	Reunification										
2.5.3	Status of Children										
2.5.4	Children's Rights	3,4,5			15	6				All	3
2.6.0	Mobility Rights										
2.6.1	Forcible Confinement										
2.6.2	Restricted Mobility										
2.6.3	Confiscation of Documents										
2.6.4	Choice of Employment		1,2				1				

Convention		C103	C105	C111	C117	C118	C122	C131	C132	C138	C142
List of Abuses											
2.6.5	Choice of Residence										
2.6.6	Authorization of Residence										
2.7.0	Other Abuses										
2.7.1	Freedom of Association				14						
2.7.2	Reproductive Rights	3									
2.7.3	Name Change on Documents										
2.7.4	Freedom of thought, conscience and religion/opinion/ expression			1							
2.7.5	Privacy										
2.7.6	Property rights/ earnings/tax issues				7,8						
2.7.7	Cultural identity		1		14						
3.0.0 DIFFICULTIES IN EXERCISING LEGAL RIGHTS											
3.1.0	Legal Action	10									
3.1.1	Corruption										
3.1.2	Renewal of Documents										
3.2.0	Arrest/Detention										
3.2.1	Torture		1,2								
3.2.2	Legal Rights		1								
4.0.0 FINAL DEPARTURE											
4.1.0	Repatriation & Reintegration										
4.1.1	Expulsion										
4.1.2	Reintegration										

Convention		C103	C105	C111	C117	C118	C122	C131	C132	C138	C142
List of Abuses											
4.1.3	Regularization										
4.1.4	Participation in public affairs of state of origin										
5.0.0 ABUSES OVER THE ENTIRE MIGRATION PROCESS											
5.1.0	Contemporary Forms of Slavery										
5.1.1	Trafficking										
5.1.2	Forced Labour or Debt Bondage		1,2								
5.1.3	Forced Confinement, etc.										
5.2.0	Smuggling										

Table 8.3. Abuses & Relevant Human Rights Standards in ILO Conventions (C143 - 184)

The numbers under each convention column refer to relevant articles in said ILO Convention, e.g., 1 under C88 is article 1 of Convention 88..

Convention		C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
List of Abuses												
1.0.0 PRE-DEPARTURE ABUSES												
1.1.0	Recruitment											
1.1.1	Fees								7, 8,			
1.1.2	Information								8,			
1.1.3	Non-deployment	2, 3							8			
2.0.0 ON-SITE ABUSES												
2.1.0	Contract Violations											
2.1.1	Contract Substitution								8			
2.1.2	Additional Tasks								8,11,12			
2.1.3	Hours								8,11, 12			
2.1.4	Leisure								8,11, 12			
2.1.5	Wages	9					10	4	8,11, 12			
2.1.6	Deductions		21		4				8			
2.1.7	Benefits	8 – 10, 12		4	All	12	5, 10,13-26	4	8,11, 12		4, 6, 10	19-21
2.1.8	Dismissal	1		8		All			8		8	
2.1.9	Other Violations								8			
2.2.0	Occupational Health & Safety		4- 9, 11,16									
2.2.1	Training & Information	12	4, 5,7,10 – 12, 14, 16,19	6,7			7, 26	4	8,11, 12			7 - 9
2.2.2	Inspection		9,11,16					9	8			5, 7

Convention		C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
2.2.3	Exposure to Risks		4,5,7,11, 13, 16, 19					4, 7	8,11, 12	3		4, 7-15
2.2.4	Medical Care		18		10	6	23, 24	4	8,11,12		3 - 6	
2.3.0	Psychological Physical & Sexual Abuse											
2.3.1	Psychological	1							8	3		
2.3.2	Physical	1							8	3		
2.3.3	Sexual	1							8	3		
2.3.4	Medical Testing	1							8			
2.4.0	Discrimination											
2.4.1	Employment	1,8,10,12, 14		All		5	6, 8	4	5,8		9	
2.4.2	Benefits & Services	1, 8,9,10,12		3,4, 5	All		6, 8, 13-26		8			
2.4.3	Application of Nat'l Standards	8,12			5	2	6		8			17
2.4.4	Other	10,12							8			
2.5.0	Family Issues											
2.5.1	Family Responsibilities			All	14	5	24, 26	4	11, 12		All	18
2.5.2	Reunification	13										
2.5.3	Status of Children											
2.5.4	Children's Rights	12,13					26	4	9	All		16
2.6.0	Mobility Rights											
2.6.1	Forcible Confinement	1							8	3		
2.6.2	Restricted Mobility	3,14							8	3		
2.6.3	Confiscation of Documents								8			
2.6.4	Choice of Employment	14		4			7, 8, 19		8	3	3	

Convention		C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
List of Abuses												
2.6.5	Choice of Residence								8	3		
2.6.6	Authorization of Residence											
2.7.0	Other Abuses											
2.7.1	Freedom of Association	1,10				5		4	4, 8,11			
2.7.2	Reproductive Rights	1				5			8,11,12			
2.7.3	Name Change on Documents								8			
2.7.4	Freedom of thought, conscience and religion/opinion/ expression											
2.7.5	Privacy								6			
2.7.6	Property rights/ earnings/tax issues											
2.7.7	Cultural identity	10, 12										
3.0.0 DIFFICULTIES IN EXERCISING LEGAL RIGHTS												
3.1.0	Legal Action											
3.1.1	Corruption					5,8,9	27	9	10,11,12			
3.1.2	Renewal of Documents	8										
3.2.0	Arrest/Detention											
3.2.1	Torture	1							8	3		
3.2.2	Legal Rights	1				7			8,10			
4.0.0 FINAL DEPARTURE												
4.1.0	Repatriation & Reintegration											
4.1.1	Expulsion	9										
4.1.2	Reintegration						26					

Convention		C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
List of Abuses												
4.1.3	Regularization											
4.1.4	Participation in public affairs of state of origin											
5.0.0 ABUSES OVER THE ENTIRE MIGRATION PROCESS												
5.1.0	Contemporary Forms of Slavery											
5.1.1	Trafficking	1-7							8	3		
5.1.2	Forced Labour or Debt Bondage	1							8	3		
5.1.3	Forced Confinement, etc.											
5.2.0	Smuggling											

9

Ratification of Relevant ILO Conventions

The following table lists the ILO instruments relevant to migrants, specifically women, and the countries that ratified or are signatory to these conventions.

TABLE 9.1. Ratification of ILO Conventions Relevant to Migrant Workers (C19-98)

Convention \ State	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Entry into Force	1926	1930	1932	1950	1950	1950	1952	1951	1952	1951
Afghanistan							1957			
Albania		2001	1957	2004	1957					1957
Algeria	1962		1962	1962	1962	1962	1962	1962	1962	1962
Andorra										
Angola	1976	1976	1976	1976	2001	1976				1976
Antigua and Barbuda	1983		1983	1983	1983					1983
Argentina	1950	1950	1950	1955	1960	1956	1956	1996		1956
Armenia										2003
Australia	1959	1931	1932	1975	1973	1949				1973
Austria	1928	1974	1960	1949	1950	1973	1951			1951
Azerbaijan			1992	2000	1992	1993	1992			1992
Bahamas	1976	1976	1976	1976	2001	1976	1976		1976	1976
Bahrain			1981	1981						
Bangladesh	1972		1972	1972	1972			1972		1972

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Barbados		1967	1967	1967	1967	1967		1967		1967	1967
Belarus			1993	1956	1995	1956	1995	1961			1956
Belgium		1927	1937	1944	1957	1951	1953	1970	1958	1953	1953
Belize		1983	1983	1983	1983	1983	1983	1983		1983	1983
Benin			1960	1960	2001	1960		1960			1968
Bhutan											
Bolivia		1954	1954		1973	1965	1977	1977	1954		1973
Bosnia and Herzegovina		1993		1993	1993	1993	1993			1993	1993
Botswana		1988		1997		1997		1997			1997
Brazil		1957	1957	1957	1989		1957	1957		1965	1952
Brunei Darussalam											
Bulgaria		1929	1935	1932	1949	1959		1955			1959
Burkina Faso		1969	1960	1960	1974	1960		1960		1961	1962
Burundi		1963	1963	1963	1971	1993					1997
Cambodia				1969		1999					1999
Cameroon		1962	1960	1960	1962	1960		1960		1962	1962

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Canada			1935			1972	1950				
Cape Verde		1987		1979	1979	1999					1979
Central African Republic		1964	1960	1960	1964	1960	1964	1960			1964
Chad			1960	1960	1965	1960		1960			1961
Chile		1931	1933	1933		1999					1999
China		1934	1930								
Colombia		1933	1933	1969	1967	1976	1967	1963			1976
Comoros		1978	1978	1978	1978	1978		1978			1978
Congo (Republic of)			1960	1960	1999	1960		1960			1999
Congo (Democratic Republic of)		1960	1960	1960	1968	2001	1969	1969			1969
Cook Islands											
Costa Rica			1972	1960	1960	1960	1960	1960	1960		1960
Côte d'Ivoire		1961	1960	1960	1987	1960		1960	1992		1961
Croatia		1991		1991	1991	1991					1991
Cuba		1928	1936	1953	1954	1952	1952	1952	1953	1952	1952
Cyprus		1960		1960	1960	1966	1960	1960		1960	1966

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Czech Republic		1993	1993	1993		1993	1993	1993			1993
Denmark		1928		1932	1958	1951	1972				1955
Djibouti		1978	1978	1978	1978	1978	1978	1978	1978		1978
Dominica		1983	1983	1983	1983	1983		1983		1983	1983
Dominican Republic		1956	1956	1956	1953	1956	1953	1973			1953
Ecuador			1954	1954	1975	1967	1975	1954		1978	1959
Egypt		1948	1960	1955	1956	1957	1954	1960	1960		1954
El Salvador				1995	1995		1995				
Equatorial Guinea				2001		2001					2001
Eritrea				2000		2000					2000
Estonia		1930		1996		1994					1994
Ethiopia				2003		1963	1963		1991		1963
Fiji		1974	1974	1974		2002					1974
Finland		1927		1936	1950	1950	1989				1951
France		1928	1930	1937	1950	1951	1952	1952	1953	1954	1951
Gabon		1961	1960	1960	1972	1960		1960	1961		1961

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Gambia				2000		2000					2000
Georgia				1993		1999	2002				1993
Germany		1928	1929	1956	1955	1957	1954			1959	1956
Ghana		1957	1959	1957	1959	1965	1961		1973		1959
Greece		1936		1952	1955	1962	1955	1955			1962
Grenada		1979	1979	1979	1979	1994		1979		1979	1979
Guatemala		1961	1961	1989	1952	1952	1952	1952	1953	1952	1952
Guinea			1959	1959	1959	1959		1959			1959
Guinea-Bissau		1977	1977	1977	1977		1977				1977
Guyana		1966	1966	1966	1966	1967		1966		1966	1966
Haiti		1955		1958	1952	1979					1957
Holy See											
Honduras				1957	1983	1956		1960			1956
Hungary		1928	1932	1956	1994	1957	1994	1956			1957
Iceland				1958		1950					1952
India		1927	1955	1954	1949		1959				

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Indonesia		1950		1950		1998	2002				1957
Iran		1972		1957				1972			
Iraq		1940	1962	1962	1951		1951	1960			1962
Ireland		1930	1930	1931	1951	1955	1969		1972		1955
Israel		1958		1955	1955	1957	1959	1959	1961	1953	1957
Italy		1928	1930	1934	1952	1958		1952	1953	1952	1958
Jamaica		1962	1963	1962	1962	1962				1962	1962
Japan		1928	1971	1932	1953	1965	1953		1956		1953
Jordan				1966	1969						1968
Kazakhstan				2001	2001	2000	2001				2001
Kenya		1964	1964	1964	1964		1964			1965	1964
Kiribati				2000		2000					2000
(North) Korea (Democratic People's Republic of)											
(South) Korea (Republic of)		2001	2001		1992		2001				
Kuwait				1968	1964	1961					

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Kyrgyzstan				1992	2000	1992		1992			1992
Laos				1964							
Latvia		1928			1994	1992					1992
Lebanon		1977	1962	1977	1962		1977	1977			1977
Lesotho		1966	1966	1966	2001	1966					1966
Liberia				1931	2003	1962					1962
Libya			1971	1961	1971	2000	1962	1962	1962		1962
Liechtenstein											
Lithuania		1934		1994	1994	1994	1994				1994
Luxembourg		1928	1958	1964	1958	1958	1958		1958		1958
Macedonia (The former Yugoslav Republic of)		1991		1991	1991	1991	1991			1991	1991
Madagascar		1962	1960	1960	1971	1960	1998	1960		2001	1998
Malawi		1965	1965	1999	1965	1999				1965	1965
Malaysia		1964		1957	1963		1974	1961		1964	1961
Maldives											
Mali		1964	1960	1960	1964	1960		1960			1964

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Malta		1965	1965	1965	1965	1965	1965	1965	1988		1965
Marshall Islands											
Mauritania		1963	1961	1961	1963	1961		1961	1964		2001
Mauritius		1969	1969	1969	1969		2004	1969		1969	1969
Mexico		1934	1934	1934		1950		1955	1991		
Micronesia (Federated States of)											
Moldova (Republic of)				2000	1996	1996	1996	1996			1996
Monaco											
Mongolia						1969					1969
Morocco		1956	1958	1957	1958						1957
Mozambique				2003	1977	1996	1977				1996
Myanmar (Burma)		1927	1954	1955		1955					
Namibia				2000		1995					1995
Nauru											
Nepal				2002							1996
Netherlands		1927	1936	1933	1951	1950	1950	1952	1992	1952	1993

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
New Zealand			1938	1938	1959		1949			1950	2003
Nicaragua		1934	1934	1934		1967	1981	1976			1967
Niger			1961	1961	1979	1961		1961			1962
Nigeria		1960	1961	1960	1960	1960	1961	1960		1960	1960
Niue											
Norway		1929	1933	1932	1949	1949	1949	1950		1955	1955
Oman				1998							
Pakistan		1927		1957	1953	1951			1952		1952
Palau											
Panama		1970	1970	1966	1958	1958	1970	1970	1971		1966
Papua New Guinea		1976	1976	1976		2000					1976
Paraguay			1964	1967	1967	1962		1966			1966
Peru		1945	1962	1960	1960	1960	1962				1964
Philippines		1994				1953	1953	1953			1953
Poland		1928		1958	1995	1957		1954	1954		1957
Portugal		1929	1959	1956	1962	1977	1972	1983	1985	1978	1964

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Qatar				1998	1976						
Romania				1957	1973	1957	1973	1973			1958
Russian Federation				1956	1998	1956		1961			1956
Rwanda		1962	1962	2001	1980	1988					1988
Saint Kitts and Nevis				2000		2000					2000
Saint Lucia		1980	1980	1980		1980		1980		1980	1980
Saint Vincent & Grenadines		1998	1998	1998	1998	2001		1998			1998
Samoa											
San Marino				1995		1986	1985				1986
Sao Tome and Principe		1982			1982	1992	1982				1992
Saudi Arabia				1978	1978						
Senegal		1962	1960	1960	1962	1960		1960	1962		1961
Serbia & Montenegro		2000		2000	2000	2000	2000			2000	2000
Seychelles			1978	1978		1978					1999
Sierra Leone		1961	1961	1961	1961	1961	1961	1961			1961
Singapore		1965		1965	1965		1965				1965

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Slovakia		1993	1993	1993		1993	1993	1993			1993
Slovenia		1992		1992	1992	1992	1992			1992	1992
Solomon Islands		1985	1985	1985	1985			1985			
Somalia		1960		1960				1960			
South Africa		1926	1932	1997		1996					1996
Spain		1929	1930	1932	1960	1977	1960	1958	1971	1967	1977
Sri Lanka			1971	1950	1956	1995		1983	1958		1972
Sudan		1957	1957	1957	1970			1970			1957
Suriname		1976		1976	1976	1976	1976	1976	1976		1996
Swaziland		1978	1978	1978	1981	1978		1978	1981		1978
Sweden		1926		1931	1949	1949	1949				1950
Switzerland		1929	1947	1940	1949	1975	1952				1999
Syrian Arab Republic		1960	1960	1960	1960	1960	1960	1957	1957		1957
Tajikistan				1993		1993		1993			1993
Tanzania (United Republic of)		1962	1962	1962	1962	2000	1962	1962		1964	1962
Thailand		1968		1969			1969				

State	Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
Togo			1960	1960		1960		1960			1983
Tonga											
Trinidad and Tobago		1963		1963		1963				1963	1963
Tunisia		1956	1957	1962	1957	1957	1968	1958			1957
Turkey			1975	1998	1951	1993	1950	1961	1952		1952
Turkmenistan				1997		1997					1997
Tuvalu											
Uganda		1963	1963	1963	1963			1963			1963
Ukraine				1956		1956		1961			1956
United Arab Emirates				1982	1982						
United Kingdom (of Great Britain and Northern Ireland)		1926		1931	1949	1949				1951	1950
United States of America											
Uruguay		1933	1933	1995	1973	1954		1954	1976	1954	1954
Uzbekistan				1992							1992
Vanuatu											

Convention	C19	C26	C29	C81	C87	C88	C95	C96	C97	C98
State										
Venezuela	1944	1944	1944	1967	1982	1964	1982		1983	1968
Viet Nam				1994						
Yemen	1969		1969	1976	1976		1969			1969
Zambia	1964	1964	1964		1996		1979		1964	1996
Zimbabwe	1980	1993	1998	1993	2003					1998
Total Number of States Parties	120	103	163	131	142	87	95	42	42	154

TABLE 9.2. Ratification of ILO Conventions Relevant to Migrant Workers (C100-138)

Convention \ State	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Entry into Force	1953	1955	1959	1960	1964	1964	1966	1972	1973	1976
Afghanistan	1969		1963	1969						
Albania	1957		1997	1997				2004		1998
Algeria	1962		1969	1969			1969			1984
Andorra										
Angola	1976		1976	1976						2001
Antigua and Barbuda	2003		1983	1983			2002			1983
Argentina	1956		1960	1968						1996
Armenia	1994			1994			1994			
Australia	1974		1960	1973			1969	1973		
Austria	1953	1969	1958	1973			1972			2000
Azerbaijan	1992	1992	2000	1992			1992	1993		1992
Bahamas	2001	2001	1976	2001	1976					2001
Bahrain			1998	2000						
Bangladesh	1998		1972	1972		1972				

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Barbados		1974		1967	1974		1974	1976			2000
Belarus		1956	1956	1995	1961			1968			1979
Belgium		1952		1961	1977			1969		2003	1988
Belize		1999	2000	1983	1999						2000
Benin		1968		1961	1961						2001
Bhutan											
Bolivia		1973	1973	1990	1977	1977	1977	1977	1977		1997
Bosnia and Herzegovina		1993	1993	2000	1993			1993	1993	1993	1993
Botswana		1997		1997	1997						1997
Brazil		1957	1965	1965	1965	1969	1969	1969	1983	1998	2001
Brunei Darussalam											
Bulgaria		1955		1999	1960						1980
Burkina Faso		1969		1997	1962				1974	1974	1999
Burundi		1993		1963	1993						2000
Cambodia		1999		1999	1999			1971			1999
Cameroon		1970		1962	1988			1970	1973	1973	2001

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Canada		1972		1959	1964			1966			
Cape Verde		1979		1979	1979		1987				
Central African Republic		1964		1964	1964	1964	1964				2000
Chad		1966		1961	1966					2000	
Chile		1971	1994	1999	1971			1968	1999		1999
China		1990						1997			1999
Colombia		1963		1963	1969						2001
Comoros		1978		1978	2004			1978			2004
Congo (Republic of)		1999		1999	1999						1999
Congo (Democratic Republic of)		1969		2001	2001	1967	1967				2001
Cook Islands											
Costa Rica		1960		1959	1962	1966		1966	1979		1976
Côte d'Ivoire		1961		1961	1961						2003
Croatia		1991	1991	1997	1991			1991		1991	1991
Cuba		1954	1954	1958	1965			1971	1972		1975
Cyprus		1987		1960	1968			1966			1997

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Czech Republic		1993		1996	1993			1993		1996	
Denmark		1960		1958	1960		1969	1970			1997
Djibouti		1978		1978				1978			
Dominica		1983		1983	1983						1983
Dominican Republic		1953		1958	1964			2001			1999
Ecuador		1957	1962	1962	1962	1969	1970	1972	1970		2000
Egypt		1960		1958	1960		1993		1976		1999
El Salvador		2000		1958	1995			1995	1995		1996
Equatorial Guinea		1985	1985	2001	2001						1985
Eritrea		2000		2000	2000						2000
Estonia		1996		1996				2003			
Ethiopia		1999		1999	1966						1999
Fiji		2002		1974	2002						2003
Finland		1963		1960	1970		1969	1968		1990	1976
France		1953		1969	1981		1974	1971	1972		1990
Gabon		1961		1961	1961						

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Gambia		2000		2000	2000						2000
Georgia		1993		1996	1993	1997		1993			1996
Germany		1956		1959	1961		1971	1971		1975	1976
Ghana		1968	1986	1958	1961	1964					
Greece		1975	1983	1962	1984			1984			1986
Grenada		1994		1979	2003						2003
Guatemala		1961	1989	1959	1960	1989	1963	1988	1988		1990
Guinea		1967		1961	1960	1966	1967	1966		1977	2003
Guinea-Bissau		1977		1977	1977						
Guyana		1975		1966	1975				1983		1998
Haiti		1958		1958	1976						
Holy See											
Honduras		1956		1958	1960			1980			1980
Hungary		1956		1994	1961			1969		1998	1998
Iceland		1958		1960	1963			1990			1999
India		1958		2000	1960		1964	1998			

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Indonesia		1958		1999	1999						1999
Iran		1972		1959	1964			1972			
Iraq		1963		1959	1959		1978	1970	1974	1974	1985
Ireland		1974		1958	1999		1964	1967		1974	1978
Israel		1965		1958	1959	1964	1965	1970			1979
Italy		1956		1968	1963	1966	1967	1971		1981	1981
Jamaica		1975		1962	1975	1966		1975			2003
Japan		1967						1986	1971		2000
Jordan		1966		1958	1963	1963	1963	1966			1998
Kazakhstan		2001		2001	1999			1999			2001
Kenya		2001		1964	2001		1971		1979	1979	1979
Kiribati				2000							
(North) Korea (Democratic People's Republic of)											
(South) Korea (Republic of)		1997			1998			1992	2001		1999
Kuwait				1961	1966	1963					1999

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Kyrgyzstan		1992	1992	1999	1992			1992			1992
Laos											
Latvia		1992		1992	1992			1992	1993	1994	
Lebanon		1977		1977	1977			1977	1977		2003
Lesotho		1998		2001	1998						2001
Liberia				1962	1959						
Libya		1962	1975	1961	1961		1975	1971	1971		1975
Liechtenstein											
Lithuania		1994		1994	1994			2004	1994		1998
Luxembourg		1967	1969	1964	2001					1979	1977
Macedonia (The former Yugoslav Republic of)		1991	1991	2003	1991			1991	1991	1991	1991
Madagascar		1962			1961	1964	1964	1966		1972	2000
Malawi		1965		1999	1965						1999
Malaysia		1997									1997
Maldives											
Mali		1968		1962	1964						2002

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Malta		1988		1965	1968	1988			1988	1988	1988
Marshall Islands											
Mauritania		2001		1997	1963		1968	1971			2001
Mauritius		2002		1969	2002						1990
Mexico		1952		1959	1961		1978		1973		
Micronesia (Federated States of)											
Moldova (Republic of)		2000	1997	1993	1996	1996		1996	2000	1998	1999
Monaco											
Mongolia		1969	1969		1969			1976			2002
Morocco		1979		1966	1963			1979			2000
Mozambique		1977		1977	1977			1996			2003
Myanmar (Burma)											
Namibia				2000	2001						2000
Nauru											
Nepal		1976			1974				1974		1997
Netherlands		1971	1981	1959	1973		1964	1967	1973		1976

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
New Zealand		1983		1968	1983			1965			
Nicaragua		1967		1967	1967	1981		1981	1976		1981
Niger		1966		1962	1962	1964			1980		1978
Nigeria		1974		1960	2002						2002
Niue											
Norway		1959		1958	1959		1963	1966		1973	1980
Oman											
Pakistan		2001		1960	1961		1969				
Palau											
Panama		1958		1966	1966	1971		1970			2000
Papua New Guinea		2000	2000	1976	2000			1976			2000
Paraguay		1964		1968	1967	1969		1969			2004
Peru		1960		1960	1970			1967			2002
Philippines		1953		1960	1960		1994	1976			1998
Poland		1954	1976	1958	1961			1966			1978
Portugal		1967	1985	1959	1959	1981		1981	1983	1981	1998

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Qatar					1976						
Romania		1957		1998	1973	1973		1973	1975		1975
Russian Federation		1956	1956	1998	1961			1967			1979
Rwanda		1980		1962	1981		1989			1991	1981
Saint Kitts and Nevis		2000		2000	2000						
Saint Lucia		1983		1980	1983						
Saint Vincent & Grenadines		2001		1998	2001						
Samoa											
San Marino		1985	1998	1995	1986						1995
Sao Tome and Principe		1982			1982						
Saudi Arabia		1978		1978	1978						
Senegal		1962		1961	1967	1967		1966			1999
Serbia & Montenegro		2000	2000	2003	2000			2000	2000	2000	2000
Seychelles		1999		1978	1999						2000
Sierra Leone		1968		1961	1966						
Singapore		2002									

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Slovakia		1993		1997	1993			1993			1997
Slovenia		1992	1992	1997	1992			1992	1992	1992	1992
Solomon Islands											
Somalia				1961	1961						
South Africa		2000		1997	1997						2000
Spain		1967	1965	1967	1967	1973		1970	1971	1972	1977
Sri Lanka		1993	1993	2003	1998				1975		2000
Sudan		1970		1970	1970	1970		1970			2003
Suriname				1976			1976	1976			
Swaziland		1981		1979	1981				1981		2002
Sweden		1962		1958	1962		1963	1965		1978	1990
Switzerland		1972		1958	1961					1992	1999
Syrian Arab Republic		1957		1958	1960	1964	1963		1972		2001
Tajikistan		1993	1993	1999	1993			1993			1993
Tanzania (United Republic of)		2002		1962	2002				1983		1998
Thailand		1999		1969				1969			2004

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Togo		1983		1999	1983						1984
Tonga											
Trinidad and Tobago		1997		1963	1970						2004
Tunisia		1968		1959	1959	1970	1965	1966			1995
Turkey		1967		1961	1967		1974	1977			1998
Turkmenistan		1997		1997	1997						
Tuvalu											
Uganda				1963				1967			2003
Ukraine		1956	1956	2000	1961			1968		2001	1979
United Arab Emirates		1997		1997	2001						1998
United Kingdom (of Great Britain and Northern Ireland)		1971		1957	1999			1966			2000
United States of America				1991							
Uruguay		1989	1954	1968	1989		1983	1977	1977	1977	1977
Uzbekistan		1992	1992	1997	1992			1992			
Vanuatu											

State	Convention	C100	C103	C105	C111	C117	C118	C122	C131	C132	C138
Venezuela		1982		1964	1971	1983	1982	1982			1987
Viet Nam		1997			1997						2003
Yemen		1976		1969	1969			1989	1976	1976	2000
Zambia		1972	1979	1965	1979	1964		1979	1972		1976
Zimbabwe		1989		1998	1999						2000
Total number of States Parties:		161	40	161	160	32	38	95	46	33	131

TABLE 9.3. Ratification of ILO Conventions Relevant to Migrant Workers (C142-184)

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
Entry into Force	1977	1978	1983	1983	1986	1985	1991	2000	2000	2000	2002	2003
Afghanistan	1979											
Albania								2002	1999	2001	2004	
Algeria	1984									2001		
Andorra												
Angola										2001		
Antigua and Barbuda	2002		2002			2002				2002		
Argentina	1978			1988						2001		
Armenia												
Australia	1985			1990		1993						
Austria	1979									2001	2004	
Azerbaijan	1992									2004		
Bahamas										2001		
Bahrain										2001		
Bangladesh										2001		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
Barbados										2000		
Belarus	1979		2000							2000	2004	
Belgium									2004	2002		
Belize			1999	1999						2000		
Benin		1980								2001		
Bhutan												
Bolivia				1998						2003		
Bosnia and Herzegovina	1993	1993	1993	1993		1993				2001		
Botswana										2000		
Brazil	1981		1992				1993			2000		
Brunei Darussalam												
Bulgaria										2000	2001	
Burkina Faso		1977								2001		
Burundi										2002		
Cambodia												
Cameroon		1978				1988				2002		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Canada										2000		
Cape Verde			2000							2001		
Central African Republic										2000		
Chad										2000		
Chile				1994						2000		
China										2002		
Colombia												
Comoros										2004		
Congo (Republic of)										2002		
Congo (Democratic Republic of)						1987				2001		
Cook Islands												
Costa Rica										2001		
Côte d'Ivoire										2003		
Croatia			1991	1991						2001		
Cuba	1978		1982								2004	

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Cyprus	1977	1977	1989			1985				2000		
Czech Republic	1993		1993						2000	2001		
Denmark	1981		1995							2000		
Djibouti												
Dominica										2001		
Dominican Republic										2000		
Ecuador	1977									2000		
Egypt	1982									2002		
El Salvador	1995		2000	2000						2000		
Equatorial Guinea										2001		
Eritrea												
Estonia										2001		
Ethiopia			1991	1991		1991			1999	2003		
Fiji										2002		
Finland	1977		1985	1983		1992	1990	1998	1999	2000		2003
France	1984			1989		1989				2001		

State	Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Gabon							1988				2001		
Gambia											2001		
Georgia		1993								2002	2002		
Germany		1980									2002		
Ghana											2000		
Greece		1989			1988						2001		
Grenada											2003		
Guatemala					1994						2001		
Guinea		1978	1978		1995						2003		
Guinea-Bissau													
Guyana		1983									2001		
Haiti													
Holy See													
Honduras											2001		
Hungary		1976		1994						2003	2000	2003	
Iceland				1991	2000						2000		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
India												
Indonesia										2000		
Iran										2002		
Iraq	1978									2001		
Ireland	1979		1995					1999		1999		
Israel	1979											
Italy	1979	1981							2000	2000	2001	
Jamaica										2003		
Japan	1986			1995					1999	2001		
Jordan	1979									2000		
Kazakhstan			1996							2003		
Kenya	1979	1979								2001		
Kiribati												
(North) Korea (Democratic People's Republic of)										2001		
(South) Korea (Republic of)	1994			2001						2001		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Kuwait										2000		
Kyrgyzstan	1992									2004		2004
Laos												
Latvia	1993		1994			1994						
Lebanon	2000									2001		
Lesotho			2001			2001				2001		
Liberia										2003		
Libya										2000		
Liechtenstein												
Lithuania	1994			2004					2004	2003	2003	
Luxembourg	2001		2001			2001				2001		
Macedonia (The former Yugoslav Republic of)	1991	1991	1991	1991		1991				2002		
Madagascar										2001		
Malawi						1986				1999		
Malaysia										2000		
Maldives												

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Mali										2000		
Malta										2001		
Marshall Islands												
Mauritania										2001		
Mauritius				2004						2000		
Mexico	1978		1984							2000		
Micronesia (Federated States of)												
Moldova (Republic of)	2001		2000			1997			2001	2002		2002
Monaco												
Mongolia			1998							2001		
Morocco						1993			1999	2001		
Mozambique										2001		
Myanmar (Burma)												
Namibia						1996				2000		
Nauru												
Nepal										2002		

Convention State	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Netherlands	1979		1991	1988				2002	1999	2002		
New Zealand										2001		
Nicaragua	1977									2000		
Niger	1993			1985		1985				2000		
Nigeria			1994							2002		
Niue												
Norway	1976	1979	1982	1982			1990			2000		
Oman										2001		
Pakistan										2001		
Palau												
Panama									1999	2000		
Papua New Guinea						2000				2000		
Paraguay										2001		
Peru				1986						2002		
Philippines					1994					2000		
Poland	1979									2002		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
Portugal	1981	1978	1985	1985		1995			2002	2000		
Qatar										2000		
Romania							1992			2000	2002	
Russian Federation	1979		1998	1998						2003		
Rwanda										2000		
Saint Kitts and Nevis										2000		
Saint Lucia						2000				2000		
Saint Vincent & Grenadines										2001		
Samoa												
San Marino	1985	1985		1988						2000		
Sao Tome and Principe												
Saudi Arabia										2001		
Senegal										2000		
Serbia & Montenegro	2000	2000	2000	2000		2000				2003		
Seychelles										1999		
Sierra Leone												

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
Singapore										2001		
Slovakia	1993		1993	2002						1999	2000	2002
Slovenia	1992	1992	1992	1992		1992				2001		
Solomon Islands												
Somalia												
South Africa			2003							2000		
Spain	1977		1985	1985	1985	1985			1999	2001		
Sri Lanka										2001		
Sudan										2002		
Suriname												
Swaziland										2002		
Sweden	1976	1982	1982	1982	1984	1983	1990			2001		2004
Switzerland	1977						1990			2000		
Syrian Arab Republic										2003		
Tajikistan	1993											
Tanzania (United Republic of)	1983									2001		

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
Thailand										2001		
Togo		1983								2000		
Tonga												
Trinidad and Tobago										2003		
Tunisia	1989									2000		
Turkey	1993					1995				2001		
Turkmenistan												
Tuvalu												
Uganda		1978				1990				2001		
Ukraine	1979			2000		1994				2000		
United Arab Emirates										2001		
United Kingdom (of Great Britain and Northern Ireland)	1977									2000		
United States of America										1999		
Uruguay			1988	1989					2004	2001		
Uzbekistan												

Convention	C142	C143	C155	C156	C157	C158	C168	C177	C181	C182	C183	C184
State												
Vanuatu												
Venezuela	1984	1983	1984	1984		1985						
Viet Nam			1994							2000		
Yemen				1989		1989				2000		
Zambia						1990				2001		
Zimbabwe			2003							2000		
Total Number of States Parties	62	18	40	34	3	33	6	4	14	150	10	5

Part IV

Conclusion

10

Conclusions

This manual was designed with Asian NGOs in mind. However, with the exception of the regional human rights mechanisms, the methodology developed for this manual is also applicable to other regions.

States can be held accountable for breaching their obligations under international law. Once the international mechanisms applicable to a particular human rights violation are identified, users should refer to the relevant chapters and subsections for more detailed information on procedural requirements, sanctions and enforcement. Users should also refer to the relevant UN Treaty or ILO Convention, which can be accessed through the websites indicated, for more details on particular mechanisms.

As discussed in earlier chapters, the UN or ILO mechanism to be used in addressing violations of migrant workers' rights will vary according to the nature of the problem. It should also be emphasized that the focus of the work of the NGO dealing with the violation will play a role in identifying a suitable mechanism. Different NGOs are concerned with the different stages in the process of labour migration. While some work primarily with pre-departure and re-integration issues, focusing on sending country policies and programs for labour migrants, others are more active in protecting the rights of migrant workers in receiving countries.

Even in countries where the Migrant Workers' Convention is not yet ratified, human rights can be protected because most of the standards embodied in UN and ILO instruments are applicable to nationals and non-nationals alike. Remember that human rights violations must be linked to a State's obligation to do something or refrain from doing something and that many international mechanisms require complainants to exhaust domestic remedies before they can be invoked by the victim of a human rights violation.

The glaring weakness of international human rights law is the limited number of formal enforcement mechanisms. In most cases, the only

sanction is the mobilization of shame. However, this should not deter NGOs. Shame has proven to be an effective sanction in the past. In general, international human rights mechanisms are most effective in combination with other NGO strategies. They should be viewed as a complement to tools such as lobbying and advocacy. Furthermore, NGOs wishing to use the international system should try to contact and work with the members of treaty bodies, with Working Groups and with Special Rapporteurs.

Appendices

Appendix A. Glossary of Terms

Appendix B. References

Appendix C. Bibliography

Appendix A – Glossary of Terms

A

Accession:

When a state signs and ratifies a treaty at a date later than when it was first presented or after it is already in force. Accession has the same legal force and effect as ratification.

B

Bodies of Principles, Codes of Ethics, Declarations, Guidelines:

These are examples of international instruments in non-treaty form. They represent a collective statement of principles or a declaration of intention. These instruments are not open to ratification. They are not usually legally binding on states (the exception being the Universal Declaration of Human Rights), but they reaffirm principles and can become sources of customary international law, *cf.* declaration

C

Charter, Convention, Covenant, Pact, Protocol, Treaty:

These are all international agreements among states that are intended to be legally binding from the date of ratification.

Charter-based Mechanisms:

See “extra-conventional mechanisms”.

Commission of Inquiry:

The independent body that may be appointed by the ILO’s Governing Body in order to investigate a complaint lodged against a state under article 26 of the ILO Constitution. A Commission of Inquiry is composed of three experts. *cf.* complaint

Committee:

See “treaty body”.

Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts):

The body composed of 20 independent experts whose tasks include reviewing government reports on the implementation of ratified ILO Conventions, as well as government reports on the state of national law and practice with respect to certain unratified Conventions and Recommendations. *cf.* Regular System of Supervision

Committee on Freedom of Association (CFA):

The CFA is the tripartite committee of the ILO's Governing Body responsible for examining complaints alleging violations of freedom of association.

Communication:

Euphemism for "complaint" in the UN human rights system.

Complaint:

The term for an allegation made under article 26 of the ILO Constitution. The allegation must maintain that a state is not implementing fully the provisions of an ILO Convention which it has ratified.

Conference Committee on the Application of Standards (Conference Committee):

The tripartite committee of the International Labour Conference that is set up each year and charged with reviewing the report of the Committee of Experts. It also discusses cases involving the implementation of ratified ILO Conventions by individual states. *cf.* Committee of Experts.

Constitutional Obligations:

Those requirements imposed by the ILO Constitution on states which are members of the ILO. They include the obligation to submit new instruments to the competent national authorities, and to report on ratified ILO Conventions, unratified ILO Conventions, and ILO Recommendations.

Customary International Law:

Customary international law is automatically incorporated into domestic law unless the state has been a persistent objector. Therefore, it gives the individual a potential remedy in domestic law. In order to claim that a principle has become part of customary international law, you must show consistent and widespread state practice to that effect and that a large number of states consider it binding. For example, the UDHR became binding because states and individuals treated it as binding. Now, in the

conscience of most states, it is regarded as a binding instrument, even though such declarations are not usually binding.

D

Declaration (ILO):

A formal statement made by the International Labour Conference or the ILO's Governing Body. Also refers to a formal statement made by an ILO member state when it ratifies an ILO Convention, usually to make use of a flexibility clause or to specify the labour standards that will apply to it under such a convention. For example, a state ratifying the Minimum Age Convention is required to specify, in a declaration appended to its ratification, the minimum age for admission to employment in its territory. *cf.* flexibility clause

Declaration (UN):

1: The formal statement a State Party may make under CERD, CAT or MWC recognizing the competence of the relevant committee (or treaty-body) to receive and consider communications from individuals or groups of individuals. *cf.* communication, treaty-body.

2: The term applies to various international instruments, including binding, or non-binding international or universal aspirations made by parties to the declaration. Some declarations may have maintained provisions that were not binding when first adopted, but with the passage of time, developed into customary international law, and thereby eventually became binding in character.¹²⁶ The Universal Declaration of Human Rights offers such an example.

Denunciation or Withdrawal from a Treaty:

When a state declares that it is no longer bound by a treaty it has previously ratified. A state may denounce a treaty or withdraw from it after giving the appropriate body notice of its intention to do so.

E

Entry into Force:

When a treaty enters into force, it becomes a binding legal document. The terms of a treaty may specify that a certain number of ratifications is needed before it is considered enforceable.

¹²⁶ <http://untreaty.un.org/English/guide.asp#reservation>

Exhaustion of Domestic Remedies:

In many cases, all domestic remedies must have been accessed and carried through to the end (or “exhausted”) before an individual or group can make a complaint to the UN or ILO. Domestic remedies may also be exhausted when no effective remedy exists at the national level.

Extra-Conventional Mechanisms:

Mechanisms for dealing with violations of human rights and fundamental freedoms that have been established by a UN resolution, rather than a treaty. These mechanisms are also referred to as “charter-based” because they are directly or indirectly created by the Charter of the United Nations. *cf.* treaty-based mechanisms

F**Flexibility Clause:**

Unlike UN treaties, reservations cannot be entered to ILO Conventions. Instead, ILO Conventions contain clauses which take into account the particular economic and social systems, and levels of development of the ILO member states. These clauses are referred to as flexibility clauses because they allow for a certain degree of flexibility in the labour standards adopted. States are said to invoke flexibility clauses by making declarations specifying the standards that will apply to them. *cf.* declaration (ILO).

Fundamental Principles and Rights at Work:

This term refers to four fundamental principles and rights, the protection and promotion of which is considered a priority by the ILO. They are: freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in employment. Certain additional obligations are imposed on ILO member states with respect to the Conventions enshrining these fundamental principles.

G**Governing Body (of the ILO):**

The Governing Body is the ILO’s executive council and is elected by the International Labour Conference. The Governing Body is composed of government, employer and worker representatives who meet three times a year in Geneva.

I

ILO (International Labour Organization):

Founded in 1919 under the Treaty of Versailles, the ILO became the United Nations' first specialized agency in 1946. The ILO's mandate includes advancing social justice and improving working and living conditions for workers everywhere. The ILO is characterized by its tripartite structure. *cf.* tripartism.

Individual Complaint Mechanism:

Covers isolated instances of alleged human rights violations. It is available under the OPCCPR, CERD, CAT and MWC to individuals or groups of individuals who believe that their human rights or fundamental freedoms have been violated.

Instruments:

A general term for formal legal documents. In the ILO, this term includes Conventions, Recommendations and Protocols.

International Labour Conference:

The International Labour Conference is often called "an international parliament of labour". The Conference is composed of government, employer and worker delegates from ILO member states, accompanied by their technical advisors, who meet once a year in Geneva.

International Labour Office:

The International Labour Office is the ILO's permanent secretariat. Its activities are overseen by the Governing Body and the Director-General.

Interstate Complaint Mechanism:

The CCPR, CERD, CAT and MWC provide this procedure in cases where one State Party believes that another State Party is not fulfilling its obligations under a treaty.

M

Member States:

Refers to States which are members of the ILO and bound by the terms of the ILO Constitution. Also refers to states which are members of the UN and bound by the terms of the UN Charter.

Mini-Report:

Contains information on specific human rights problems that deserve scrutiny. Mini-reports are usually prepared when the committee has asked the state for information on particular issues and an NGO wishes to provide alternative information on those issues or when an NGO does not have the resources for a full 'Shadow' Report. *cf.* 'Shadow' Report.

Model Questionnaire:

Some bodies of the UN provide model formats, called model questionnaires, for the submission of communications. Use of these model questionnaires is not mandatory since communications are considered even when they are not submitted in this format.

O**(Optional) Protocol:**

An international agreement amending or supplementing an original treaty. States Parties to the original treaty are not bound by an optional protocol unless they separately ratify or accede to it.

R**Ratification:**

Ratification is the act by which a state formally agrees to be legally bound by a treaty's provisions. It usually requires the approval of the state's legislative body (or bodies, in the case of federal states). A state that ratifies a treaty is called a "State Party" to that treaty. An agreement that is ratified is applicable and legally binding on the State Party. Some treaties do not come into force until they have been ratified by a certain number of the states that have signed it. The number of ratifications required is specified in the text of the treaty.

Recommendation:

ILO Recommendations cannot be ratified and are therefore, strictly speaking, not legally binding on ILO member states. Recommendations provide the governments of ILO member States with policy or technical guidelines and sometimes clarify or complement ILO Conventions. Therefore, in a practical sense, ILO Recommendations can be legally binding on ILO Members states who have ratified the associated Convention(s) to the extent that they interpret the language of the Convention(s) and define the nature of the government's obligations.

Regular System of Supervision:

The ILO's regular system of supervision is based on its review of government reports on ratified and unratified ILO Conventions. These government reports, which can be detailed or simplified, include information on government measures taken to fulfill a state's obligations under ILO instruments. Government reports on ratified ILO Conventions are due at regular intervals and are said to be "periodic".

Reporting Mechanism:

This mechanism is available under the CCPR, ESCR, CADE, CERD, CEDAW, CAT, CRC and MWC. A state that has ratified or acceded to one of these treaties is required to submit a report on its fulfillment of its obligations under the treaty. The aim of the reporting mechanism is to make States Parties accountable in the area of human rights. In general, reports are submitted to the Secretary-General of the UN, who transmits them to the relevant treaty body.

Representation:

The term for an allegation made under article 24 of the ILO Constitution. It must be made by an industrial organization of workers or employers and allege that a state is not implementing the terms of an ILO Convention it has ratified.

Reservation:

Reservations are made at the time of ratification or accession. They indicate that the State Party disagrees with certain provisions of the treaty and is therefore not legally obligated to fulfill them. Reservations must not be incompatible with the overall purpose of the treaty. Some human rights treaties are not open to reservations. *cf.* flexibility clauses

S**'Shadow' Report:**

A comprehensive critique of the state report submitted under the reporting mechanism. 'Shadow' Reports are usually prepared by NGOs who have not had an opportunity to participate in the state reporting process. *cf.* mini-reports.

Signature:

Indicates a state's intention to be bound by the terms of an international agreement, but does not actually bind the state. *cf.* ratification.

The signature of an international instrument is the first step for a State toward becoming a Party to an international instrument. The following step is ratification. By signing an international instrument, States are given a period of time before becoming fully bound by the text of the document. According to Article 18 of the Vienna Convention on the Law of Treaties, signatories to international treaties commit themselves to refrain from acts which would defeat the object and purpose of the signed document.

Special Rapporteurs:

Experts who are assigned to particular thematic issues or country situations. Their functions vary according to their particular mandate. In general, they collect information on alleged violations of human rights and formulate policy recommendations. In some cases, they visit individual countries.

Special Systems of Supervision:

The ILO's special systems of supervision (or grievance procedures) include the filing of representations or complaints against States Parties to ILO Conventions, and the Freedom of Association procedures which apply to all ILO member states. *cf.* complaints and representations.

States Parties:

States that have ratified or acceded to a treaty.

Succession:

Act by which a new state assumes the treaty obligations of its predecessor.

A State that has gained independence from another State may choose to remain bound by an international instrument, which applied to its territory prior to independence, by means of a Declaration of Succession.

T

Treaty Body:

A group of experts set up according to the terms of a treaty to monitor each State Party's progress in fulfilling its obligations under that treaty. Also called a committee.

Treaty-based Mechanisms:

UN treaties dealing with human rights have established three mechanisms for dealing with violations of human rights and fundamental freedoms: the individual complaint mechanism, the interstate complaint mechanism

and the reporting mechanism. *cf.* extra-conventional or charter-based mechanisms.

Tripartism (noun) and Tripartite (adjective):

Tripartism is the ILO's defining characteristic, unique among international organizations. It means that three parties are represented on the ILO's main bodies and participate in the decision making, including the formulation of international labour standards and supervision of their implementation. These three parties are governments of states that are members of the ILO; representatives of workers; and representatives of employers.

W

Working Groups:

Groups of experts who concentrate on particular themes in human rights or on ways of strengthening and clarifying existing human rights mechanisms. Like the Special Rapporteurs, their functions vary according to their mandate.

Appendix B – References

A. INTERNET

The best way to access up-to-date human rights material is online. The following sites are our sources of information:

untreaty.un.org

The UN Treaty Collection includes five categories of treaty-related data: the status of multilateral treaties deposited with the Secretary-General, the UN treaty series, recently deposited multilateral treaties, photographs of treaty signature ceremonies, and the titles of multilateral treaties deposited with the Secretary-General in the UN official languages (Arabic, Chinese, English, French, Russian and Spanish).

While subscription access to the UN Treaty Collection Web site was introduced on 1 March 2000 a category of users which includes “Non-profit, NGOs, Government, UN Agencies” can receive free access to the site.

www.ohchr.org/english/

The texts of many human rights treaties can also be accessed free of charge through the United Nations High Commissioner for Human Rights homepage by clicking on the “International Law” link.

The main sites for the UN and the ILO are:

www.un.org

UN homepage with links to general information about the UN, its members and its missions.

www.unhchr.ch/html/menu2/7/b/mmig.htm

Special Rapporteur of the Commission on Human Rights on the Human Rights of Migrants.

www.ilo.org

ILO homepage. Conventions and Recommendations can be accessed at www.ilo.org/ilolex/english/convdisp1.htm.

General information on human rights can be found at the following:

www.hri.ca

Founded in 1976, Human Rights Internet's (HRI) primary role is to serve the information needs of international scholars, human rights activists, asylum lawyers, and other organizations via an extensive documentation centre and computerized databases.

www.hrw.org/hrw/index.html

Human Rights Watch is dedicated to protecting the human rights of people around the world.

www.unesco.org

Contains links to UNESCO partner NGOs and some human rights documents.

Sites dealing more specifically with women or migration are:

www.december18.net/web/general/start.php

A portal on the promotion and protection of migrants' rights.

www.migrantwatch.org

An independent global monitoring body focusing on the human rights of migrants.

www.ipsnews.net/migration/index.html

A project by IPS Asia-Pacific that focuses on the human side of migration. It also provides links to organizations working on migrant workers at the global, regional and national levels.

www.iom.ch

The International Organization for Migration acts with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and uphold the dignity and well-being of migrants.

www.pdhre.org

The People's Decade of Human Rights Education site includes topics such as "migrant workers" and "women" and excerpts of relevant UN and ILO documents, as well as links to www.unhcr.ch.

www.catwinternational.org

The Coalition Against Trafficking in Women is a feminist human rights NGO that works internationally to oppose all forms of sexual exploitation.

www.gaatw.org

The Global Alliance Against Traffic in Women (GAATW) is a non-governmental human rights network comprising individuals and organisations that work on issues related to trafficking in women and women's labour migration worldwide.

www.ecpat.net

ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) was originally established as a campaign to end child prostitution in Asian tourism. It has since broadened its focus to include the issues of child pornography and the trafficking of children for sexual purposes.

www.unifem.org

UNIFEM (United Nations Development Fund for Women) works with governments, NGOs, community and other organizations, as well as individuals, in East and South East Asia to promote gender equality between women and men and advance the status of women. Their particular focus is on implementing the Beijing Platform for Action through the political and economic empowerment of women.

www.ercomer.org/wwwvl/index.html

The World Wide Web Virtual Library on Migration and Ethnic Relations. A collection of links to major Internet resources in the field of migration and ethnic relations. This site is part of the much larger WWW Virtual Library that covers many other subjects.

B. TEXTS

If Internet access is not an option, then the best up-to-date source of information on human rights documents is the series *Multilateral Treaties Deposited with the Secretary-General, Status as at 30 April 1999* (ST/LEG/SER.E/17), (New York: United Nations, 1999). This publication consolidates the information (signatures, ratifications, accessions, reservations, declarations, objections, etc.) relating to all multilateral treaties covered up to 30 April 1999. References are also given regarding the publication of the text of the treaty in the United Nations Treaty Series (U.N.T.S.), or if it has not yet been published in the U.N.T.S., the reference to the United Nations documentation where its text may be found.

In conjunction with the *Multilateral Treaties Deposited with the Secretary-General* and the *Treaty Series*, it is useful to have a text dealing specifically with women's human rights in the context of the treaty system. The ones which were particularly helpful to our project were:

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Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*. Vol. 16, No. 9 (B), July 2004.

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Schuler, M.A., ed., *Claiming Our Place: Working the Human Rights System to Women's Advantage* (Washington, D.C.: Institute for Women, Law and Development, 1993).

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Office of the High Commissioner for Human Rights (Geneva), United Nations Institute for Training and Research (UNITAR) and United Nations Staff College Project (ILO Turin Centre), *Manual on Human Rights Reporting: Under Six Major International Human Rights Instruments* (Geneva: United Nations, 1997).

Finally, UNESCO has published a comprehensive bibliography of human rights-related materials. It is organized thematically and includes categories such as “women” and “migration”:

Symonides, J., Volodin V., & Rivet, S., eds., *Access to Human Rights Documentation: Documentation, Bibliographies and Data Bases on Human Rights*, 2nd ed. (Paris: UNESCO, 1994).

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