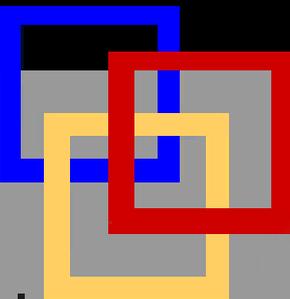


Labour Migration Policies and the International Legal Framework



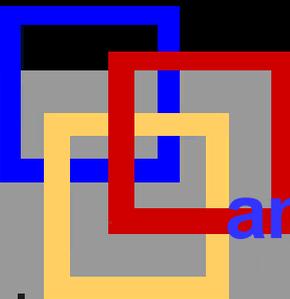
Gloria Moreno-Fontes Chammartin
mfontes@ilo.org

International Migration Programme (MIGRANT)
International Labour Organization ILO



Labour Migration Policy

- **90%** of International Migration linked to the World of Work
- Key role of **Ministries of Labour/Employment**
- **Social dialogue:** employers and workers' reps
- Linking **migration to employment policies**
- Based on **labour market needs** and involving **labour market institutions**

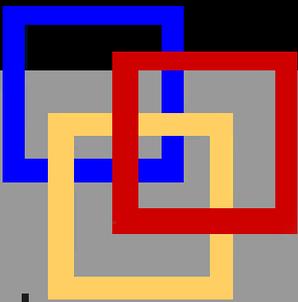


Good practice in Social dialogue and identifying labour market needs

Ireland has an immigration policy which is primarily based on the skills needs of the economy identified in their Skills Anticipation System. The FAS (Training and Employment Authority of Ireland) is responsible for many labour market functions, in addition to the functions associated with public employment services and has a Planning and Research Department which includes the Skills and Labour Market Research Unit (SLMRU) that is responsible for the identification of the skills needs of the Irish economy.

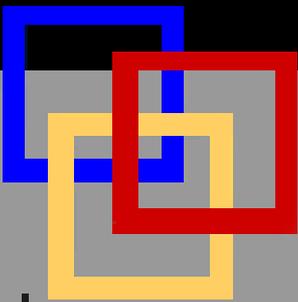
One of the key functions of the SLMRU is to identify which skills-sets cannot be sourced within the EEA and to provide this information to those who advise the Government on immigration policy. The Expert Group on Future Skills Needs (EGFSN) monitors the balance between skills demand and supply in the economy to resolve any identified shortages. It reports to both the Minister of Education and Skills and the Minister for Enterprise, Employment and Innovation.

The Group has a tripartite structure under an independent chairperson. It includes representatives of the Social Partners, the relevant Government Departments, the Economic Development Agencies (IDA Ireland; Enterprise Ireland;) and the Agencies involved in policy in relation to post-secondary education and training.



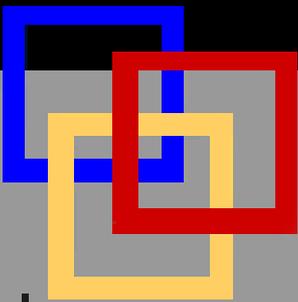
Why do women migrant workers need specific legal protection?

- **Low regard for women** and the **types of mostly low-skilled and semi-skilled jobs** they perform, thus often resulting in de-skilling and other discriminatory practices.
- More likely to face **multiple discrimination** and **various forms of exploitation and abuse** (e.g. non-payment or withholding of wages, lowest wages, workplace violence, non-freedom of movement, bad working conditions) **and inequality** (no right to family reunification, nor to family life, neither to child care support services).
- Often **no right to contribute to social security**, mainly health coverage and pension (e.g. domestic workers).
- Relatively **more job opportunities for men** migrant workers into legal channels of migration
- Remain outside the **scope of national legislation**
- **Too dependent on the employer** for their working and residence permit



NECESSARY TO:

- Ensure **safety and health** for men and women migrants of child bearing age (e.g. prohibition of exposure to hazardous substances during pregnancy) and **maternity protection** for women migrant workers (including maternity leave and benefits and protection against dismissal);
- **Eliminate discrimination on the basis of reproductive rights** (e.g. prohibition to oblige women migrants to undergo obligatory pregnancy tests before they travel or to dismiss and/or deport them when they become pregnant during employment);
- Extend **labour protection to all economic sectors and occupations** including those where there is high concentration of women migrant workers;
- Design special measures to **combat harmful gender stereotypes and eliminate discrimination** in migration for employment;
- Eliminate measures which restrict their **entry into fair and productive** employment;
- Give **voice and representation** to women migrants to ensure their views and perspectives are taken into account in policy and decision making.
- Provide them with flexibility in **changing employers, ensuring non-contract substitution, no withholding of i.d. documents and fair recruitment practices.**

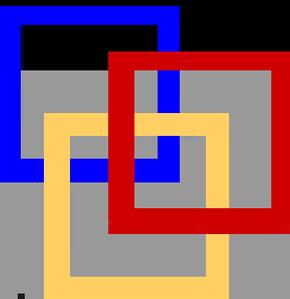


WIDE SCOPE OF PROTECTION

* Unless otherwise specified, *all ILO Conventions apply to both women and men migrant workers irrespective of their nationality*

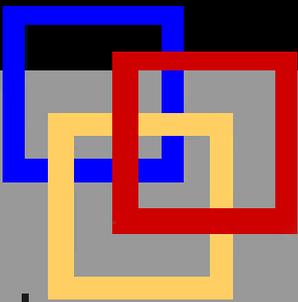
FRAMEWORK OF PROTECTION composed especially of:

- **4 KEY Gender Equality Conventions**
- **8 Fundamental Conventions (comprising universal principles and rights that apply to all workers regardless of nationality, residence or migrant status)**
- **2 Migrant Workers Conventions (as an element of employment policy)**
- **Other ILS containing specific provisions on migrant workers**



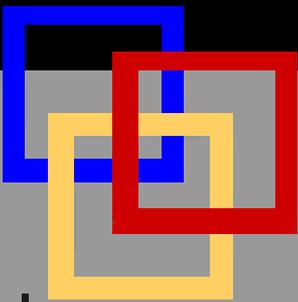
PRINCIPLES

- **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)
- **Discrimination at work** means 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).



4 Key Gender Equality Conventions

- **Discrimination in respect to Employment and Occupation** Convention, 1958 (No.111)-
172 ratifications
- **Equal Remuneration for Men and Women Workers for Work of Equal Value** Convention, 1951 (No.100)- 171 ratifications
- **Maternity Protection** Convention, 2000 (No. 183)-
29 ratifications
- **Workers with Family Responsibilities** Convention, 1981 (No. 156) – 43 ratifications



8 Fundamental ILO Conventions

- **Discrimination (Employment and Occupation) Convention, 1958 (No.111)** (172 ratifications)
- **Forced Labour Convention, 1930 (No. 29)** (177 ratifications)
- **Worst Forms of Child Labour Convention, 1999 (No. 182)** (179 ratifications)
- **Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87)** (153 ratifications)
- **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)** (164 ratifications)
- **Abolition of Forced Labour Convention, 1957 (No. 105)** (174 ratifications)
- **Minimum Age Convention, 1973 (No. 138)** (167 ratifications)
- **Equal Remuneration Convention, 1951 (No.100)** (171 ratifications)



Other ILS containing specific provisions on migrant workers

C181 Private Employment Agencies Convention, 1997

C19 Equality of Treatment (Accident Compensation) Convention, 1925

C102 Social Security (Minimum Standards) Convention, 1952

C118 Equality of Treatment (Social Security) Convention, 1962

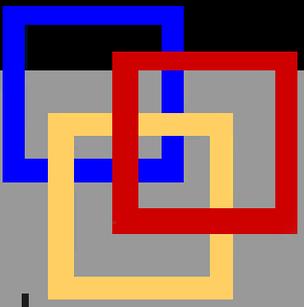
C121 Employment Injury Benefits Convention, 1964

C157 Maintenance of Social Security Rights Convention, 1982

C169 Indigenous and Tribal Peoples Convention, 1989

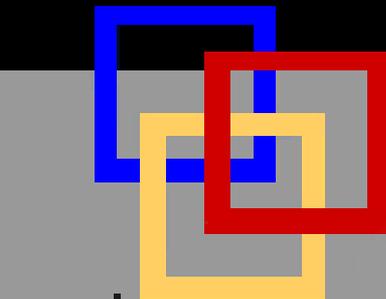
R200 HIV and AIDS Recommendation, 2010

C189 Domestic Workers Convention, 2011 (and R201)



ILO Migrant workers- Specific instruments

- **the Migration for Employment Convention (Revised), 1949 (No. 97) (49 ratifications)**
 - **Migration for Employment Recommendation (Revised), 1949 (No. 86)**
- **the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (23 ratifications)**
 - **Migrant Workers Recommendation, 1975 (No. 151)**



Ratifications

ILO migrant workers' instruments

Convention No. 97 (1949) **Convention No. 143 (1975)**

➤ **49 States parties and territories**

Africa: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Tanzania Zanzibar, Zambia

Americas and Caribbean: Belize, Bahamas, Barbados, Brazil, Cuba, Dominica, Ecuador, Grenada, Guatemala, Guyana, Jamaica, Saint Lucia, Trinidad and Tobago, Uruguay, Venezuela

Asia and Pacific: Hong Kong (SAR China), Kyrgyzstan, Malaysia (Sabah), New Zealand, Philippines, Tajikistan

Europe: Albania, Armenia, Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Italy, The former Yugoslav Republic of Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovenia, Spain, United Kingdom

Middle East: Israel

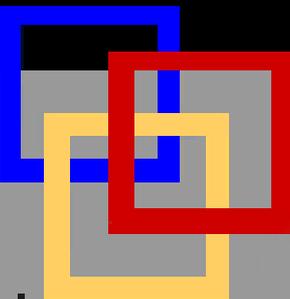
➤ **23 States parties**

Africa: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Togo, Uganda

Americas and Caribbean: Venezuela

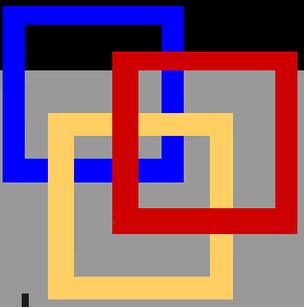
Asia and Pacific: Philippines, Tajikistan

Europe: Albania, Armenia, Bosnia and Herzegovina, Cyprus, Italy, The former Yugoslav Republic of Macedonia, Montenegro, Norway, Portugal, San Marino, Serbia, Slovenia, Sweden



Convention No. 97

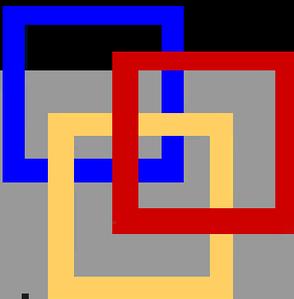
- **Article 6.** Equal treatment (treatment no less favourable than that which it applies to its own nationals) **without discrimination in respect of nationality, race, religion or sex**, to immigrants lawfully within its territory, in respect of:
 - **Conditions of Work (wages, hours of work, overtime arrangements, holidays with pay, etc);**
 - **Membership of trade unions and enjoyment of the benefits of collective bargaining;**
 - **Accommodation**
 - **Social security (with limitations)**
 - **Employment taxes**
 - **Legal proceedings**



Convention No. 97

Article 3.

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, **take all appropriate steps against misleading propaganda** relating to emigration and immigration.
2. For this purpose, it will where appropriate act in co-operation with other Members concerned.



Convention No. 143 – Minimum standards of protection

Article 1. Each Member for which this Convention is in force undertakes to respect the basic human rights of *all* (women and men) migrant workers, whether regular or irregular.

Article 8. Mere loss of employment should not automatically lead to irregular migration.

Article 9. In the case of irregular migrants, equality of treatment in respect of rights arising out of past employment (remuneration, social security and other benefits).



International human rights system

- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990**
 - **One of nine core human rights treaties**
 - Art. 1. Applicable, except as otherwise provided hereafter, to **all** migrant workers and members of their families **without distinction of any kind such as sex**, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
 - Art. 7. States Parties undertake, in accordance with the international instruments concerning human rights, to respect and ensure to **all** migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention **without distinction of any kind such as to sex....**
- **Committee on Migrant Workers (CMW)** – migrant domestic workers/rights of migrant workers in an irregular situation, etc.
- **UN Special Rapporteur on human rights of migrants-**
 - To examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants **recognizing the particular vulnerability of women**, children and those undocumented or in an irregular situation;
 - To **take into account a gender perspective when requesting and analysing information, and to give special attention to the occurrence of multiple forms of discrimination and violence against migrant women.**
 - To formulate appropriate recommendations to prevent and remedy violations of h.r.



UN Convention on Migrant Workers, 1990

Ratifications

➤ 47 States parties

Africa: Algeria, Burkina Faso, Cape Verde, Egypt, Ghana, Guinea, Lesotho, Libya, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Rwanda, Senegal, Seychelles, Uganda

Americas and Caribbean: Argentina, Belize, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, St. Vincent and the Grenadines, Uruguay

Asia and Pacific: Bangladesh, Indonesia, Kyrgyzstan, Philippines, Sri Lanka, Tajikistan, Timor-Leste

Europe: Albania, Azerbaijan, Bosnia and Herzegovina, Turkey

Middle East: Syria

Signatories

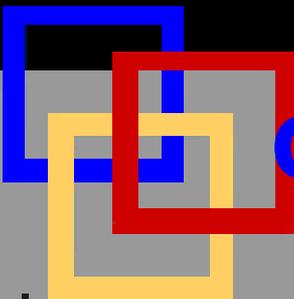
➤ 20 States

Africa: Benin, Cameroon, Chad, Comoros, Congo, Gabon, Guinea-Bissau, Liberia, Madagascar, Sao Tome and Principe, Sierra Leone, Togo

Americas and Caribbean: Haiti, Venezuela

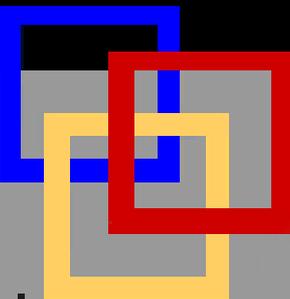
Asia and Pacific: Cambodia, Palau

Europe and Central Asia: Armenia, Montenegro, Serbia



CEDAW – General Recommendation No. 26 on women migrant workers

- **Convention to Eliminate all Forms of Discrimination Against Women (CEDAW)**
 - It also belongs to the nine core human rights treaties
 - It protects all women, including migrant women, against sex- and gender-based discrimination that are the causes and consequences of the violations of their human rights.
- **R. No. 26** Scope limited to addressing the situations of migrant women, who as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship.
 - **Women migrant workers who migrate independently, those who join their spouses** or other members of their families who are also workers, **and undocumented women migrant workers** who may fall into any of the above categories.
 - Female migration should be studied from the perspective of **gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration.**
 - It includes recommendations to States parties.

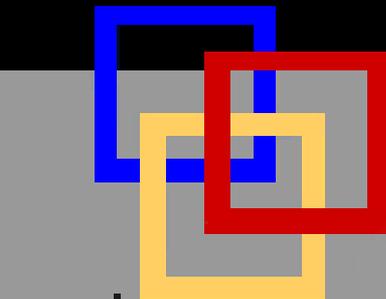


Committee on Migrant Workers: Concluding Observations mentioning female migrant workers

➤ **General Comment no. 1 on migrant domestic workers** states:

“60. [...] Recognizing that most domestic workers are women and girls and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, **States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that they face throughout the migration process.**”

“61. **States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status** (articles 1 and 7), including restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel (article 8) or bans on women migrant domestic workers marrying nationals or permanent residents (article 14), or securing independent housing [...]”

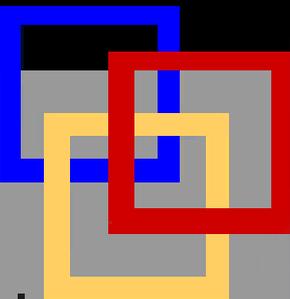


Committee on Migrant Workers: Concluding Observations mentioning women migrant workers

➤ **General Comment no. 2 on the rights of migrant workers in an irregular situation and members of their families** states:

"21. Migrant workers in an irregular situation, **particularly women**, are at increased risk of ill-treatment and other forms of violence at the hands of both private actors, including employers, and State officials which includes **sexual violence, beatings, threats, psychological abuse, and denial of access to medical care**, for example. Under article 16, paragraph 2, States parties have an obligation to protect all migrant workers and members of their families against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. This obligation requires States parties to:

- (a) Adopt and implement legislation prohibiting such acts;
- (b) Effectively investigate cases of abuse and violence;
- (c) Prosecute and punish those responsible with appropriate punishments;
- (d) Provide adequate reparation to victims and members of their families;
- (e) Provide human rights training for public officials; and
- (f) Effectively monitor the conduct of State agents, and regulate that of private persons and entities, with a view to preventing such acts."

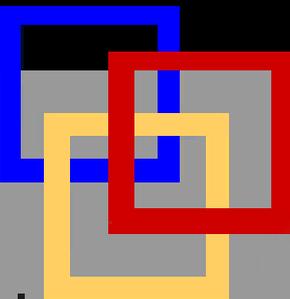


Committee on Economic Social and Cultural Rights: Concluding Observations mentioning female migrant workers

- GC no. 18 on Article 6 of the ICESCR [the right to work]:

“13. Article 3 of the Covenant prescribes that States parties undertake to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”. **The Committee underlines the need for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.**

In particular, **pregnancies must not constitute an obstacle to employment and should not constitute justification for loss of employment.** Lastly, emphasis should be placed on the link between the fact that women often have less access to education than men and certain traditional cultures which compromise the opportunities for the employment and advancement of women.”



Committee on the Elimination of Racial Discrimination: Case of *Yilmaz-Dogan v. the Netherlands*

In the case of *Yilmaz-Dogan v. the Netherlands*, a pregnant migrant worker was fired when she got pregnant. Her employer justified that by stating:

"When a Netherlands girl marries and has a baby, she stops working. Our foreign women workers, on the other hand, take the child to neighbours or family and at the slightest set-back disappear on sick-leave under the terms of the Sickness Act. They repeat that endlessly. Since we all must do our utmost to avoid going under, we cannot afford such goings-on."

The CERD found that the Netherlands – through acceptance of her employer's request to terminate her contract before the Cantonal Court – had failed to address discrimination and to protect equality before the law in respect of the right to work.

See CERD, *Yilmaz-Dogan v. Netherlands*, Communication no. 1/1984, Views of 29 September 1988, at paras. 9.2-9.3.