



# **MANUAL**

## **Regional Workshop on Ethical Business and Recruitment Practices in Labour Migration**

### Chapter 4

The international Labour organization and migrant workers

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## Chapter 4: The International Labour Organization and migrant workers

### Key questions

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- What international labour standards are relevant to the rights of migrant workers?
  - What protections do these standards provide to migrant workers?
  - How is compliance with these standards monitored? Can complaints be made if a State breaches its obligations under these standards?
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### 1. Introduction

The International Labour Organization (ILO) was established in 1919 following the First World War, predating the formation of the United Nations. Today it is a specialized agency of the UN with the aim of promoting rights at work, as encapsulated in the slogan: “Decent work for all men and women”. This mission is based on an understanding of the inextricable relationship between labour rights, social justice and the conditions for “lasting peace, progress and prosperity”.<sup>1</sup>

The ILO is the only UN body with an explicit constitutional mandate for the protection of workers in international labour migration.<sup>2</sup> This focus has been restated in the Declaration of Philadelphia, 1994<sup>3</sup> and the ILO Declaration on Fundamental Principles and Rights at Work, 1998 (see below).

This chapter provides information on the key ILO standards relevant to the rights of migrant workers. It also explains the structure of the ILO and its supervisory and complaints procedures.

Upholding core labour standards is essential for ensuring that the human rights of migrant workers are respected in practice. The right to decent work is a fundamental right that enables the realization of many other rights for migrant workers.

### 2. ILO standards and migrant workers

The ILO has adopted over 180 conventions addressing specific labour issues and concerns, including those that specifically address the rights of migrant workers. In addition to these legally binding conventions, the ILO has codified standards through non-binding guidelines in the form of “recommendations”.

The ILO was also actively involved in the drafting of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It recognizes the definition of

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<sup>1</sup> “Mission and Objectives”; ILO; see: <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>.

<sup>2</sup> “MIGRANT: International Migration Branch”; ILO; see: <http://www.ilo.org/public/english/protection/migrant/index.htm>.

<sup>3</sup> Declaration concerning the aims and purposes of the International Labour Organization; ILO Constitution, Annex.

migrant workers that the Convention provides and acknowledges the Convention as one of the key framework instruments on the rights of migrant workers.<sup>4</sup>

## 2.1 ILO conventions and recommendations specific to migrant workers

The ILO has adopted two legally-binding instruments specifically on migrant workers:

- Migration for Employment Convention, 1949 (C- 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143).

These instruments promote the **principles of equal treatment, equality of opportunity and non-discrimination**. A total of 49 countries have ratified C-97 and 23 countries have ratified C-143.<sup>5</sup> Only two countries with NHRIs that are members of the APF – the Philippines and New Zealand – have ratified C-97; and only the Philippines has ratified C-143.

The **Migration for Employment Convention, 1949** provides a framework to regulate and provide protection to a “migrant for employment” at all stages of the migration process. Member States must provide assistance and information on departure, journey and entry, including medical assistance. They must also take steps to eliminate misleading propaganda on emigration and immigration and to prevent the expulsion of irregular migrants.

The Convention defines a migrant for employment as a person who migrates from one country to another with a view to being employed otherwise than on his or her own account and includes any person regularly admitted as a migrant for employment (article 11). It therefore applies to regular migrants (article 8) and is not applicable to frontier workers, seamen, short-term entry of members of the liberal professions and artistes, or to self-employed foreign migrants.

The Convention requires member States to accord equal treatment to regular migrant workers in relation to working conditions; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation; social security; employment taxes; and legal proceedings relating to the matters referred to in the Convention (article 6).

The **Migrant Workers (Supplementary Provisions) Convention, 1975** sets out a comprehensive approach to address labour migration, starting with a commitment to the protection of basic human rights of all migrant workers (article 1). It provides minimum standards for the protection of migrant workers in both regular and irregular situations.

The Convention is the first international instrument to deal with problems arising from irregular migration. It seeks to suppress the clandestine migration and the illegal employment of migrants (article 3) and encourages the prosecution of “manpower trafficking” (article 5).<sup>6</sup>

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<sup>4</sup> *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*; ILO; 2006; see: “Section V: Protection of Migrant Workers”; para. 9(b); *In Search of Decent Work – Migrant Worker’s Rights: A Manual for Trade Unionists*; International Labour Office; 2008; p. 78.

<sup>5</sup> For a list of countries that have ratified these conventions, see the “Standards” section of “MIGRANT: International Migration Branch”; ILO; <http://www.ilo.org/public/english/protection/migrant/areas/standards.htm>.

<sup>6</sup> The Convention does not specifically define the phrase “manpower trafficking” which, in summary, refers to trafficking for labour. For a comprehensive definition of trafficking in persons, which includes trafficking for the purposes of labour exploitation, see the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

The Convention requires member States to guarantee equality of opportunity and treatment for documented migrant workers and their families in respect to employment and occupation, social security, trade unions, cultural rights and individual and collective freedoms (article 10). However, this provision does not apply to frontier workers, short term entry of the liberal professions and artistes, seamen, trainees and persons coming for training or education and persons who come for specific duty assignments (article 11(2)).

In addition, the Convention stresses the importance of consulting representative organizations of employers and workers in relation to the laws, regulations and other measures provided for in the Convention which are designed to prevent and eliminate migration in abusive conditions.<sup>7</sup>

The **Migrant Workers Recommendation, 1975** calls for further elaboration and broadening of the standards set out in C-143, within the framework of a coherent policy on international migration for employment. It seeks to promote effective equality of opportunity and treatment with nationals for migrant workers lawfully within the territory of a member State in respect to vocation and employment training, security of employment, working conditions, trade union membership and remuneration for work of equal value, as well as living conditions, including housing, social services and access to education and health services (article 2).

The Recommendation encourages member States to provide the free choice of employment and geographical mobility for migrant workers who have resided lawfully in the country (article 6(a));<sup>109</sup> to ensure the efficient resolution of cases where migrant workers with irregular status may be regularized, and where they cannot be regularized, to ensure equal treatment with regards to certain rights arising from past and present employment (article 8); to formulate social policy appropriate to the conditions and specific needs of migrant workers (article 9), to promote family reunification (article 13) and to provide assistance and information in adapting to the economic, social and cultural environment of the country of employment (article 24).

The ILO has a dedicated unit for labour migration, the International Migration Programme (MIGRANT), which promotes international standards and cooperation and provides technical assistance and capacity building to member States on labour migration and the promotion of migrant workers' rights.<sup>8</sup>

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<sup>7</sup> 108 See article 7 in particular and, more generally, articles 2, 4 and 12.

<sup>8</sup> "MIGRANT: International Migration Branch"; ILO; see: <http://www.ilo.org/public/english/protection/migrant/index.htm>.

## 2.2 Core labour standards and other relevant conventions

All core ILO labour rights – known as the Fundamental Conventions of the ILO and enshrined in the **ILO Declaration on Fundamental Principles and Rights at Work** – apply in equal measure to all migrant workers.

Adopted in 1998, the Declaration states in its Preamble that the ILO “should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation”.

Article 2 of the Declaration states that:

all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization 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, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

The eight conventions considered “fundamental” by the ILO include:

- Forced Labour Convention, 1930 (C-29)
- Freedom of Association Convention, 1948 (C-87)
- Right to Organize and Collective Bargaining Convention, 1949 (C-98)
- Equal Remuneration Convention, 1951 (C-100)
- Abolition of Forced Labour Convention, 1957 (C-105)
- Discrimination (Employment and Occupation) Convention, 1958 (C-111)
- Minimum Age Convention, 1973 (C-138)
- Worst Forms of Child Labour Convention, 1999 (C-182).

There are other ILO standards that are directly relevant to rights of migrant workers.<sup>9</sup> Of particular importance are the Private Employment Agencies Convention, 1997 (C-181) and the Domestic Workers Convention, 2011 (C-189).

The **Private Employment Agencies Convention, 1997** provides guidance for designing a legal framework to address illegal recruitment practices and trafficking of human beings, especially women and children. It applies to all private employment agencies and all categories of workers, including migrant workers, but excludes the recruitment and placement of seafarers from its coverage (article 2(2)).

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<sup>9</sup> For a list of other relevant standards, see the *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*; 2006; Annex I; pp. 33-34.

Some of the Convention's key provisions include:

- that member States ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability (article 5)
- the protection of worker's privacy in processing worker's data (article 6)
- that private employment agencies not charge directly or indirectly, in whole or in part, any fees or costs to workers (article 7)
- that member States provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including laws or regulations which provide for penalties, including prohibition of private employment agencies which engage in fraudulent practices and abuses (article 8(1))
- that member States ensure that child labour is not used or supplied by private employment agencies (article 9)
- provisions for adequate mechanisms to deal with complaints, abuses and fraudulent practices of private employment agencies (article 10)
- adequate remedies including penalties for violations of the Convention (article 14(3)).

The **Domestic Workers Convention, 2011** – also known as the Convention Concerning Decent Work for Domestic Workers – is a landmark standard that aims to protect and improve the lives and working condition of domestic workers worldwide. The ILO estimates that there are around 53 to 100 million domestic workers, the vast majority of whom are women and girls.<sup>10</sup>

Migrant workers make up a large proportion of domestic workers and their earnings represent a significant proportion of remittances to developing countries. Migrant domestic workers can be at high risk of exploitation and abuses. Partly because domestic work is "invisible", domestic workers are undervalued, overworked and unprotected. Migrant domestic workers can experience a range of human rights violations, ranging from excessive recruitment fees and confiscation of passports, through to forced labour, trafficking, sexual exploitation and rape.

In giving legal recognition to domestic work as "work", the Convention grants protections to domestic workers that are commensurate to other workers, such as reasonable hours of work, weekly rest of at least 24 consecutive hours, limitations on in-kind payment and clear information on terms and conditions of employment. It also includes provisions regarding fundamental principles and rights at work, including freedom of association and the right to collective bargaining, and that a written work contract is provided before the migrant travels to the country of destination. Member States are also required to provide clear rules and regulations on private employment agencies to prevent fraudulent and abusive practices.

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<sup>10</sup> *Global and regional estimates on domestic workers*; Domestic Work, Policy Brief No 4; ILO; 2011; pp. 6-9.

## 2.3 ILO Multilateral Framework on Labour Migration

The ILO Multilateral Framework on Labour Migration, adopted in March 2006, is a non-binding instrument that promotes a rights-based approach to labour migration and protection for migrant workers. It was developed in response to the absence of a multilateral process to govern labour migration and to mitigate some of the associated problems, such as the exploitation of migrants, the growth of irregular migration and the “brain drain” on developing countries.<sup>11</sup>

The framework contains comprehensive principles and guidelines in relation to labour migration and provides practical guidance to Governments. While the framework is non-binding, member States are urged to promote and respect the framework as a way of fostering coherence and consistency in migration policy at the national, regional and international level.

A key focus of the framework is to ensure equality for, and improve protection of, migrant workers and to prevent disadvantage or exploitation. It applies to all migrant workers and seeks to improve the circumstances of especially vulnerable groups. The framework emphasizes the special position of women, who make up half of all migrant workers and often migrate alone.

The framework provides non-binding principles and guidelines in eight areas:

- international cooperation on labour migration
- creation of global knowledge base
- effective management of labour migration
- protection of human rights of all migrant workers regardless of status
- prevention and protection against abusive migration practices
- promotion of orderly and equitable process of labour migration
- promotion of social integration and inclusion.

## 3. The ILO tripartite structure and its supervisory system

The ILO is unique among UN agencies in providing a forum for non-government actors to participate as independent social partners in discussing and resolving common issues.

The ILO structure consists of three main bodies:

- the International Labour Conference
- the Governing Body
- the International Labour Office.

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<sup>11</sup> *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*; ILO; 2006; p. v.

These organs are represented equally by Governments, employer organizations and trade unions in their deliberations and decision-making processes.

The International Labour Conference acts like an international parliament of labour and is responsible for setting international labour standards and policies. The Governing Body is the executive arm, while the International Labour Office functions as the secretariat.

Each member State of the ILO sends four representatives to the International Labour Conference: two Government delegates, an employer delegate and a worker delegate. Each delegate has equal voting rights.<sup>12</sup>

The ILO regularly assesses the application of standards in member States and identifies how they could be better applied in law and practice. If there are difficulties in the application of standards, the ILO seeks to engage with, and provide technical assistance to, the countries concerned.

The ILO has two kinds of supervisory mechanism:

- the regular system of supervision, which involves the “examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of the ratified conventions”<sup>13</sup>
- special procedures, which includes “a representations procedure and a complaints procedure of general application, together with a special procedure for freedom of association”.<sup>14</sup>

### 3.1 Regular system of supervision

According to the ILO, “the regular system of supervision is based on the examination by two ILO bodies of reports on the application in law and practice sent by member States and on the observations on these matters sent by workers” organizations and employers” organizations.”<sup>15</sup>

After ratification of ILO conventions, member States are required to submit their reports to the **Committee of Experts on the Application of Conventions and Recommendations** (CEACR), which is composed of 20 independent experts chosen from across geographic regions.

The reporting obligations of ILO member States include an:

- obligation to report on ratified conventions
- obligation to report on unratified conventions
- obligation to report on recommendations.<sup>16</sup>

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<sup>12</sup> ILO Constitution; article 4.

<sup>13</sup> “Applying and promoting international labour standards”; ILO; see: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm?lang=en#RegularSupervision>.

<sup>14</sup> Ibid.

<sup>15</sup> “ILO supervisory system/mechanism”; ILO; see: <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>.

<sup>16</sup> ILO Constitution; articles 22, 19(5e) and 19(6d).



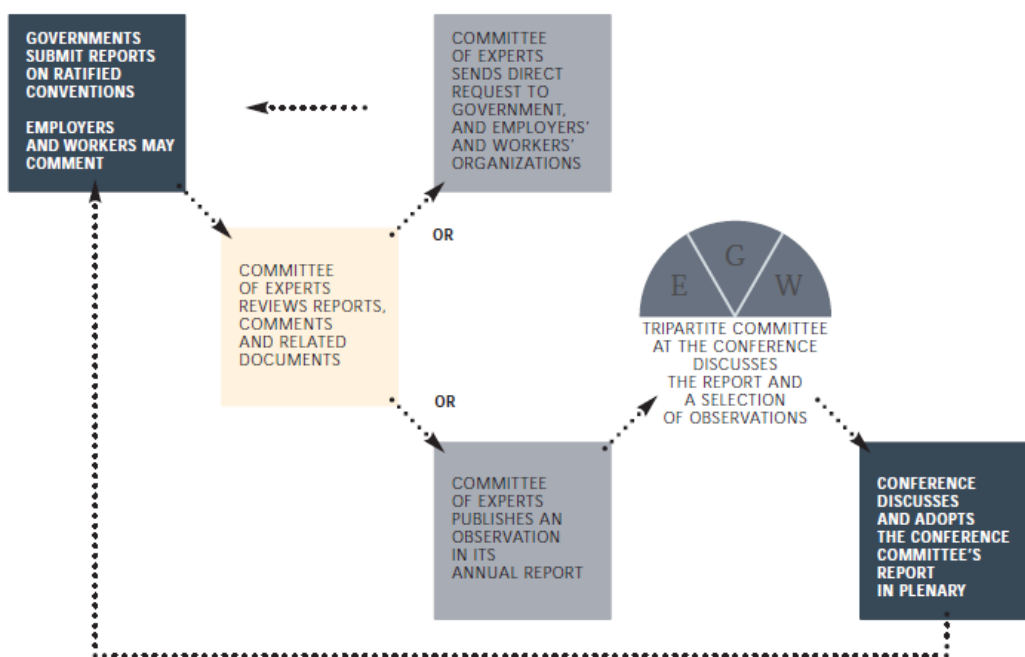
Periodic reports submitted by governments are considered by the CEACR, which provides comments in the form of “observations” and “direct requests”. Observations are comments on fundamental questions raised by the application of a particular convention, and which are published in the Annual Report, while direct requests are technical in nature and communicated directly to member States.

CEACR reports are submitted to the next session of the International Labour Conference and examined by the tripartite **Conference Committee on the Application of Standards**. The Conference Committee considers a selection of observations, invites the concerned Government to respond to the observations and then presents recommendations to the Government to address specific issues or to invite ILO missions or technical assistance. The findings of the Conference Committee are published in its report.

The ILO regular system of supervision has been credited with progress in reforming some labour laws and policies in some countries.<sup>17</sup> In recent years, member States have also been “more receptive to the Committee’s comments” and “tending to implement them more fully”.<sup>18</sup>

***ILO regular supervisory process***<sup>19</sup>

The regular supervisory process



<sup>17</sup> *The Committee of Experts on the Application of Conventions and Recommendations: its dynamic and impact*; Eric Gravel and Chloé Charbonneau-Jobin; ILO; 2003. See also: „Facing up to the Complexities of the ILO’s Core Labour Standards Agenda”; Philip Alston; *European Journal of International Law*; June 2005; pp. 467-80.

<sup>18</sup> *The Committee of Experts on the Application of Conventions and Recommendations: its dynamic and impact*; Eric Gravel and Chloé Charbonneau-Jobin; ILO; 2003; p. 24.

<sup>19</sup> “Committee of Experts on the Application of Conventions and Recommendations”:ILO; see: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>.

### 3.2 Special procedures

The special procedures are engaged upon the submission of a “representation” or a complaint. They include:

- the procedure for representations on the application of ratified conventions
- the procedure for complaints over the application of ratified conventions
- the special procedure for complaints regarding freedom of association.

The **representation procedure** allows an industrial association of employers or workers to bring a “representation” or allegation to the ILO Governing Body against a member State for failure “to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party” (article 24, ILO Constitution). A tripartite Committee is set up by the Governing Body which examines the issues raised and the response of the Government concerned. If the Government response is not considered satisfactory, the Governing Body publishes both the representation and the response (article 25, ILO Constitution).

The representation must satisfy certain conditions before it can be examined by the Committee. Officers of the ILO Governing Body determine whether the representation has been submitted according to formal requirements and whether it establishes in what respects the Government is alleged to have failed to effectively observe a convention it has ratified.<sup>20</sup>

Under the **complaints procedure**, a member State, a delegate to the International Labour Conference or the ILO Governing Body on its own accord, may submit a complaint against another member State for failing to secure the effective observance of a convention ratified by both member States (article 26, ILO Constitution). The ILO Governing Body may refer the matter for examination to a Commission of Inquiry or forward complaints on violation of trade union rights to the Committee on Freedom of Association. Articles 26 to 34 of the ILO Constitution govern this procedure.

The Commission of Inquiry is the highest investigative level procedure at the ILO and is set up to deal with complaints involving persistent and serious violations and persistent refusal to address such violations by a Member.<sup>21</sup> Since 1996, there have been 11 enquiries set up by the ILO. The Commission of Inquiry conducts a full investigation of the complaint and prepares a report setting out all questions of facts and recommendations (articles 26 to 28, ILO Constitution).

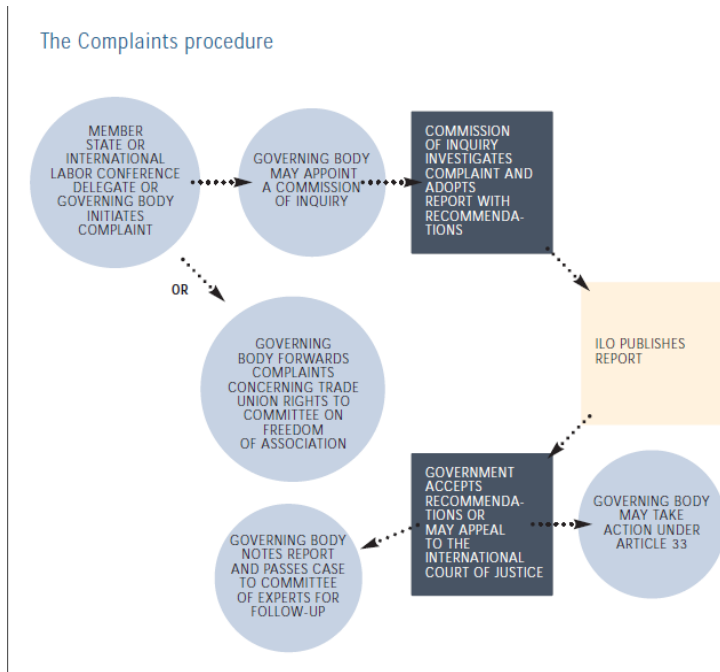
The Government against which the complaint is made may accept the recommendations or refer the matter to the International Court of Justice (article 29, ILO Constitution). If the member State refuses to take action on the recommendations, the Governing Body may recommend to the International Labour Conference “such action as it may deem wise and expedient to secure compliance” (article 33, ILO Constitution). Article 33 has been used once, in 2000, when the ILO Governing Body asked the International Labour Conference to take measures against Myanmar to end the use of forced labour.

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<sup>20</sup> For complete procedure and requirements, see: Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution; ILO; 1932 (modified 1938, 1980 and 2004).

<sup>21</sup> “Complaints”; ILO; <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>.

***ILO complaints procedure***<sup>22</sup>



In the 1950s, the ILO established supervisory procedure to ensure compliance with the fundamental principle of freedom of association and collective bargaining, enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C-87) and the Right to Organise and Collective Bargaining Convention, 1949 (C-98). The **special procedure on freedom of association** can apply to member States that have not ratified these conventions.

There are three competent bodies of the ILO that can hear complaints of alleged infringement of trade union rights:

- the Committee on Freedom of Association
- the Fact-Finding and Conciliation Commission on Freedom of Association
- the Governing Body itself.<sup>23</sup>

The **Fact-Finding and Conciliation Commission on Freedom of Association** was established in 1950, following discussions between the ILO and the United Nations Economic and Social Council (ECOSOC). All complaints received by the ECOSOC concerning allegations of infringement of trade union rights are referred to the ILO Governing Body and then to the Fact-Finding and Conciliation Commission. Generally, the procedure applies to member States of the ILO. Non-member States of the ILO may give their consent to the referral.

**The Committee on Freedom of Association** was created in 1951 with nine regular members and nine deputies, representing Governments, trade unions and employer groups in equal proportion. The

<sup>22</sup> Ibid.

<sup>23</sup> For further information, see: ILO Special procedures for examination in the International Labour Organization of complaints alleging violations of freedom of association; Annex I.

Committee's mandate is to determine whether any given legislation or practice complies with the principles of freedom of association and collective bargaining set out in the relevant conventions and to examine whether the evidence is satisfactory to support the complaint. The Committee conducts the preliminary examination and prepares a report to the ILO Governing Body and recommends measures to address the situation. It can also seek the consent of the Government concerned to refer the complaint to the Fact-Finding and Conciliation Commission.

At any stage of the procedure, either during an examination or taking action on recommendations, **on-the-spot missions** can be undertaken by the ILO Director General or representative. This involves visiting the country concerned and making on-the-spot enquiries with a view to overcoming difficulties. On-the-spot missions are generally undertaken in the context of allegations of a particularly serious nature. They can be carried out only with the approval of the Committee and the consent of the concerned Government. This approach, which has been used successfully, is similar in purpose to "direct contacts" with Governments employed by the Fact-Finding and Conciliation Commission.

Complaints to the ILO special procedures can be lodged either directly with the ILO or through the UN. Complaints are deemed "receivable" only when submitted by a national organization directly interested in the matter, by international organizations of employers or workers having consultative status with the ILO, or other international organizations of employers or workers where the allegations relate to matters directly affecting their affiliated organizations. If the complaints are found to be substantiated, the ILO Governing Body can communicate with the concerned Government, publicize the matter or take other alternative actions.

## Key points: Chapter 4

- All core ILO labour rights – enshrined in the ILO Declaration on Fundamental Principles and Rights at Work – apply equally to all migrant workers, regardless of their migration status.
- The ILO has developed labour standards specifically relating to the rights of migrant workers. Other ILO conventions relevant to migrant workers address the rights of domestic workers, the operation of private employment agencies, illegal recruitment practices and human trafficking.
- The ILO has established a regular system of supervision to monitor implementation of these standards. Complaints can also be brought to the ILO for an alleged failure to uphold labour standards.

## Further reading

*International Labour Migration: A Rights-Based Approach*; ILO; 2010

*International Labour Standards on Migrant Workers' Rights: Guide for Policymakers and Practitioners in Asia and the Pacific*, ILO; 2007

*Migration and International Human Rights Law; Practitioner's Guide No. 6*; International Commission of Jurists; 2011

*Monitoring International Labor Standards*; National Research Council; 2004

*Protecting the Rights of Migrant Workers: A Shared Responsibility*; ILO; 2009