

# Combating Discrimination and Promoting Equal Treatment and Opportunities for Migrant Workers



International Labour Organization



The ILO has specific standards on the protection of migrant workers:

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



## Two main principles of the ILO Conventions on migrant workers:

### EQUALITY OF OPPORTUNITY AND TREATMENT

with respect to employment and occupation aims at ensuring equal access to employment, vocational training and education, job promotion and advancement, job security, and equal pay for work of equal value and conditions of work. Ensure that workers' performance is rewarded according to productivity and merit, taking into account the objective characteristics of the job (e.g. skills, knowledge, responsibilities, working conditions), and without interference of considerations unrelated to merit (e.g. sex, race or religion)

### COMBATING DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

including any distinction, exclusion or preference based on race, colour, 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 (for which there is no objective or legitimate justification)

## Objectives of Conventions Nos 97 and 143 and Recommendations Nos 86 and 151

### Convention No. 97 and Recommendation No. 86 aim:

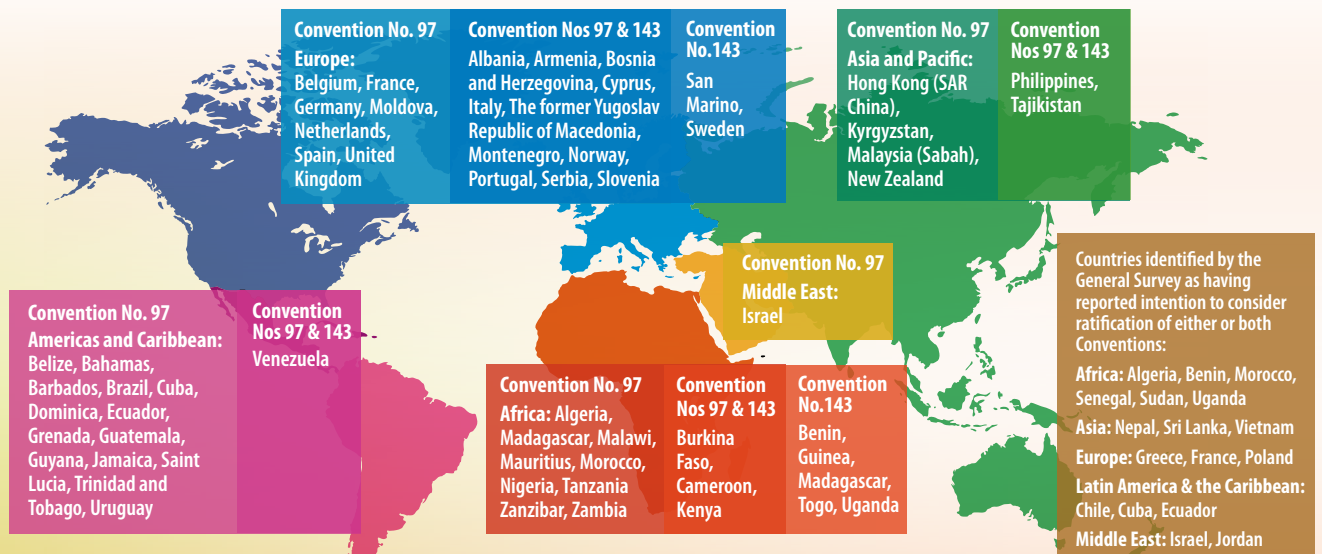
- to secure no less favourable treatment to migrant workers in a regular situation as compared to nationals;
- to enhance cooperation between Member States and to provide guidance on general protection measures; and
- to provide guidance on the conditions in which labour migration should take place.

### Convention No. 143 and Recommendation No. 151 supplement these provisions, aiming:

- to ensure respect for the basic human rights of all migrant workers, including migrant workers in an irregular situation;
- to guarantee equality of opportunity and treatment to migrant workers in a regular situation; and
- to prevent irregular migration including the unlawful employment of migrant workers.

The objectives of the two Conventions and two Recommendations are highly interlinked and complementary.

## Ratifications of ILO Migrant Workers' Conventions Nos 97 and 143



### The ratification and effective implementation of the Conventions contribute to:

- promoting fair access to opportunities and preventing poor working conditions through ensuring workplaces comply with labour standards, particularly in respect of wages, working time, occupational safety and health, etc.;
- creating more equal opportunities for both the existing workforce and new arrivals, thus also laying the foundations for an improvement in the situation of all workers; and
- providing a bulwark against a race to the bottom in times of economic downturn and/or the rise in extremist positions that foment discrimination and xenophobia which may preclude reforms that can adversely impact migrant workers.

## Convention No. 97:

- Convention No. 97 promotes the conclusion of **bilateral labour agreements (BLAs)** between States where there is a considerable flow of migrant workers.
- BLAs can help origin, transit and destination countries by including specific provisions to combat abusive migrant recruitment practices, promote sound skills and jobs matching, portability of social security entitlements, etc.
- The accompanying ILO Recommendation No. 86 contains a model bilateral agreement in its Annex.

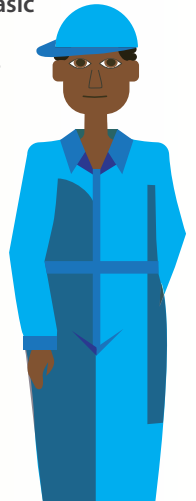
## Convention No. 143:

### Addressing irregular migration

- Convention No. 143 is the **first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants**, while laying down the **general obligation to respect basic human rights of all migrant workers**.
- In fact, it aims to **prevent all forms of irregular migration in abusive conditions**, including the unlawful or unauthorized employment of migrant workers.
- It includes targeted provisions to **address the problems arising out of irregular migration flows and illegal employment of migrants** and on suppressing the activities of organizers of clandestine movements of migrants and their accomplices.

### Fundamental rights at work of all migrant workers

- Convention No. 143 recognizes the need to **ensure full respect of human rights of all migrant workers**, including those in an irregular situation (Article 1).
- **The eight ILO Fundamental Conventions:** the right to freedom of association and collective bargaining (Conventions Nos 87 and 98), the prohibition and abolition of forced labour (Conventions Nos 29 and 105 as well as the 2014 Protocol to the Forced Labour Convention No. 29), the elimination of child labour (Conventions Nos. 138 and 182), as well as the right to equal remuneration and the prohibition of all forms of discrimination in employment and occupation (Conventions Nos 100 and 111).



## Free choice of employment, loss of employment and consideration of regularization:



- Conventions Nos 97 and 143 do not affect the right of each Member State to refuse entrance or stay and to determine the methods of entry and stay. However, they recall that:
- Mere loss of employment of migrant workers legally in the territory should not automatically lead to irregular migration, nor imply the withdrawal of his/her residence and work permit.
- The migrant worker should enjoy equality of treatment in respect of security of employment, the provision of alternative employment, relief work and retraining.
- Member States may consider regularization of migrant workers, "Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and take up legal employment."
- A Member State may decide to give to migrant workers the free choice of employment, while assuring the right to geographical mobility after a period no longer than two years.

## Achieving fair labour migration governance:

The 2016 "Promoting Fair Migration", General Survey concerning the Migrant Workers Instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations:

- noted that the objectives of the instruments retain their relevance (as when they were adopted), for all migrant workers (irrespective of gender, origin, skill and status);
- mentioned that some governments reported their intention to consider the ratification of the instruments;
- highlighted that certain governments and a number of workers' organizations, in particular, considered that an ILO campaign to promote ratification and implementation of the instruments was desirable; and
- invited governments to consider adopting measures to give effect to the provisions of the instruments, in particular by engaging in tripartite dialogue on possible ratification of Conventions Nos 97 and 143.

*Irregular migration exposes migrants to discrimination, exploitation, abusive working and living conditions, and in some cases loss of their lives which amplifies the need for establishing and strengthening effective labour migration governance frameworks.*



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