

The Rights of Migrant Workers in The United Nations System

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Abstract:

The study presents the rights of migrant workers in the United Nations System. It is estimated that 150 million economically active people live outside their countries and this trend is only expected to grow. That is the reason why the world should pay attention to migrant workers and ensure their human rights.

The most important United Nations legal act which protect the widest range of migrant workers rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990. The paper shows the status of ratification of the Convention, scope and the most important definitions. Article also describes provisions of the Convention refers to the specific situation of migrant workers and – what is more – refers only to documented workers. The paper also shows the human rights mechanisms, such as the Special Reporter on the Human Rights of Migrants and the Committee on Migrant Workers.

The main objective of the study was to show both weak (for example low number of ratifications of the Convention), as well as the strengths of the UN mechanisms for the protection of the rights of migrant workers.

Keywords: rights of migrant workers, United Nations human rights, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Introduction

The absolute number of people migrating has risen from 154 million in 1990 to 244 million in 2015. It has been estimated, that 3.3 percent of the world's population, lived outside their country of origin (source: United Nations Population Fund website, <<http://www.unfpa.org/migration>> [04.06.2016]). Nowadays – there are more international migrants in the world than at any other time in history. What is more, this trend is only

expected to grow. Many people cross borders in search of better economic and social opportunities. International Labour Organization estimates (*ILO Global Estimates on migrant workers. Results and methodology. Special focus on migrant domestic worker*, International Labour Office – Geneva, ILO 2015, p. 5) that in 2013 it was 150 million economically active people which were living outside their countries¹. Migration today is a feature of international labour and skills mobility. Migration could be a positive and empowering experience, but, on the other hand, migrants are exposed to human rights violations, discrimination, and exploitation, especially when they don't know national language of their destination and have no support in that country. Migrants are often to be found working in jobs that are dirty, dangerous and degrading. That is the reason why the world should pay attention to migrant workers and ensure their human rights.

There are three levels of human rights: international, regional and national. This article presents the international regulations of the rights of migrant workers in the United Nations system. The United Nations (called also UN) is an intergovernmental organization to promote international co-operation around the world. The organization was established on 24 October 1945 when the United Nations Charter had been ratified by a majority of signatories. At its founding, the United Nations had 51 member states, there are now 193 (*History of the United Nations*, [online], <<http://www.un.org/en/aboutun/history/>> [10.06.2016]). Versatility, or in other words, the universality of the UN refers to several aspects of this system: geographical, which indicates that the UN affects almost the whole world; objective because it takes into account all the basic categories of human rights; and subjective, which means that the system applies to all UN Member States (Jabłoński, Jarosz-Żukowska, 2004, p. 178).

1. The right to work – basic regulations

Basic legal acts adopted by United Nations bodies guarantee the right to work to everyone without any exception. The Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 at Paris in article 23 states that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. What is more – everyone who

works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Finally – everyone has the right to form and to join trade unions for the protection of his interests. The term “everyone” which is use in article 23 means that not only citizens have the right to work in good conditions, but every human being.

What is more article 5 of the International Convention on the Elimination of All Form of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 states that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee inter alia the right to work of everyone, without distinction as to race, colour, or national or ethnic origin. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and under-employment, UN Member States shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. Employment Policy Convention (1964, no. 122) adopted on 9 July 1964 by the General Conference of the International Labour Organisation at its forty-eighth session, states that this policy shall aim at ensuring that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin (art. 1). Employment Policy Convention has been ratified by 111 countries. We can say that it is a wide range of influence of this convention.

These regulations show that the United Nations does not differentiate the right to work, depending on the nationality of the employee. In particular, states should provide foreigners the same rights as citizens.

2. Legal framework of the United Nations concerning directly the rights of migrant workers

At first, International Labour Organization (specialized agency of the United Nations) adopted conventions and recommendations concerning directly migrant workers. International Labour Organization standards on migration provide tools for both countries of origin and destination to manage migration flows and ensure adequate protection for this category of workers.

The very first it was Convention concerning Migration for Employment adopted in 1949 (No. 97) which applies to migrants for employment who are recruited under Government-sponsored arrangements for group transfer (49 ratifications of Convention No 97). Very important convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers was Convention adopted on 24 June 1975 by the General Conference of the ILO at its sixty session (No. 143). The Convention emphasizes that Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers. Sadly only 23 countries have ratified Convention No 143. ILO has also issued recommendations concerning Migration for Employment (No. 86) in 1949 and concerning Migrant Workers (No.151) in 1975. The protection of migrant workers has already started at the end of the 40's when ILO has adopted convention in which member states were obliged to facilitate international migration for employment by establishing and maintaining a free assistance and information service for migrant workers and taking measures against misleading propaganda relating to emigration and immigration.

The United Nations bodies first voiced concern about the rights of migrant workers in 1972, when the Economic and Social Council expressed alarm at the illegal transportation of labour to some European countries and “in conditions akin to slavery and forced labour” [resolution 1706 (LIII)]. In 1972 too, the General Assembly condemned discrimination against foreign workers and called upon Member States to end such practices and to improve reception arrangements for migrant workers [resolution 2920 (XXVII)]. Four years later – the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a report on the exploitation of labour through illicit and clandestine trafficking, which recommend the drawing-up of a United Nations convention on the rights of migrant workers (*The International Convention on Migrant Workers and its Committee. Fact Sheet No. 24 (Rev. 1)*, New York and Geneva 2005, p. 2). This recommendation was echoed in General Assembly resolution 33/163 (1978) and resolution 34/172 (1989) both titled: „Measures to improve the situation and ensure the human rights and dignity of all migrant workers”. Following the adoption of resolution 34/172, a working group open to all Member States was established in 1980 to draw up a convention. The working group finished drafting the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families in 1990. Convention has been adopted by General Assembly resolution 45/158 of 18 December 1990. After 1990, General Assembly adopted around 50 resolutions on protection of migrants, including migrant workers, for example: Resolutions „Violence against women migrant workers” adopted in: 2015 (70/130), 2011 (66/128), 2009 (64/139), 2007 (62/132), 2005 (60/139), 2003 (58/143), 2002 (56/131), 2000 (54/138), 1996 (50/168). But the most important United Nations legal act which protect the widest range of migrant workers rights is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990.

3. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

a) Status of ratification

The Conventions primary objective is to protect migrant workers and their families from exploitation and the violation of their human rights. This legal act entered into force in July 2003, because the Convention required a minimum of 20 ratifications before it could enter into force. This threshold was reached when El Salvador and Guatemala ratified it on 14 March 2003. So far the Convention has been ratified by 48 states². The most of them are situated in Africa and South America. So far, countries that have ratified the Convention are primarily countries of origin of migrants (for example Mexico, Morocco or the Philippines). For these countries, the ratification of the Convention was very important as a vehicle to protect their citizens living abroad. For example in the Philippines ratification of the Convention took place in a context characterized by several cases of Filipino workers being mistreated abroad. Such cases hurt the Filipino population and prompted the ratification of the Convention (*Information Kit. United Nations Convention on Migrants' Rights. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, UNESCO 2005, p. 11). There are also 18 countries which have signed the Convention but not ratified yet. On the other hand – there are 132 countries in the world with no action, despite the fact that the migrants rights violation is a serious problem today.

What is interesting – none of European Union countries has ratified the Convention. Many EU Member States consider that the Convention does not distinguish sufficiently between the rights of regular and irregular migrants.

They argue that is the reason why its ratification would entail the obligation of States to grant too many rights to migrants who do not have a legal status in the country (Touzenis, Sironi, 2013, p. 24). Many European States also argue that the Convention infringes upon States sovereignty in limiting their competence to decide upon entry and stay of migrants. What is more, a number of European States are concerned about the fact that the Convention may be an incentive to irregular stay because its provisions aim to legalize the illegal workforce (in details see: Plaetevoet, Sidoti, 2010). Many countries consider that the rights enshrined in the Convention are protected already in other international, regional instruments or in national law. There are also financial and administrative obstacles³.

Summarizing, countries that are destination countries do not want to ratify the Convention and take on new obligations. That is the reason why states that have ratified the Convention are primarily countries of origin of migrants.

b) Scope and definitions

The scope of the Convention is very wide. The Convention is applicable to all migrant workers and members of their families without distinction of any kind. What is more the Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence (art. 1)

No other international legal instrument defines the term “migrant” in such a comprehensive way, as the Convention do. Article 2 (1) defines a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. The Convention also explains who is treated as a migrant workers family member. The term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned (art. 4).

The Convention innovates by defining the rights which apply to certain categories of migrant workers and their families, including: all migrant

workers, legal workers, frontier workers, seasonal workers, itinerant workers, migrants employed for a specific project and self-employed workers.

c) Specific protection of all migrant workers and members of their families

The Convention affirms human rights spelled out in the other core human rights treaties. On the other hand – Convention includes a number of rights addressing specific protection needs and providing additional guarantees in the light of the particular vulnerability of migrant workers and members of their families. Part III of the Convention (arts. 8 to 35) grants a fairly broad series of rights to all migrant workers and members of their families, irrespective of their migratory status. We can find there: the right to life (art. 9), the prohibition of torture (art. 10), the prohibition of slavery and forced labour (art. 11), the right to liberty and security of person and to procedural guarantees (arts. 16–19 and 24), the right to freedom of opinion, expression, thought, conscience and religion (arts. 12–13), prohibition of arbitrary interference with privacy, home correspondence and other communications and prohibition of arbitrary deprivation of property (arts. 14–15), the right to just and favorable conditions of work and to rest and leisure (art. 25), the right to social security (art. 27) and the right to education (art. 30).

However most of the provisions of the Convention refers to the specific situation of migrant workers and guarantees them extra protection. Migrant workers and members of their families shall be free to leave any State, including their State of origin as well as have the right at any time to enter and remain in their State of origin (art.8). Article 15 protects migrant workers from the arbitrary deprivation of property. What is more – article 21 contains safeguards against confiscation, destruction or attempts to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits and prohibits the destruction of the passport or equivalent document of a migrant worker or a member of his or her family. Also specific to the particular situation of migrant workers is article 22, which provides, inter alia, that migrant workers and members of their families shall not be subject to measures of collective expulsion and that they may be expelled from the territory of a State party only in pursuance of a decision taken by the competent authority in accordance with the law. Article 23 spells out the right of

migrant workers and members of their families to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin whenever the rights recognized under the Convention are impaired. Article 25 of the Convention establishes that migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment. Article 26 recognizes the right to take part in meetings and activities of trade unions and freely join them.

The Convention also applies to living conditions of migrant workers, which are often unsatisfactory. Article 27 of the Convention stipulates that, with respect to social security, migrant workers and members of their families shall enjoy the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. What is more – article 28 guaranteed that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment. The Convention also guarantees the right of every migrant workers child to access to education on the basis of equality of treatment with nationals of the State concerned.

States parties have to ensure respect for the cultural identity of migrant workers and members of their families and not to prevent them from maintaining their cultural links with their State of origin (art. 31). Migrant workers and members of their families shall also have the right to transfer their earnings and savings as well as their personal effects and belongings (art. 32). Finally, according to article 33, migrant works and members of their families shall have the right to be informed of their rights arising out of the Convention as well as of the conditions of their admission and their rights and obligations under the law and practice of the State concerned. These obligations are placed not only on the State of employment but also on the State of origin and on the State of transit. State parties shall take appropriate measures to disseminate the said information, which shall be provided free of charge and, as far as possible, in a language that the migrants and their families are able to understand.

d) The rights granted to documented workers

The rights granted to documented and undocumented workers are not identical. The Convention assigns additional rights to migrant workers and members of their families who are documented or in a regular situation. This could be a way to discourage illegal migration.

Documented workers have the right to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work (art. 38); they also have the right to liberty of movement in the territory of the State of employment (art. 39). Workers in a regular situation have the right to be fully informed by their States of origin and employment about conditions applicable to their admission and concerning their stay and the remunerated activities they may engage in (art. 37), and the right to form associations and trade unions (art. 40). The Convention guarantees some extra political rights to documented workers: right to participate in the public affairs of the State of origin, in accordance with its legislation and right to vote and to be elected in the State of origin, in accordance with its legislation (art. 41).

Furthermore, documented migrant workers and members of their families enjoy the same opportunities and treatment as nationals in relation to various economic and social services (arts. 43 and 45), in the exercise of their remunerated activity (art. 55), in the choice of their remunerated activity (subject to some restrictions and conditions) (art. 52) and in respect of protection against dismissal and the enjoyment of unemployment benefits (art. 54).

Documented migrant and members of their families also enjoy exemption from import and export taxes on their household and personal effects (art. 46) and shall not be liable to more onerous taxation than nationals in similar circumstances (art. 48). Article 47 provides that migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State.

In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favorably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay, taking into due account the length of time they have already resided in that State (art. 50). Finally, documented migrant workers and members of their families enjoy additional guarantees against expulsion (art. 56).

The Convention extends rights to regular migrant workers and members of their families, notably in the equality of treatment with nationals of States in a number of legal, political, economic, social and cultural areas.

4. The Committee on Migrant Workers

The implementation of the Convention rests with its States parties. Article 72 provides that this process is monitored by a committee – the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee consist of 10 experts, elected by the States parties. The Committee meets in Geneva and normally holds two sessions per year. It held its first session in March 2004 (*Committee on Migrant Workers*, <http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx> [20.06.2016]).

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of “concluding observations”. This is a great forum to expose abuses, inequity and discrimination.

Article 77 of the Convention gives the Committee competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77. This individual complaint mechanism will become operative when 10 states parties have made the necessary declaration under article 77. So far there are only four countries: Mexico, Turkey, Uruguay and El Salvador so the individual complaint mechanism has not yet entered into force (status of ratification from website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en#2 [26.06.2016]).

The Committee organizes days of general discussion. What is more – it can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention (general comments).

5. Special Rapporteur on the Human Rights of Migrants

The mandate of the Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights (resolution 1999/44). The Special Rapporteur deals with the protection and the proclamation of the rights of migrants including migrant workers. What is important –

the mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the Convention. This body is a forum empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators. The mandate of the Special Rapporteur is a real mechanism that can operate around the world. What is more – the Special Rapporteur does not require the exhaustion of domestic remedies to act.

The main functions of the Special Rapporteur are: „(a) to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants (...); (b) to request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their family, (c) to formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; (d) to promote the effective application of relevant international norms and standards on the issue; (e) to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants” (see: *Special Rapporteur on the human rights of migrants*, <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>, [20.06.2016]).

Everyone can send to the Special Rapporteur information regarding individual cases of alleged violations of the human rights of migrants or information regarding general situations concerning the human rights of migrants in a specific country. The Special Rapporteur send urgent appeals and communications to concerned Governments to clarify or bring to their attention these cases. The Special Rapporteur also conducts country visits upon the invitation of the Government. From 2000 to end of 2014 the Special Rapporteur undertook 31 visits (including 3 missions to Italy, 2 in Mexico, Malta, Greece, Turkey, etc. – see all missions: Visit undertaken and reports, <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx>, [20.06.2016]). The Special Rapporteur also presents annual reports to the Human Rights Council in which informs of the country visits he has undertaken, the communications he has sent, and other activities undertaken. What is more, the Special Rapporteur can formulate recommendations on a chosen topic in a field of the protection of the human rights of migrants.

Due to the fact that the mandate of the Special Rapporteur operates throughout the world, provides a great forum for the exchange of information on violations of the rights of migrants and their families.

Summary

The Convention provides a wide range of rights of migrant workers and their families. What is more – we have to remember, that migrant workers have the same rights as every human being regardless of their status. In relation to the Convention migrant workers have the following types of rights:

- ⇒ human rights guaranteed in the basic acts of human rights
- ⇒ specific rights to the particular situation of all migrant workers
- ⇒ other rights of migrant workers and members of their families who are documented or in a regular situation.

The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights – a policy topic that is drawing increasing attention worldwide. The Convention provides an international definition of migrant workers, and categories of migrant workers. It also guarantees minimum universal human rights standards for all migrant workers, not only documented but also undocumented.

The biggest problem faced by the United Nations is a small number of countries that have ratified the Convention. There are many myths about obstacles to ratification the Convention. Some countries maintain, that their national legal acts protects migrant workers in a satisfactory way. Some of them do not see the need to legislate on this topic, because they have a small number of migrant on their territory. In my opinion – the Convention is not well known, what is a problem too. Finally there are broader social, economic and political boundaries for ratification of the Convention.

All of this caused that the Convention only entered into force in July 2003. What is more – the individual complaint mechanism has not yet entered into force, which makes that the Committee on Migrant Workers has a limited capacity. Universal system of human rights doesn't meet today's expectations. The UN organization has a great tool to protect human rights of migrant workers, but they are not fully used by Member States.

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Endnotes

¹ International Labour Organizations presents global estimates on migrant workers in 2013. According to ILO there were 232 million international migrants in the world in 2013. 207 million of them were of working age, 15 years old and over. Of these migrants, 150 million were working or economically active.

² As of May 2015, the following 48 states have ratified the Convention: Albania, Argentina, Algeria, Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guyana, Guinea, Honduras, Indonesia, Jamaica, Kyrgyzstan, Lesotho, Libya, Madagascar, Mali, Mauritania, Mexico, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Saint Vincent and the Grenadines, Syria, Tajikistan, Turkey, Uganda and Uruguay (source: <http://indicators.ohchr.org/> [8.06.2016]).

³ For Example Poland indicates that referring to the limited level of immigration and emigration which do not require the establishment of further services as requires by the Convention. Source: Reply of Poland to Recommendation No. 24 in National Report of Poland, 8 March 2012, para. 106 (<http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx> [20.06.2016]).