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INTERNATIONAL LABOUR ORGANISATION STANDARDS AND ACTIVITIES RELATING
TO THE PROTECTION OF MIGRANT WORKERS AND THEIR FAMILIES

Note submitted by the International Labour Organisation

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I. INTRODUCTION

1. By resolution 34/172 of 17 December 1979, the United Nations General Assembly decided to establish at its thirty-fifth session a working group to elaborate an international convention on the protection of the rights of all migrant workers and their families, and invited the international organizations concerned to participate in the work of the working group. When informed of this resolution, the Governing Body of the International Labour Office considered that, in view of the experience and specialized competence of the ILO regarding the protection of migrant workers, it should participate actively in the work of the working group. The present note is intended to provide information on the standards and activities of the ILO in this field.

II. CONSTITUTIONAL MANDATE AND NATURE OF THE ILO'S ACTIVITIES FOR THE PROTECTION OF MIGRANT WORKERS

2. The ILO constitution mentions among the Organisation's objectives "protection of the interests of workers when employed in countries other than their own". It also provides, as a means of promoting full employment and the raising of standards of living, for "the provision under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement".

3. Among means for promoting the Organisation's objectives, the ILO constitution provides for the adoption of Conventions and Recommendations by the International Labour Conference (composed of government, employers' and workers' delegates of member States). Conventions are intended, upon ratification by member States, to create an obligation to make their provisions effective. Recommendations are not open to ratification, but are intended as guidance to policy, legislation and practice. To date, 153 Conventions and 162 Recommendations have been adopted. The Conventions have been the subject of more than 4,800 ratifications. It is recalled that an analysis of the principles concerning the protection of migrant workers and their families contained in ILO Conventions and Recommendations, arranged by subject-matter, was presented to the Commission for Social Development at its twenty-sixth session in 1979, and was embodied in document E/CN.5/564 of 11 December 1978.

4. Provision is also made for procedures to supervise the implementation of instruments adopted by the International Labour Conference. In particular, the reports which member States are required to submit concerning the application of ratified Conventions are the subject of technical scrutiny by the Committee of Experts on the Application of Conventions and Recommendations and discussion by the tripartite Conference Committee on the Application of Conventions and Recommendations. Member States may also be requested to report on their legislation and practice with regard to unratified Conventions and Recommendations. Such reports have in recent years been requested on two occasions on instruments of special concern to migrant workers, namely, the Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Conventions and Recommendations of 1949 and 1975 concerning migrant workers. General surveys based on the

information contained in these reports, as well as on reports from States bound by the Conventions in question, were made by the Committee of Experts on the Application of Conventions and Recommendations in 1977 and 1980 respectively.

5. It is recalled that information on other ILO activities of concern to migrant workers was submitted to the Commission for Social Development at its twenty-sixth session in a report set out in document E/CN.5/572 of 12 January 1979.

6. In the following sections of this note indications will be provided of the protection to be accorded to migrant workers and their families under ILO Conventions and Recommendations.

III. APPLICATION OF ILO STANDARDS GENERALLY TO MIGRANT WORKERS

7. In general, ILO Conventions and Recommendations apply to all persons falling within their scope, irrespective of their nationality. This is the case, for example, as regards instruments prohibiting forced labour or dealing with wages, conditions of work, occupational safety and health, the employment of women or the employment of children and young persons. The principal Convention relating to trade union rights provides for the right to organize of "workers and employers, without distinction whatsoever". 1/ A few Conventions provide expressly for their application irrespective of nationality. 2/ Limitations on the protection of foreigners are to be found in certain Conventions relating to social security, based on the principle of reciprocity and depending on whether benefits are provided out of public funds or under contributory schemes. 3/ Only one ILO Convention permits the exclusion of foreigners. 4/

IV. ILO STANDARDS DEALING SPECIFICALLY WITH THE PROTECTION OF MIGRANT WORKERS AND THEIR FAMILIES

8. The International Labour Conference has adopted a number of instruments dealing specifically with the protection of migrant workers and their families. Mention may be made in particular of the following:

1/ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

2/ For example, the Maternity Protection Convention, 1919 (No. 3), as well as the revised Convention (No. 103, of 1952) on this subject, the Plantations Convention, 1958 (No. 110) and several Conventions relating to the employment of seafarers.

3/ For example, the Social Security (Minimum Standards) Convention, 1952 (No. 102).

4/ Seafarers' Pensions Convention, 1946 (No. 71).

Migration for Employment Convention (Revised), 1949
(No. 97);

Migration for Employment Recommendation (Revised),
1949 (No. 86);

Migrant Workers (Supplementary Provisions) Convention,
1975 (No. 143);

Migrant Workers Recommendation, 1975 (No. 151);

Equality of Treatment (Accident Compensation) Convention,
1925 (No. 19);

Maintenance of Migrants' Pension Rights Convention, 1935
(No. 48);

Equality of Treatment (Social Security) Convention, 1962
(No. 118).

9. The Migration for Employment Convention (Revised), 1949 (No. 97) has been ratified by 35 States. It applies to persons migrating from one country to another with a view to employment otherwise than on their own account, but excludes frontier workers, members of the liberal professions and artists entering for short periods and seamen. The Convention provides for the maintenance of free services to assist migrants for employment, in particular to provide them with accurate information, and for action against misleading propaganda relating to emigration and immigration. It provides for measures to facilitate the departure, journey and reception of migrants for employment and for medical services to ascertain that migrants for employment and members of their families authorized to accompany them are in reasonable health and to ensure adequate medical attention and hygienic conditions on departure, during journeys and on arrival. More detailed provisions relating to recruitment, placing and conditions of labour and to the importation of personal effects, tools and equipment are contained in three annexes to the Convention (which a ratifying State may however exclude from its obligations). The Convention requires every ratifying State to grant immigrants lawfully within its territory equality of treatment with its nationals, without discrimination in respect of nationality, race, religion or sex, in regard to a number of matters, namely (a) in so far as they are regulated by law or regulations or are subject to the control of the administrative authorities: remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age for employment, apprenticeship and training, women's work and the work of young persons, membership of trade unions, enjoyment of the benefits of collective bargaining, and accommodation; (b) social security (subject to certain limitations arising under arrangements for the maintenance of acquired rights and rights in course of acquisition or in respect of benefits payable out of public funds or in respect of allowances paid to persons not qualifying for a normal pension); (c) employment taxes, dues or contributions payable in respect of the person employed; (d) legal proceedings relating to the foregoing matters. The Convention provides for co-operation by the employment services and other services connected

with migration with corresponding services of other countries, and for the services of the public employment service to be rendered free to migrants for employment. It contains provisions to protect the residence rights of migrants for employment admitted on a permanent basis and members of their family in case of incapacity due to illness or injury, and concerning transfer of earnings and savings. It also provides for conclusion of bilateral agreements to regulate matters arising under the Convention where the volume of migration makes this necessary or desirable.

10. The Migration for Employment Recommendation (Revised), 1949 (No. 86) supplements Convention No. 97. It contains provisions on general policy regarding labour migration, the services to be provided to assist migrants and their families by means of information and advice and in regard to such matters as accommodation, vocational training, access to schools and to recreation and welfare facilities, safeguards in connexion with the recruitment and selection of migrants, authorization for members of the family to accompany or join migrants admitted on a permanent basis, enjoyment of equal employment conditions with nationals, the removal of restrictions on employment after not more than five years' regular residence, special arrangements for supervising conditions of employment of migrant workers, protection against removal from the country on account of lack of means or the state of the employment market, and the provision of unemployment relief and promotion of re-employment in the event of the return to their home country of migrants and members of their families. The Recommendation contains in an annex a model bilateral agreement for applying the principles set forth in Convention No. 97 and Recommendation No. 86.

11. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) comprises two parts, dealing respectively with migrations in abusive conditions and with equality of opportunity and treatment. Ratifying States may accept the obligations of these parts severally. The Convention has been ratified by nine States; eight have accepted both parts, the remaining State only Part II. Part I, relating to migrations in abusive conditions, requires ratifying States to respect the basic human rights of all migrant workers. It provides for measures to be taken, both within the jurisdiction of the ratifying State and in collaboration with other States, to suppress clandestine movements of migrants and illegal employment of migrants, and against the organizers of illicit or clandestine movements of migrants for employment and against those who employ workers who have immigrated in illegal conditions. Provision is made for systematic contact and exchange of information between States on this subject, for measures aimed at the detection of the illegal employment of migrant workers and for the definition and application of administrative, civil and penal sanctions in such cases. A migrant worker who has resided legally in a country for the purpose of employment is not to be regarded as being in an illegal or irregular situation by the mere fact of loss of employment, which shall not in itself imply the withdrawal of his residence or work permit. A migrant worker who has been employed illegally and whose position cannot be regularized shall enjoy equality of treatment for himself and his family in respect of rights arising out of past employment. In case of the expulsion of the worker or his family, the cost shall not be borne by them. Nothing in the Convention shall prevent a country from giving persons illegally residing or working there the right to stay and take up legal employment.

12. Part II of Convention No. 143 requires ratifying States to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory. This part of the Convention applies to persons migrating from one country to another with a view to being employed otherwise than on their own account, but excludes frontier workers, artists and members of the liberal professions entering on a short-term basis, seamen, persons coming specifically for training or education, and workers admitted temporarily at the request of their employer to undertake specific duties or assignments of limited duration. The Convention sets out a series of measures by which the national policy of equality of opportunity and treatment is to be given effect, including legislative, administrative and educational measures, information and assistance, and co-operation with employers' and workers' organizations. It however permits certain restrictions on equality of access to employment, for example, during an initial period of residence not exceeding two years, or in respect of access to limited categories of employment or functions where restrictions are necessary in the interests of the State. The Convention provides for application of a social policy to enable migrant workers and their families to share in advantages enjoyed by nationals while taking account of their special needs pending adaptation to the society of the country of employment, for action to assist migrants and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, and for equality of treatment with regard to working conditions to be guaranteed to all migrant workers. The Convention envisages collaboration among countries to facilitate the reunification of families of migrant workers residing legally in the country of employment.

13. The Migrant Workers Recommendation, 1975 (No. 151) calls for over-all and agreed migratory policies. It spells out in greater detail the measures to be taken to ensure equality of opportunity and treatment for migrant workers, defines principles of social policy to enable migrant workers and their families to share in advantages enjoyed by nationals, while taking account of special needs pending their adaptation to the society of the country of employment (including provisions regarding reunification of families, protection of the health of migrant workers, and social services) and provides for protection of residence rights in case of loss of employment, for procedural safeguards against arbitrary expulsion, and for protection of rights arising out of employment of migrant workers upon leaving the country of employment, irrespective of the legality of their stay there.

14. The Conventions and Recommendations whose provisions have been summarized above apply to migrant workers and their families irrespective of whether the country whose nationals they are has ratified the Conventions in question and without any requirement of reciprocal treatment there of nationals of the country of employment.

15. On the other hand, the provisions of the three Conventions concerning social security rights mentioned above apply only to nationals of States bound by the respective instruments. The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) requires a ratifying State to grant to the nationals of any other ratifying State who suffer personal injury due to industrial accidents happening in its territory, or their dependants, the same treatment in respect of

workmen's compensation as to its own nationals. This Convention has been ratified by 101 States. The Equality of Treatment (Social Security) Convention, 1962 (No. 118) may be ratified in respect of one or more of nine specified branches of social security. 5/ In respect of each branch for which it has accepted the obligations of the Convention, a ratifying State must grant within its territory to the nationals of any other ratifying State equality of treatment under its legislation with its own nationals, as regards both coverage and the right to benefits. It is not necessary for the other ratifying State to have accepted the obligations of the Convention for the corresponding branch of social security in order to entitle its nationals to the benefit of these provisions; however, equality of treatment may be refused by one State to the nationals of another State which has legislation relating to the branch concerned and does not grant equality of treatment in respect of that branch to the nationals of the first State. The Convention also deals with the payment of benefits abroad, with the payment of family allowances in respect of children residing in other ratifying States, and with arrangements for the maintenance of acquired rights and rights in course of acquisition. The Convention has been ratified by 34 States. The Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48) provides for participation by ratifying States in a scheme for maintenance of rights in the course of acquisition or acquired under compulsory invalidity, old-age and widows' and orphans' insurance by workers who move from one country to another. The Convention has been ratified by eight States. The adoption of a revised Convention on this subject is to be considered by the International Labour Conference at its 67th session in 1981.

V. FURTHER ILO DOCUMENTATION RELATING TO MIGRANT WORKERS

16. The ILO will make available, for the information of members of the working group to be established by the United Nations General Assembly, copies of the following documents:

Texts of the Conventions and Recommendations dealing specifically with migrant workers mentioned in the present note;

"Migrant workers" - general survey by the Committee of Experts on the Application of Conventions and Recommendations of reports relating to Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151, Report III (4B), International Labour Conference, sixty-sixth session, 1980;

ILO publications on migrant workers and their families - an annotated bibliography, ILO, 1979.

17. The ILO will also be glad to arrange for members of the working group, on request, to be able to consult other documents listed in the above-mentioned bibliography.

5/ Medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivors' benefit, employment-injury benefit, unemployment benefit, family benefit.