



# The International Law as a tool to enhance human rights- based approach to migration

International GFMD Policy Seminar,  
Chisinau, Republic of Moldova: 12-13 October 2011

# Structure of the presentation

- Core international human rights instruments relevant to migration
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- The human rights-based approach to migration
- Recommendations how to enhance the human rights-based approach to migration

# Core international human rights instruments

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights\*
- International Convention on the Elimination of Racial Discrimination
- Convention on the Elimination of Discrimination Against Women\*
- Convention Against Torture\*
- Convention on the Rights of the Child\*
- International Convention on the Protection of All Migrant Workers and Members of their Families
- International Convention for the Protection of All Persons from Forced Disappearances
- Convention on the Rights of Persons with Disabilities\*

\* Some treaties are supplemented by optional protocols dealing with specific concerns

# Normative framework on migrants' human rights: ICRMW

The drafting of the ICRMW took ten years to complete

The General Assembly adopted the Convention on 18 December 1990 without a vote

The Convention entered into force on 1 July 2003

It currently has 45 ratifications and 16 signatories



# ICRMW

- provides a comprehensive rights-based definition and legal basis for national policy and practice regarding international migrant workers and their family members
- establishes minimum standards of protection for civil, political, economic, social and cultural rights of **all** migrant workers and members of their families
- approaches migrant workers as more than labourers or economic commodities: they are human beings with human rights,
- recognises the vulnerability in which migrant workers and members of their families find themselves and the consequent need for appropriate protection

# ICRMW

- its philosophy is based on the principle of non-discrimination
- provides an internationally agreed definition of a migrant worker, which is broad in scope and includes all migrants, both men and women, who are to be engaged, are engaged or have been engaged in a remunerated activity in a country other than their own
- seeks to prevent and eliminate clandestine movements, while protecting the fundamental human rights of irregular migrants
- seeks to discourage irregular migration by imposing sanctions on employers
- establishes the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

# Part III (articles 8 to 35): Rights of *all* migrant workers

General standards including:

- Right to life (article 9)
- Protection against torture (article 10)
- Protection against slavery and forced or compulsory labour (article 11)
- Right to privacy (article 14)
- Protection from the arbitrary deprivation of property (article 15)
- Right to liberty and security (articles 16, 17)
- Equality before the law (article 18)

# Part III: Rights of *all* migrant workers

Standards specific to migrant workers, including

- Protection from confiscation or destruction of documents (art. 21)
- Protection from collective expulsion (art. 22)
- Right to consular protection (art. 23)
- Right to join trade unions (art. 26)
- Right to emergency medical care (art. 28)
- Access to birth registration and education (art. 29, 30)
- Right to transfer earnings and savings (art. 32)
- Right to information (art. 33)

## Part IV (articles 36-56): Rights of migrant workers in a regular situation

Standards specific to regular migrants, including

- Right to freedom of movement (article 39)
- Right to form trade unions (article 40)
- Right to participate in public affairs (article 41)
- Protection of the family and measures to facilitate reunification (article 44)
- Equality of treatment regarding employment protections (article 54)

# ICRMW as a tool to enhance development by:

(1) the protection of the rights of migrants workers and their families as a means of enhancing their intergration and thus their contribution to the host community, as well as their reintegration in the country of origin; (2) preventing their marginalisation and social exlusion; (3) the protection of the rights of irregular migrants with a view to reducing the negative effects of irregular migration; (4) inter-State cooperation on the promotion of sound, equitable, human anf lawful conditions in connection with international migration.

# The **human rights-based** approach

- ✓ express linkage to **rights**
- ✓ **accountability** of duty-bearers
- ✓ **empowerment** of rights-holders
- ✓ effective and inclusive **participation**
- ✓ **non-discrimination** and attention to vulnerable groups

# Obligations in respect to migrants

## Respect



Do not arbitrarily detain migrants

Do not carry out mass expulsions without examining individual circumstances

## Protect



Penalise abusive employers, through criminal sanctions if necessary

Regulate recruitment and brokerage agencies

## Fulfil



Include irregular migrants in national plans of action on housing

Ensure that migrants are consulted on public policies

# Recommendations how to enhance the human rights-based approach to migration

- Ratifying the core human rights treaties, including the ICRMW
- Promoting the better understanding of the content of the ICRMW to dispell misconceptions surrounding this treaty
- Training for policy-makers to improving their capacity in adressing human rights-based approach to migration on the political agenda and in public debates
- Establishing a platform for co-operation, ensuring the participation both of migrant and human rights NGOs and trade unions

# Recommendations:

- Promoting the principle that all migrants, including irregular migrants are entitled to basic human rights among the public through regular interventions in the popular media,
- Preparing studies and analysis into the broad catalogue of rights afforded by the ICRMW to all migrants, regardless of status, and in particular to the likely effect that this would have in preventing or reducing irregular migration
- Ensuring that migration systems are also protection-sensitive in regard to the needs of persons in need of international protection as refugees fleeing persecution or who may fear persecution, as well as for those persons who, for humanitarian reasons leave their homelands



**For more information**  
**[www.ohchr.org](http://www.ohchr.org)**

(Follow the links from the home page:  
Your human rights - Human rights issues  
– Migration – Migration and human  
rights)