



International  
Labour  
Office

**The right to social protection for migrant  
workers and refugees: International  
Labour Standards**



Do migrants have the  
right to social  
security/protection  
under international law?

# Social Security – a basic human right



- Declaration of Philadelphia (1944)
- Universal Declaration of Human Rights (1948)
  - Article 22 of the states *“Everyone, as a member of society, has the right to social security”*
  - Article 25 *“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services....*
- Social Security (Minimum Standards) Convention No.102 (1952)
- International Covenant on Economic, Social & Cultural Rights (1966/**1976**)
- Social Protection Floors Recommendation No: 202 (2012)

# Inherent restrictions: why migrant workers are often legally excluded from social protection

## Principle of nationality

- Coverage and entitlement to benefits limited to nationals of a country
- Exclusion of foreign workers from schemes and entitlements in the host country, or
- Restrictions on export of benefits abroad to non-nationals

## Principle of territoriality

- Scope of application of social security legislation limited to territory of country where it was enacted
- A corollary of national sovereignty and of state responsibility for the people living inside its borders
- Legally and technically not permitted to enforce legislation outside of the country



# Inherent restrictions: why migrant workers are often legally excluded from social protection

## **Lack of social security coordination through bilateral/multilateral agreements**

- No guarantee of maintenance of migrant workers' social security rights or rights in course of acquisition
- Difficult for migrant workers to qualify for benefits in any country

## **Lack of formal status**

- Migrant workers in an irregular situation often excluded from social protection coverage.

# International Human Rights Instruments: a legal framework for protecting migrants and guiding policy development

## **International Convention on the Rights of Migrant Workers and Members of their Families**

- Sets the principle of equality of treatment with regards to social security benefits and emergency medical care - (ICRMW art. 27 & 54)

## **Convention on the Elimination of All Forms of Discrimination against Women**

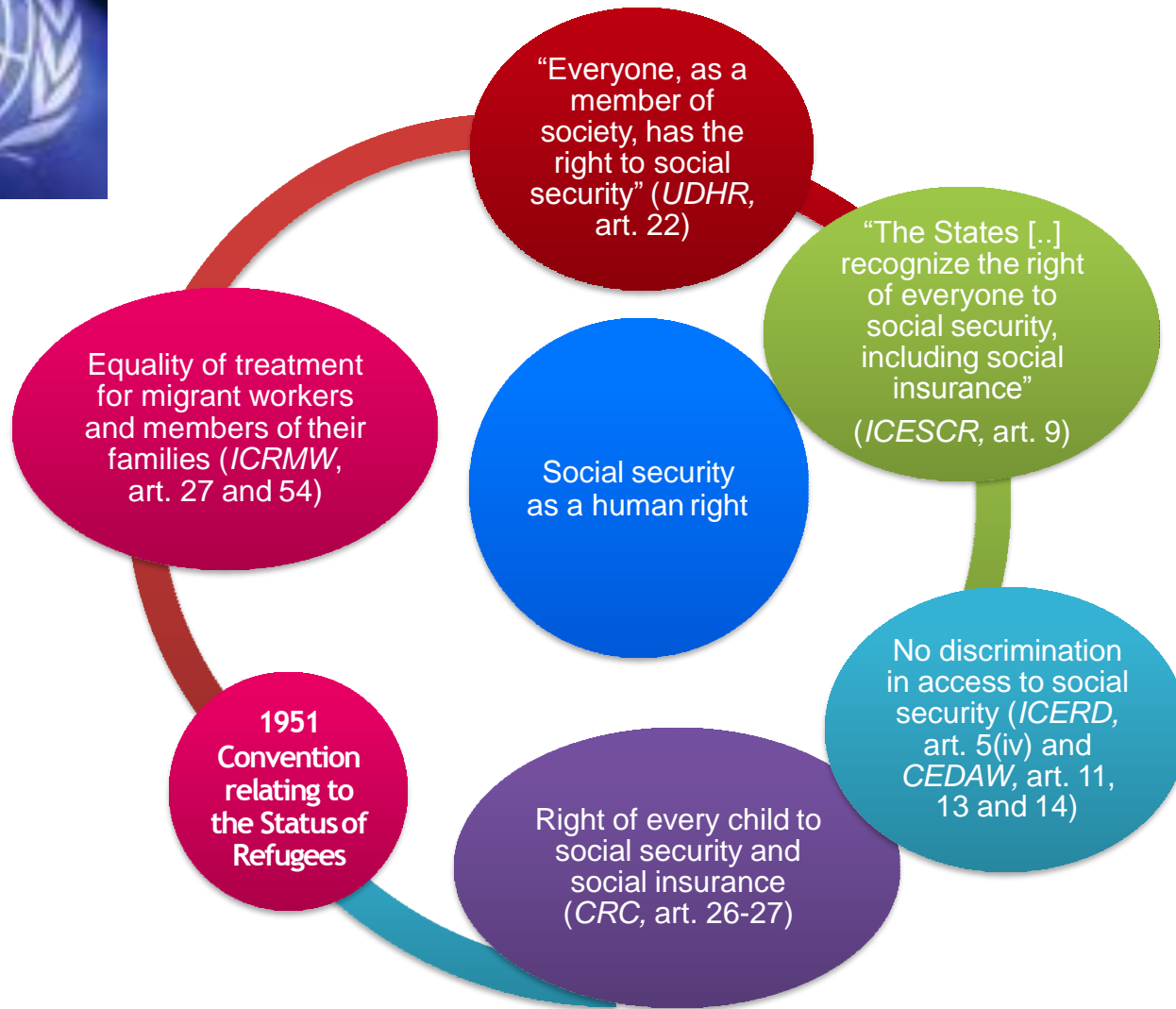
- Provides special protection to women. The Committee has drawn attention to the particular discrimination against domestic women workers, including in accessing social services and the particular vulnerability of migrant women domestic workers.

## **International Convention on the Elimination of All Forms of Racial Discrimination**

- Regards migrant workers and in particular irregular migrant workers as vulnerable groups and establishes the right of equal treatment as regards “the right to public health, medical care, social security and social services

And regional instruments and policy frameworks -

# International legal framework: The right to social security in UN instruments



# Migrant workers' right to social protection part of ILO's mandate

Declaration of Philadelphia of 1944 and recently recalled by the Social Protection Floors Recommendation, 2012 (No. 202)

- The achievement of “*the extension of social security measures to provide basic income to all in need of such protection and comprehensive medical care*”
- And the preamble of the Declaration refers to “*the interests of workers when employed in countries other than their own*”.

For this reason, and as an expression of the principle of non-discrimination, **all ILO instruments apply to migrant workers** unless otherwise stated.



# Key Social Security Coordination Principles laid down in ILO Instruments

**Equality of Treatment Between Nationals and Non-Nationals:** Non-national workers should have the same conditions as national residents in terms of coverage and entitlement to benefits.

**Maintenance of Rights in Course of Acquisition:** The contribution period served in other country should be taken into account when considering the qualifying period (principle of aggregation).

**Maintenance of Acquired Rights and Provision of Benefits Abroad:** The rights acquired in other countries should be guaranteed to the migrant workers; There should be no restriction on the payment of benefits irrespective of the place of residence of the beneficiary (export of benefits).

# Key Social Security Coordination Principles laid down in ILO Instruments

## **Determination of Applicable Legislation:**

To avoid a worker to be subject to several legislations, to avoid double benefits or double obligation to pay social security contributions. or, conversely, fail to be subject to any of them.

Rules must be set for calculation and payment of benefits.

**Mutual administrative assistance:** Facilitation of administrative arrangements through liaison bodies to ensure a smooth coordination.



	Equality of treatment <sup>1</sup>	Applicable legislation	Maintenance of acquired rights and provision of benefits abroad	Maintenance of rights in the course of acquisition	Administrative assistance
C19 - Equality of Treatment (Accident Compensation) Convention, 1925 (interim status)	Yes				
R86 - Migration for Employment (Revised), 1949	Yes		Yes	Yes	
C102 - Social Security (Minimum Standards) Convention, 1952	Yes				
C97 - Migration for Employment Convention (Revised), 1949	Yes				
C118 - Equality of Treatment (Social Security), 1962	Yes		Yes	Yes	Yes
C121 - Employment Injury Benefits, 1964 [Schedule I amended in 1980]	Yes				
R122 - Employment Policy Recommendation, 1964	Yes				
C127 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967				Yes	
C130 - Medical Care and Sickness Benefits Convention, 1969	Yes				
C143 - Migrant Workers (Supplementary Provisions), 1975	Yes				
C151 - Migrant Workers, 1975	Yes				
C157 - Maintenance of Social Security Rights, 1982		Yes	Yes	Yes	Yes
R167 - Maintenance of Social Security Rights Recommendation, 1983		Yes	Yes	Yes	Yes
C168 - Employment Promotion and Protection against Unemployment, 1988	Yes				
MLC, 2006 - Maritime Labour Convention (as amended)	Yes				
R201 - Domestic Workers, 2011	Yes		Yes	Yes	
R202 - Social Protection Floors, 2012	Yes				
R204 - Transition to the Informal Economy, 2014					

# Coverage Of Specific Groups In ILS

	MIGRANT DOMESTIC WORKERS	SEASONAL, AGRI. MIGRANT WORKERS	MIGRANTS IN IRREGULAR SITUATION	REFUGEES
C102 Social Security (Minimum Standards) Convention, 1952	X	X		X
C118 Equality of Treatment (Social Security) Convention, 1962	X	X		X
R202 Social Protection Floors Recommendation, 2012	X	X	X children	X
C157 Maintenance of Social Security Rights Convention,	X	X		
C97 Migration for Employment Convention (Revised), 1949	X	X		X
C143 Migrant Workers (Supplementary Provisions) Convention, 1975	X	X	X	X
C181 Private Employment Agencies Convention, 1997	X	X		
C151 Migrant Workers Recommendation, 1975	X	X	X	X
C189 The Domestic Workers Convention, 2011	X			
R204 Transition from the Informal to the Formal Economy Recommendation, 2015	X	X	X	X
C184 Convention No. 184 on Safety and Health in Agriculture, 2001		X		
C168 Convention No. 168 on Employment Promotion and Protection against Unemployment, 1988	x	X		

# ILO International Labour Standards

C. 102

Social security (Minimum Standards) Convention, 195

- Art. 68: equality of treatment of non-national residents (**2 exceptions** in respect of (portions of) benefits which are payable wholly /mainly out of **public funds** and in **respect of transitional schemes.**)

C. 118

Equality of treatment of (social security) 1962

KEN,RWA

- Equality of treatment of nationals of other ratifying States (and dependents) on its territory with its own nationals (including refugees and stateless persons, if specifically accepted) (reciprocity)
- **Flexibility** – only for the branches accepted
- Members should endeavor to participate in schemes for the maintenance of social security rights

R. 202

Social Protection Floors Recommendation, 2012

- applies to "...at least all residents and children, as defined in national laws and regulations." (Paragraph 6).

# ILO International Labour Standards

C. 157

Convention on the  
Maintenance of Social Security  
Rights, 1982

- provides rules for implementing the principles of the maintenance of rights in course of acquisition and of **acquired rights**, in respect of all branches of social security as well as determination of **applicable legislation** and **administrative assistance**.

R. 167

Recommendation on the  
Maintenance of Social Security  
Rights, 1983

- Members concerned should endeavor to conclude bilateral and multilateral social security instruments and administrative arrangements
- Includes in its **annex a model provisions** for **bilateral or multilateral agreements**

R. 204

Transition from the Informal to  
the Formal Economy  
Recommendation, 2015

- Promote and extend **OSH protection** to employers and workers in the informal economy (Para 17).
- Progressively extend, in law and practice, to all workers in the informal economy, **social security, maternity protection, decent working conditions** and a **minimum wage** ...(para 18)\*



# ILO International Labour Standards

C. 189

Domestic Workers Convention,  
2011 (No. 189)

- **Equality of treatment** as regards **social security** including **maternity**
- Recognition for the need to take into account of the specific context and features of domestic work
- Calls for the participation of the relevant parties in the formulation of social security measures

R. 201

Domestic Workers  
Recommendation, 2011 (No.  
201)

- Underlines the need to **facilitate the payment of social security contributions**, including in respect of domestic workers working **for multiple employers**
- Equality of treatment and portability of social security entitlements for migrant domestic workers through **bilateral and multilateral agreements**
- Consideration of the monetary value of payments in kind in respect to contribution and entitlements
- Encourages cooperation including with respect to accessing social security

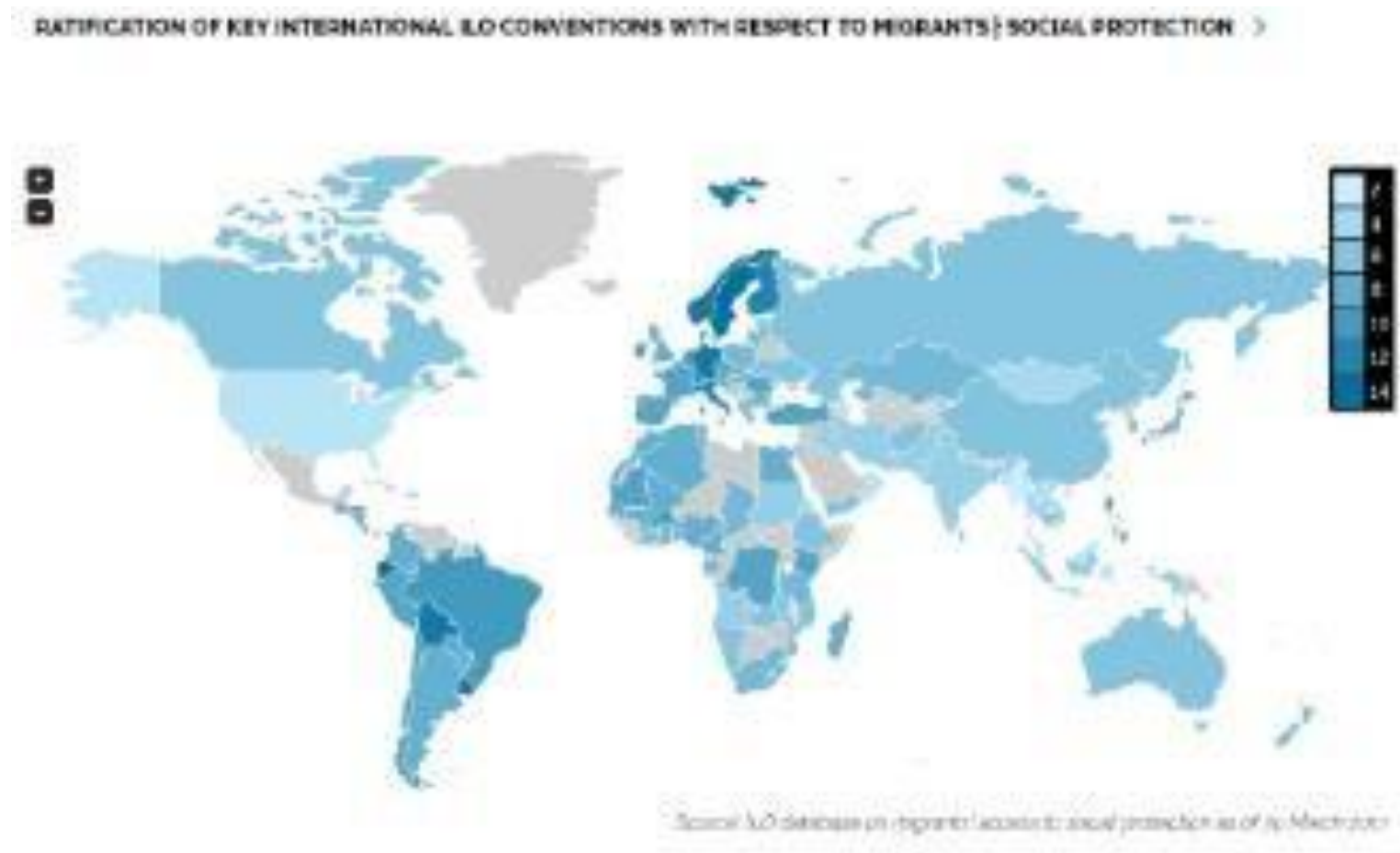
R. 205

Employment and Decent Work  
for Peace and Resilience  
Recommendation, 2017

- Members should establish, re-establish or maintain social protection floors, as well as seek to close the gaps in their coverage, taking into account C. 102 , R202 and others
- facilitate, as appropriate, the portability of work-related and social security benefit entitlements, including pensions, in accordance with the national provisions of the host country

## Ratifications of key international UN or ILO Conventions with respect to migrants' rights to social protection

See <http://migrants.social-protection.org>



# ILO supervisory system and protection of migrant workers' rights

- Regular supervisory system
  - ❑ CEACR - Committee of Experts on the Application of Conventions and Recommendations
    - ❑ Observations and direct requests
    - ❑ 2016 General survey and other GS
  - ❑ ILC Committee on the Application of Standards
- Representations and Complaints (Governing Body)
- Committee on Freedom of Association (GB)

# Committee of Experts on the Application of Conventions and Recommendations

- Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it.
- Every two years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental
- Committee of Experts makes two kinds of comments: observations and direct requests
  - Observations contain comments on fundamental questions raised by the application of a particular convention by a state (published in the report of the Committee)
  - Direct requests relate to more technical questions or requests for further information (not published but directly communicated to the governments concerned)

# Why ratify?

- Best way and commitment to protect rights of foreign and own citizens
- Protect state's sovereign right to determine its migration policy
- Contribute to transparent and effective migration policy-making based on ILS
- Flexibility
- Conventions' principles can accommodate any of today's migrant workers policy context
- International endorsement of national law and policy on migration
- Benefit from international monitoring, guidance and technical assistance

# Advantages of ratification of International Labour Standards

- Ratification is a formal procedure whereby a State accepts the Convention as a legally binding instrument:
  - Long process, requires certain level of involvement and participation + obligation to submit reports
  - BUT it ensures the application of common rules by the different States concerned with migration
  - It gives an immediate advantage to migrant workers
  - It enhances coordination/harmonization of social security schemes
  - Supervisory mechanism - provides guidance and advice on application of standards




# Extending social protection to migrant workers, refugees and their families: policy option No. 1:

## **The ratification and application of ILO Conventions and Recommendations**

The principles and standards therein, notably the principle of equality of treatment, can be incorporated into domestic law and/or bilateral arrangements.

# Myth or truth?

1. There is no point in ratifying Conventions as they rarely result in the desired change for a country let alone for migrant workers.
2. Migrants migrate to get access to social protection benefits - «Welfare shopping»
3. Remittances are a good solution to finance social protection and they are a major contribution to the development of a country.
4. See cartoon



IN THIS COUNTRY, MIGRANTS HAVE A  
DUTY TO PAY TAXES AND SOCIAL  
SECURITY CONTRIBUTIONS!

SO WE CAN ALSO  
BENEFIT FROM THEM?

LET'S NOT  
EXAGGERATE!

Finni



International  
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# Thank you for your attention !

- [Recommendation concerning national floors of social protection](#) (Social Protection Floors Recommendation), 2012 (No. 202).
- [Social Security \(Minimum Standards\) Convention, 1952 \(n° 102\)](#)
- [ILO social security Conventions and Recommendations](#)
- [World Social Protection Report 2017-2019: Universal social protection to achieve the Sustainable Development Goals](#) (Geneva: ILO, 2017).
- [Social protection for all: Building social protection floors and social security systems: The strategy of the International Labour Organization](#) (Geneva: ILO, 2012). - including in the annex the ILO Social Protection Floors Recommendation, 2012 (No. 202).
- [Social security for migrant workers: A rights based approach](#)

ILO social protection web platform: [www.social-protection.org/](http://www.social-protection.org/)

Workspace: <http://migrants.social-protection.org> including maps

Contact: [umuhire@ilo.org](mailto:umuhire@ilo.org)