

## **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Canada** has neither signed nor acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**Adoption:** The Convention was adopted by the United Nations General Assembly on 18 December 1990.

**Entry into force:** 1 July 2003.

**Number of signatories and ratifications/accessions:** There are 47 State parties to the Convention. An additional 38 states have signed but not ratified the Convention.

In this document:

- Summary information
- History
- Key Provisions of the Rights of All Migrant Workers and Members of Their Families
- Canada's Commitments and Responsibilities
- International Monitoring and Implementation
- References

### **Summary information**

The [Convention](#) 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 “emphasizes the link between migration and human rights” and “seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families throughout the entire migration process.” While reiterating human rights specified in other major human rights treaties, the Convention also addresses specific protection needs of migrant workers and members of their families.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly of the United Nations in 1990. It entered into force in 2003 after 20 states had ratified or acceded to it. The Convention established the [Committee on the Protection of the Rights of All Migrant Workers and Members of their Families](#) (CMW), a body of independent experts that monitors implementation of the convention by State parties.

## History

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly of the United Nations by its [resolution 45/158](#) of 18 December 1990 after many years of discussions, reports and recommendations on the subject of migrants' rights.

According to a UN [Fact Sheet on The International Convention on Migrant Workers and its Committee](#), "The United Nations 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 at the exploitation of workers from some African countries 'in conditions akin to slavery and forced labour.' In the same year, the General Assembly ... condemned discrimination against foreign workers and called upon Governments to end such practices and to improve reception arrangements for migrant workers."

"Following a request from the Economic and Social Council in 1973, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a report on the exploitation of labour through illicit and clandestine trafficking in 1976. The report ... recommended the drawing-up of a United Nations convention on the rights of migrant workers. This recommendation was echoed at the World Conference to Combat Racism and Racial Discrimination in Geneva in 1978 and in [General Assembly resolution 33/163](#) on measures to improve the situation and ensure the human rights and dignity of all migrant workers."

Following the adoption of a resolution by the General Assembly, "a working group open to all Member States was established in 1980 to draw up a convention, and the international organs and organizations concerned — the Commission on Human Rights, the Commission for Social Development, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization — were invited to contribute to the task." The working group finished drafting the Convention in 1990 and it was adopted by the General Assembly without a vote.

The Convention entered into force 1 July 2003 after 20 States had ratified or acceded to it. In 1998, a Steering Committee for the ratification of the Convention, an alliance involving the United Nations Secretariat, intergovernmental agencies and leading international human rights, church, labour, migrant and women's organizations, was convened and "coordinated international and national activities to publicize the Convention and raise awareness about it through its Global Campaign. According to the UN's Fact Sheet on the Convention, its work "led to a sharp increase in the number of ratifications and signatures."

The Convention is considered to be one of the seven "core" international human rights treaties, which together form the United Nations human rights treaty system.

## Key Provisions

In addition to the definition of “migrant” 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 defines “members of a family” as “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.”

As well, the Convention distinguishes between “documented” or “regular” migrant workers and members of their families” (i.e. those authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party) and “undocumented” or “irregular” (i.e. those that do not comply with the above conditions).

The Convention requires the States parties to act in accordance with international human rights instruments and ensure provision of the rights contained in the Convention 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.”

Many of the articles in the Convention specify the application to migrant workers of rights spelled out in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the other core human rights treaties. For example, *inter alia*:

- No migrant worker or family member shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
- No migrant worker or family member shall be held in slavery or servitude or required to perform forced or compulsory labour; and
- Migrant workers and family members shall have the right to freedom of thought, conscience and religion.

However the Convention also includes a number of rights addressing specific protection needs and providing additional guarantees in light of the particular vulnerability of migrant workers and members of their families. For example, it:

- forbids the arbitrary deprivation of property;
- safeguards against confiscation, destruction or attempts to destroy identity documents, documents authorizing entry, residence or establishment in the national territory or work permits;
- protects against collective expulsion;
- provides recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin whenever rights recognized under the Convention are impaired or migrant workers or their family members are arrested or detained;
- ensures migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of

- remuneration, urgent medical care and children's access to education;
- ensures respect for the cultural identity of migrant workers and members of their families; and
- requires migrant workers and members of their families 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.

The Convention assigns additional rights to migrant workers and members of their families who are classified as "documented" or "regular" migrant workers. Included are:

- the right to freely move in the territory of the State of employment and freely choose their residence there;
- the right to form associations and trade unions and to participate in public affairs of their State of origin, including voting and election; and
- access to various economic and social services such as housing, protection against dismissal and the enjoyment of unemployment benefits in the same manner as nationals.

The Convention also requires States parties, including States of transit, to collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. This is particularly relevant for the prevention and elimination of trafficking in persons and the smuggling of migrants. The Convention also requires States parties to "take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation."

## **Canada's Commitments and Responsibilities**

Canada has neither signed nor acceded to the Convention. As a result, there are no commitments or responsibilities for Canada under the Convention.

## **International Monitoring and Implementation**

The Convention established the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) to monitor the implementation of the Convention by its State parties. It held its first session in 2004. The Committee on Migrant Workers is currently composed of 14 independent experts who are elected for a term of four years by States parties.

"All State 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 examines each report and address its concerns and recommendations to the State party in the form of concluding

observations.

In addition, Article 77 of the Convention allows a State party to declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction. Such Individuals should first have exhausted all possible domestic remedies. This provision will take effect only after ten State parties have made such a declaration.

The Committee meets in Geneva and normally holds two sessions per year. It can also publish statements on themes related to its work and interpretations of the content of the provisions in the Convention.

With respect to Canada, because it has neither signed nor acceded to the Convention, it is not directly affected by any international monitoring by bodies created by the treaty.

However, human rights in Canada, as in the other Member States of the UN, are reviewed through the Universal Periodic Review (UPR) process, under the auspices of the UN Human Rights Council. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms and provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. In June 2013, the Working Group on the Universal Periodic Review issued its most recent [report for Canada](#). In that report the Working Group recommended that Canada consider ratifying or acceding to the Convention “to further promote and protect migrants, in particular undocumented and irregular migrants.”

In a [2006 report commissioned by UNESCO](#) and authored by a team of nongovernmental experts, four broad reasons for Canadian government objection to the Convention were identified:

- Migration management (including the rights accorded to migrant workers) lies within the national sovereignty of each nation state and should consequently not be subjected to multilateral institutions;
- The spirit of the Convention is historically far removed from Canadian philosophy in terms of the selection of foreign workers which favours access to Canadian citizenship;
- Fundamental rights of all persons, irrespective of their legal status, are already guaranteed in Canada; [and]
- Signing and ratifying the Convention would force Canada to review its temporary migrants programmes in order to make them more respectful of the Convention.”

## References

[International Convention on Migrant Workers](#)

[The International Convention on Migrant Workers and its Committee OHCHR Fact Sheet 24rev](#)

[Committee on Migrant Workers](#)

[United Nations General Assembly resolution 45/158 of 18 December 1990 adopting International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#)

[United Nations General Assembly resolution 33/163 on “Measures to improve the situation and improve the human rights and dignity of all migrant workers.”](#)

[Report of the Working Group on the Universal Periodic Review – Canada \(28 June 2013\)](#)

[Obstacles to ratification of the United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families: The Canadian case.](#)