



International
Labour
Organization



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WHY IS IT IMPORTANT TO RATIFY AND EFFECTIVELY IMPLEMENT ILO CONVENTIONS NOS 97 & 143 ON MIGRANT WORKERS?

Ratifications of ILO Migrant Workers Instruments

Europe:

Convention No. 97

Belgium, France, Germany, Moldova, Netherlands, Spain, United Kingdom

Conventions Nos 97 & 143

Albania, Armenia, Bosnia and Herzegovina, Cyprus, Italy, the former Yugoslav Republic of Macedonia, Montenegro, Norway, Portugal, Serbia, Slovenia

Convention No. 143

San Marino, Sweden

Asia&Pacific:

Convention No. 97

Hong Kong (SAR China), Kyrgyzstan, Malaysia (Sabah), New Zealand

Conventions Nos 97 & 143

Philippines, Tajikistan

Middle East:

Convention No. 97

Israel

Americas and Caribbean:

Convention No. 97

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

Conventions Nos 97 & 143

Venezuela

Africa:

Convention No. 97

Algeria, Malawi, Mauritius, Morocco, Nigeria, Tanzania Zanzibar, Zambia

Conventions Nos 97 & 143

Burkina Faso, Cameroon, Kenya, Madagascar

Convention No. 143

Benin, Guinea, Mauritania, Togo, Uganda

Sierra Leone submitted in May 2019 the ratification of both: Convention 97 and Convention 143. The process of depositing the instrument of ratification is ongoing.

Countries identified by the General Survey as having reported intention to consider ratification of either or both Conventions:
Africa: Algeria, Benin, Senegal, Sudan, Uganda; **Asia:** Nepal, Sri Lanka, VietNam; **Europe:** Greece, France, Poland; **Latin America & the Caribbean:** Chile, Cuba, Ecuador; **Middle East:** Jordan, Israel

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Introduction

The purpose of this brochure is to serve as a tool in awareness-raising activities assisting ILO member States which have expressed an interest in the possibility of ratifying, and those that are working towards the full implementation of, **the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151)**. It will also **contribute to achieving fair labour migration governance** by providing the ILO's tripartite constituents with user-friendly material demonstrating their flexibility, and defusing misconceptions about the meaning of certain of its provisions.

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 ratification¹ 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.

It is important to highlight that in principle all international labour standards² apply to migrant workers irrespective of nationality and immigration status, unless otherwise stated. The ILO fundamental Conventions have special importance to migrant workers, as recognized by the **1998 Declaration on Fundamental Principles and Rights at Work**.³ In addition, the ILO has produced complementary policy frameworks, such as the 2006 Multilateral Framework on Labour Migration, the 2016 General Principles and Operational Guidelines for Fair Recruitment, and the 2016 Guiding principles on the Access of Refugees and Other Forcibly Displaced Persons to the labour market which are firmly rooted in the above-mentioned Conventions and other international human rights and labour standards, notably the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990 by the United Nations General Assembly.

¹ The following are the countries identified by the 2016 General Survey as having reported intention to consider ratification: Africa: Algeria, Benin, Morocco, Senegal, Sudan, Uganda; Asia: Nepal, Sri Lanka, VietNam; Europe: Greece, France, Poland; Latin America & the Caribbean: Chile, Cuba, Ecuador; Middle East: Jordan, Israel.

² Of particular relevance to labour migration and migrant workers are the following: the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Labour Inspection Convention, 1947 (No. 81); Labour Clauses (Public Contracts) Convention, 1949 (No. 94); the Protection of Wages Convention, 1949 (No. 95); Social Security (Minimum Standards) Convention, 1952 (No. 102); Plantations Convention, 1958 (No. 110); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Policy Convention, 1964 (No. 122); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Minimum Wage Fixing Convention, 1970 (No. 131); Nursing Personnel Convention, 1977 (No. 149); Occupational Safety and Health Convention, 1981 (No. 155); Maintenance of Social Security Rights Convention, 1982 (No. 157); Occupational Health Services Convention, 1985 (No. 161); Safety and Health in Construction Convention, 1988 (No. 167); Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); Safety and Health in Mines Convention, 1995 (No. 176); Maternity Protection Convention, 2000 (No. 183); the Private Employment Agencies Convention, 1997 (No. 181); Safety and Health in Agriculture Convention, 2001 (No. 184); the Maritime Labour Convention, 2006 (MLC, 2006); the Domestic Workers Convention, 2011 (No. 189); and the 2014 Protocol to the Forced Labour Convention No. 29, 1930.

³ The Declaration underscores the need to devote "special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers..."; and stipulates that all ILO member States, including those that have not ratified the instruments in question, have an obligation by virtue of their membership "to respect, to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those conventions".

Achieving fair and effective labour migration governance

Ratifying and effectively implementing ILO Conventions Nos 97 and 143 and their accompanying Recommendations Nos 86 and 151 is a key pillar in realizing labour-migration-related targets of the **2030 Agenda for Sustainable Development, the Global Compact for Safe, Orderly and Regular Migration**, as well as the implementation of the **ILO's Decent Work and Fair Migration Agendas**. Experience demonstrates that labour migration governance models that pursue decent work for all begin with a comprehensive policy framework guided by international labour standards. Well-governed labour migration can contribute to sustainable development for *countries of origin, transit and destination*, and can provide benefits and opportunities for migrant workers and their families. In contrast, poorly governed labour migration can bring risks and challenges, including for sustainable development and decent work, in countries of origin, transit and destination, especially for low-wage workers. These risks can include insecurity and informality, brain drain, displacement, increased risk of child labour, debt bondage, forced labour, trafficking in persons, safety and health hazards, discrimination, xenophobia in the workplace and other decent work deficits.

Strengthening the process of modernization of the migration regulatory framework

Ratifying and effectively implementing Conventions Nos 97 and 143 **promotes and strengthens the process of modernizing labour migration policies and legislation to meet the dynamic changes and challenges of governing labour migration and mobility today**. It permits the consolidation of progress to achieve fair labour migration governance based on international cooperation, the recognition of changing business and labour market needs, respect for fundamental principles and rights at work, and promotes the principles of equality of treatment and opportunity for decent work among all workers.

Enhancing international cooperation

By ratifying Conventions Nos 97 and 143, countries gain a great deal of legitimacy at the international level to promote measures and negotiations with other States. Conventions Nos 97 and 143 call for **enhancing international cooperation to regulate international labour migration providing a framework not only between member States, but also between social partners from countries of origin, transit and destination**. The Conventions also promote the international exchange of information and good practices as recommended by the 2016 New York Declaration for Refugees and Migrants.

Fostering consistent approaches to managing labour migration across regions

Ratification can also foster consistent approaches to managing labour migration across regions (particularly among regional economic processes), improve labour migration governance and help address

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ILO Conventions on Migrant Workers promote Safe, Orderly and Regular Migration



irregular migration. Convention No. 143 aims to prevent all forms of irregular labour migration in abusive conditions including both irregular migration and unauthorized employment of migrant workers as well as, in its most extreme form, trafficking in persons. The successful regulation and transparent management of recruitment of migrant workers plays an important role in effectively suppressing irregular migration and reducing labour migration in abusive conditions. Article 9(4) of Convention No. 143 provides the opportunity to member States to regularize men and women migrant workers in an irregular situation and Recommendation No. 151 suggests that the decision on whether or not the worker's situation should be regularized should be taken in a timely fashion.

Promoting Bilateral Labour Agreements (BLAs)

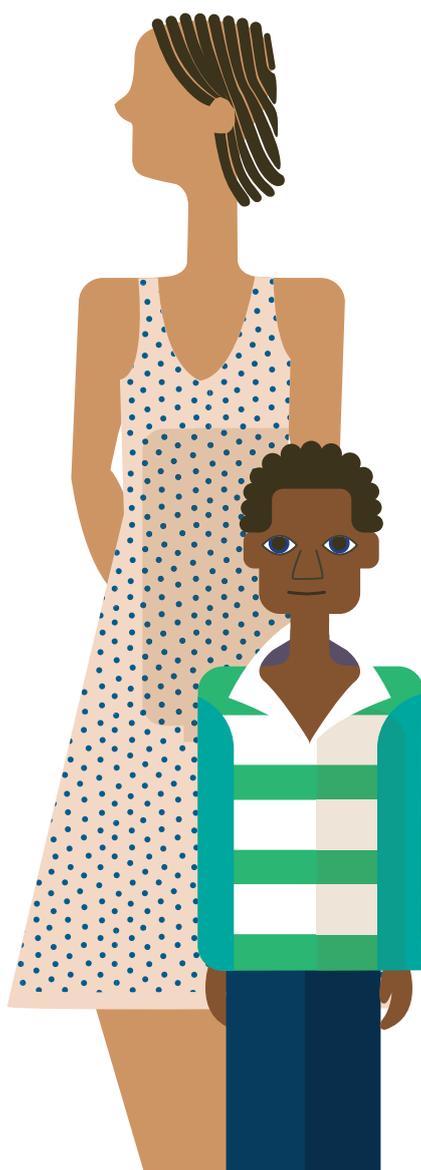
Convention No. 97 promotes the conclusion of **bilateral labour agreements** between States where there is a considerable flow of migrant workers. In this regard, Article 10 stipulates that “in cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising”. Accompanying ILO Recommendation No. 86 contains a model bilateral agreement in its Annex. 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. These measures would also reduce the incidence of trafficking in persons and forced labour.

Formulating national labour migration policy

ILO Convention No. 143 and Recommendation No. 151 urge countries of origin, transit and destination of migrant workers to **formulate and implement a national policy** designed to promote and guarantee equality of opportunity and treatment “by methods adapted to national circumstances and practices” (Article 10, Convention No. 143, Para 2, Recommendation No. 151). The formulation and implementation of labour migration policies should take into consideration the views of the three World of Work actors (Ministries of Labour, and workers, and employers' organizations).

Ratifying and effectively implementing international labour standards concerning labour migration

All States should make progress in ratifying and effectively implementing international standards concerning labour migration. Most countries can now be considered as **countries of origin, transit and destination**. The rights recognized in Conventions Nos 97 and 143 apply to all migrant workers, regardless of the country in which they are located. The Conventions contain provisions aimed at protecting not only migrant workers in destination countries, but also in origin, and during transit



and return. South-South migration for employment accounts for more than 50 per-cent of international migration, and most countries begin to see themselves and recognize each other simultaneously in all or at least two of these classifications.

Considering the entire labour migration process

Conventions Nos 97, 143 and their accompanying Recommendations **cover the entire labour migration process** and focus on providing an international cooperation framework to regulate international labour migration. They also provide guidance on the conditions in which labour migration should take place (e.g. bilateral labour agreements; employment contracts; regulation of recruitment practices; services provided before departure on arrival and on return; regulation of conditions on the recognition of labour qualifications, certification and diplomas; identification of short- and long-term labour market needs, etc.).

Preventing unfair competition that results in poor working conditions

The ratification of Conventions Nos 97 and 143 contributes to improving the protection of the rights of migrant workers through ensuring workplaces comply with labour standards, particularly in respect of their working conditions, health and safety. Ratification of these ILO Conventions contributes to creating equal opportunities for both the existing workforce and new arrivals, thus also laying the foundations for an improvement in the situation of all workers.

Labour migration and free circulation of labour are increasingly featuring on the agenda of regional integration processes.



Photo: Trevor Cole

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What is their Flexibility, Validity and Relevance in responding to today's labour migration challenges?



Flexibility

The structure of Conventions Nos 97 and 143 is **highly flexible and allows member States to ratify them partially** (both are divided into several parts) **or fully**, thus allowing them to be compatible with existing legislation and practices at the national level. For example:

1. The Annexes of Convention No. 97 can be excluded from ratification.
2. Convention No. 143 is divided into three parts, with a selective choice to ratify the first or second part. Part I (Articles 1 to 9) 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. It also provides for certain protective measures for migrant workers who have lost their employment and for those in an irregular situation. Part II (Articles 10 to 14) widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity.
3. Certain provisions of the Conventions allow member States to design the measures taken pursuant to the instruments to fully take account of national circumstances. For example, Article 10 of Convention No. 143 calls on member States “to pursue a national policy designed to promote and guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of...”

Validity

The provisions of Conventions Nos 97 and 143 remain fully valid. In fact, its provisions continue to respond to present labour migration governance challenges. For example:

- › need for broader recognition of labour market needs caused by demographic trends, labour shortages in particular sectors, occupations, etc. (particularly in the case of low-skilled workers);
- › need to improve migrant workers' certificates, diplomas and skills recognition;
- › need to establish more international migration programmes recognizing the right to family unity and family reunification;
- › essential need to respect and enforce migrant workers' rights;
- › need to combat and eradicate discriminatory practices that result in migrant workers receiving lower wages than national workers as well as facing longer working hours, working in occupations and sectors affected by higher levels of informality, etc.;
- › need to recognize the positive contribution of migrant workers

and labour migration as key development factors in countries of destination's economies and labour markets; and

- › need to prevent unfair recruitment practices to reduce labour migration costs.

Relevance

The purpose of the instruments is therefore as relevant now as when they were adopted. The need for more safe, orderly and regular migration (main objective of the Global Compact for Safe, Orderly and Regular Migration) has been underlined by many countries of origin, transit and destination, as well as the business community and workers' organizations. The ratification of the Conventions provides 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. In addition, high levels of labour exploitation, forced labour and child labour among international migrants remain outstanding issues in many countries.

ILO Conventions Nos 97 and 143 are highly flexible, allowing member States to ratify them fully or partially, and remain fully as valid and relevant today as when they were adopted.

Tripartism and Social Dialogue

Conventions Nos 97 and 143 **recognize the pivotal role of social dialogue and engagement of all ILO tripartite constituents** (representatives of Ministries of Labour, employers' and workers' organizations) as a suitable mechanism to improve labour migration governance, particularly in the formulation and implementation of the laws and regulations and labour migration measures. The participation of the ILO's tripartite constituents in national, regional and global processes can ensure the effectiveness and sustainability of labour migration policies, including those on combating discrimination and xenophobia against migrant workers, occupational safety and health, wages, working time, skills development and recognition of qualifications, fair recruitment, and strengthening the linkages between migration and development. In addition, the ratification of the Conventions facilitates the creation of tripartite forums wherein social dialogue measures can be taken to guarantee and safeguard the labour rights of migrant workers.

Importance for trade union organizations

The ratification of Conventions Nos 97 and 143 ensures labour migration policies are based on international labour standards, tripartism and social dialogue, and provides **the necessary framework to carry out**

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Tripartism and Social Dialogue are important to realizing a Fair Migration Agenda

activities to ensure the protection of, and prevent the deterioration of, labour rights of both migrant and national workers, as well as to prevent social dumping. ILO Conventions Nos 97 and 143 are, in turn, a way of offering labour protection to migrant workers through freedom of association and the benefits of collective bargaining by demonstrating that trade union organization is a fundamental tool in enhancing, strengthening and defending the rights of all workers. The principles of equality of treatment and opportunity that underlie the Conventions are key in trade union campaigns to ensure that migrant workers, both those in a regular and in an irregular situation, can form and join trade unions, hold office in trade unions, and enjoy protection against discrimination on the grounds of their trade union activities.

Importance for employers' organizations

ILO Conventions Nos 97 and 143 and their accompanying Recommendations promote the establishment of **transparent and coherent labour migration policies based on clear criteria** (including labour market needs-assessments) which is a concern identified often by employers; establish procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements; and create a more even playing field for fair competition among business. Conventions promote labour migration policies that should be based on a clear identification of the supply and demand of labour at all skill levels and appropriate skills and jobs matching, for both short- and long-term employment, through periodic and objective labour market analysis and identification of sectoral, occupational and regional labour shortages. Such policies also need to consider the long-term impact of demographic trends (especially ageing and population growth) and include provisions facilitating the recruitment of migrants in search of employment, and promoting the recognition of their qualifications, certificates and diplomas.



The ILO advocates for labour migration to be addressed as a labour issue by labour authorities in collaboration with social partners – employers' and workers' organizations – and other relevant actors. It is this social dialogue between authorities and social partners which is crucial to the elaboration and implementation of credible, viable and sustainable labour migration policies and practices. It is essential to recognize how labour migration affects labour markets and how the participation of social partners can help incorporate a social dimension into labour migration policies.

Recognition that migrant workers also have labour rights

Conventions Nos 97 and 143 **recognize a very important set of labour rights for migrant workers**, laying the foundations for promoting a rights-based approach to achieving fair labour migration. Recognizing that migrant workers are workers endowed with labour rights can also help to promote tolerance and reduce discrimination and xenophobia in and outside the workplace, and enhance economic productivity and social cohesion.

Recognition of 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). Notably, these comprise the fundamental rights at work contained in 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, 1930), 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).

Equal treatment between migrant workers in a regular situation and national workers

Convention No. 97 guarantees **equal treatment without discrimination on the basis of nationality, race, religion or sex, to migrants lawfully within the territory of countries of destination** in relation to the following:

- › working conditions (remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons);
- › membership of trade unions and enjoyment of the benefits of collective bargaining;
- › accommodation;
- › social security;
- › employment taxes, dues or contributions payable in respect of the person employed; and
- › access to justice, **equality of treatment and opportunity between migrant workers in a regular situation and national workers.**

Equality of treatment and opportunity between migrant workers in a regular situation and national workers

Convention No. 143 (Article 10) also calls on member States to pursue a national policy designed to promote and guarantee, **by methods**

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The Conventions promote a Rights-based Approach that takes account of Labour Market Needs

Access to skills recognition processes, especially for low- and medium-skilled migrant workers, is often limited, while migrants frequently encounter difficulties in articulating their experiences from the destination countries into better human resources development opportunities on their return.

appropriate to national conditions and practice, for persons who, as migrant workers or as members of their families, are lawfully within its territory, equality of opportunity and treatment, in respect of:

- › employment and occupation;
- › social security;
- › trade union and cultural rights; and,
- › individual and collective freedoms.

Free choice of employment after a period of two years while ensuring the right to geographical mobility

Convention No. 143 (Article 14a) stipulates that a member State may “make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract”.

Address Irregular migration

Convention No. 143 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. Migrant workers in an irregular situation are covered by Part I which provides for certain protective measures for migrant workers who have lost their employment and for those in an irregular situation (Articles 1–9).

Equal treatment of migrant workers in an irregular situation with regard to rights arising out of previous employment

Convention No. 143 (Article 9) also establishes that equal treatment must be **guaranteed to migrant workers in an irregular situation with regard to rights arising out of previous employment** concerning:

- › remuneration due;
- › social security and other benefits accrued as entitlements;
- › access to justice in defending their rights before a competent body; and
- › the costs of expulsion, which should not be borne by migrant workers and their families.

Recognition of skills

Convention No. 143 (Article 14b) provides for the recognition of occupational qualifications as a prerequisite to migrant workers being capable of competing on equal terms with national workers in the labour market, and calls for making regulations concerning the recognition of occupational qualifications acquired abroad, including certificates and diplomas. Article 4 (Validity of Documents) of the Model Agreements annexed to Recommendation No. 86 provides that the “parties shall determine the conditions to be met for purposes of recognition in the territory of immigration of any document issued by the competent authority of the territory of emigration in respect of migrants and members of their families (or in the case of refugees and displaced persons, by anybody established in accordance with the terms of an international instrument which may be responsible for their protection) concerning: (c) occupational qualifications; (d) general education and vocational training.

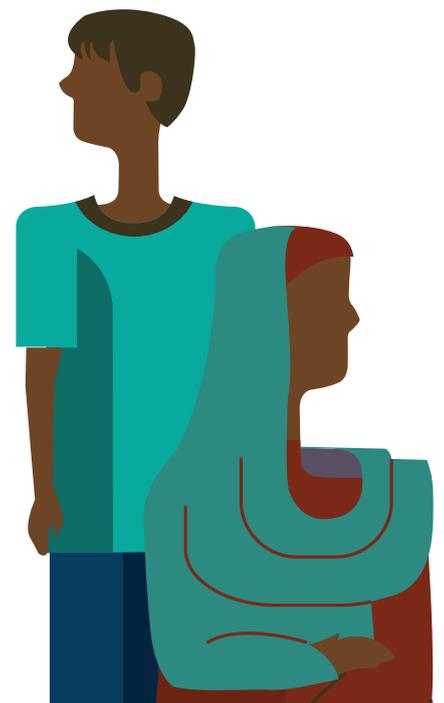
ILO migrant workers Conventions contain provisions dealing with regulation of recruitment, the provision of services to facilitate recruitment, arrival and employment, and unregulated recruitment.

Identification of labour market needs

Paragraph 1 of Recommendation No. 151 states, “Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it **should take account not only of short-term labour needs and resources but also of the long-term** social and economic consequences of migration both for migrants as well as for the communities concerned.” Article 1(b) of the Model Agreement annexed to Recommendation No. 86 mentions the need for immigration countries to furnish appropriate information to emigration countries mentioning “the number, the categories and the occupational qualifications of the migrants desired”.

Fair recruitment

ILO migrant workers Conventions contain provisions dealing with **regulation of recruitment, the provision of services to facilitate recruitment, arrival and employment, and unregulated recruitment.** They mention the importance taking measures by both countries of origin and employment to prevent abusive and fraudulent practices (including trafficking in persons and forced labour) in the recruitment for employment and placement abroad. The successful regulation and transparent management of recruitment of migrant workers plays



an important role in effectively suppressing irregular migration and reducing labour migration in abusive conditions. The main purpose of these provisions is to: protect migrant workers; facilitate the control of recruitment; and suppress clandestine employment. They cover not only direct engagement by employers or their representatives, but also operations conducted by intermediaries, including public and private recruitment bodies (Article 7 and Annexes I and II of Convention No. 97 and Paragraphs 1b, 1c, 1d, 13, 14 and 15 of Recommendation No. 86). The Conventions help provide an appropriate framework for implementing the ILO's General Principles and Operational Guidelines for Fair Recruitment.

Model Employment Contracts

Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 mention the **need to issue to migrant workers (prior to departure from the country of origin) an employment contract setting out the conditions of work and remuneration**, and information on living and working conditions in the country of destination. As far as possible, the information provided to migrant workers on the terms and conditions of employment should be in their own language or in a language with which they are familiar. Contracts of employment should regulate such essential matters as hours of work, weekly rest periods and annual leave.

Promoting fair access to opportunities and preventing poor working conditions

The ratification of Conventions Nos 97 and 143 contributes 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 and occupational safety and health. Ratification of ILO Conventions contributes to 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.

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Who do Conventions Nos 97 and 143 as well as Recommendations Nos 86 and 151 cover?

Scope of the Conventions

- › The provisions of Conventions Nos 97 and 143 **apply to “any person who migrates, or who has migrated, from one country to another with a view to being employed otherwise than on his/her own account and includes any person regularly admitted as a migrant worker”**.
- › The **family of the migrant worker** comprises the spouse and dependent children, and his/her father and mother.
- › Conventions Nos 97 and 143 apply to **migrant workers in all sectors of employment and occupation**, regardless of salary or skill level.

- › **They do not distinguish between** workers who migrate in order to settle permanently in the country of destination and those who migrate for **seasonal or short-term** work and who do not plan to stay for a considerable period in the country of destination.
- › They cover **refugees and displaced persons**, to the extent that they are workers employed outside their countries.
- › Convention No. 97 encompasses situations in which migrant workers are **recruited through public or private mechanisms** acting as intermediaries or employers and can help support the establishment of a system of fair recruitment. The main objectives of these provisions are: to protect migrant workers; facilitate the control of recruitment and eliminate clandestine recruitment and employment (Article 7 in Annex I and II of Convention No. 97 and Paragraphs 1 b, 1c, 1d, 13, 14 and 15 of Recommendation No. 86).
- › The provisions of Convention No. 97, Recommendation No. 86 and Part II (Articles 10 to 14) of Convention No. 143 relate only to the **protection of migrant workers in a regular situation (or regular-status migrant workers)**.
- › Part I (Articles 1 to 9) of Convention No. 143 provides protection to **all migrant workers regardless of the length of their stay and immigration status**.

Exceptions

The Conventions do not cover: frontier workers, seafarers, artists and persons who exercise a liberal profession and who enter the country for a short-term period. Convention No. 143 includes additional exceptions relating to persons entering the country for special training or educational purposes, and persons employed in organizations or enterprises operating within the territory of a country who have been admitted temporarily at the request of their employers, to perform specific jobs or functions for a defined or limited period of time and that are obliged to leave the country at the end of their work or functions (e.g. posted workers).

Residence and loss of employment

Pursuant to Article 8 of Convention No. 143 migrant workers who have ‘resided legally’ in the territory for the purpose of employment are protected under the Convention in the case of loss of employment. Such migrant workers **should not be considered in an irregular situation by the mere loss of their employment**. They are also entitled “to enjoy equality of treatment with nationals in respect to particular guarantees of security of employment, the provision of alternative employment, relief work and retraining”.



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What are some of the common misconceptions about the Conventions' provisions?

There are some misconceptions about the requirements of the instruments that, in some cases, lead governments feeling unable to ratify the Conventions. For instance:

- › **The provisions of the Conventions apply only to regular migrant workers (False):** This is a misconception since Convention No. 143 contains different norms that guarantee fundamental human rights of all migrant workers, regardless of their migratory status. It also includes provisions requiring that labour rights arising out of past employment be recognized.
- › **ILO Conventions prevent States from deciding which migration policies they wish to apply (False):** Conventions Nos 97 and 143 are far from preventing States from making sovereign decisions on migration policy independently. On the contrary, their flexibility facilitates the ratification process to be compatible with national circumstances and in turn promotes schemes of safe, regular and orderly migration from a rights perspective and based on labour market needs.
- › **The provisions of ILO Conventions Nos 97 and 143 apply only to workers in countries of destination (False):** As also explained above, this is another misconception, since ILO Conventions Nos 97 and 143 are applicable in countries of origin, transit and destination alike. Many of their provisions aim to prevent migration under abusive conditions. In turn, the Conventions are premised on bilateral cooperation and social dialogue as mechanisms for regulating migration, thus including all stakeholders (employers, workers and governments) involved in the labour migration process.
- › **Some Governments believe that Convention No. 143 includes the obligation to grant migrant workers in an irregular situation access to social security (False):** The Committee of Experts on the Application of Conventions and Recommendations has pointed out that the purpose of Article 9(1) of Convention No. 143 is to ensure that migrant workers who have contributed to and/or are affiliated to social security, in spite of the fact that they were in an irregular situation, enjoy acquired rights/benefits related to past employment. These refer to those entitlements given to migrant workers, such as their payments into social security schemes. This provision is supported by accompanying Recommendation No. 151 (Paragraph 34).
- › **Some Governments believe that the convention mandates them to regularize migrant workers whose employment comes to an end or prohibits their return to countries of origin (False):** This is a misunderstanding since the practice of returning migrant workers at the end of a time-bound contract does not, in itself, constitute a violation of the Convention. Article 8(1) of Convention No. 143 refers exclusively to migrant workers who lose their employment, as opposed to those whose employment comes to an end as foreseen in the employment contract.

Conventions Nos 97 and 143 on migrant workers retain their relevance, for all migrant workers, irrespective of gender, origin, skill and status. Migrant workers continue to require specific protection to ensure that their rights are respected; the need to address irregular migration is increasing in importance; and the potential for international cooperation between countries of origin, transit and destination has been stated numerous times by governments and social partners.

Moreover, the need for cooperation between governments and social partners, as set out in the instruments, is key to good governance of labour migration as a whole. Conventions Nos 97 and 143 have the potential to contribute to effective governance of the considerable current migration challenges faced by the ILO's tripartite constituents.



Photo: Annie Spratt



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ILO Regional Office for Africa

<https://www.ilo.org/africa/areas-of-work/labour-migration/lang--en/index.htm>

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