International Legal Framework Governing Migration

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Presentation outline

- International instruments relevant to migration
- Instruments of particular relevance to irregular migrants
- Law and Practice: proposed responses
Key principles: State sovereignty

- States have power to determine conditions of admission, residence and removal from their territory
- But limits to this power, for example
  - International refugee law (non-refoulement)
  - Human rights
    - No return where there is a real risk of torture, inhuman and degrading treatment or punishment
## Instruments of International Migration Law

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Instruments of International Migration Law

**Refugee Law**
- 1951 Convention
- 1967 Protocol

**Nationality Law**
- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons

**Law of the Sea**
- Convention on the Law of the Sea
- FAL Convention
- International Convention for the Safety of Life at Sea
Key principles: Rights

- Universal human rights instruments apply to all persons irrespective of nationality and immigration status: e.g. UDHR, ICCPR, ICESCR, ICERD, CEDAW, CAT, CRC

- ICESCR also applies to non-nationals, including irregular migrants
  - ESC Committee General Comments and practice

- Non-discrimination: Distinctions between citizens and non-citizens can only be justified if they serve a legitimate State objective and are proportional to the achievement of that objective
Core Human Rights Treaties

- Universal Declaration on Human Rights (UDHR), 1948
- International Convention on the Elimination of all forms of Racial Discrimination (ICERD), 1965
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Covenant on Civil and Political Rights (ICCPR), 1966
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979
- Convention against Torture (CAT), 1984
- Convention on the Rights of the Child (CRC), 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990
- Convention on the Rights of Persons with Disabilities (CRPD), 2006
Specific international standards protecting irregular migrants

- UN Convention on Migrant Workers (1990)
- ILO Convention No. 143 (1975)
UN Migrant Workers Convention
1990

- Adopted by UN General Assembly – 18 December 1990
- Entry into force – 1 July 2003
- 43 States parties to date:
  - Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia, Bosnia, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Jamaica, Kyrgyzstan, Lesotho, Libya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Rwanda, Syria, Tajikistan, Timor-Leste, Turkey, Uganda, Uruguay
Convention on Migrant Workers
1990 General features

- **Comprehensive** instrument applicable to the whole migration process and regulating the legal status of migrant workers and their families
- Protects the basic rights of all migrant workers and their families (lawfully resident and irregular migrants) on the basis of equality with nationals (Part III)
- Grants regular migrants a number of additional rights on the basis of equality with nationals (Part IV)
Rights covered:
Civil and Political Rights

Examples of particularly important civil and political rights for migrant workers

- Right to life – Art 9; Freedom from cruel, inhuman or degrading treatment – Art 10
- Freedom from slavery, forced labour – Art 11,
- Right to liberty and security of person – Art 16(1). Procedural protection against individual expulsion applicable to all migrant workers – Art 22
Employment Rights

- Rights to equal work/employment conditions with nationals - Art 25
- Trade union rights (freedom of association)
  - to join existing trade unions - Part III, Art 26
- Rights arising out of past employment
  - Remuneration (past wages) - Art 25(3)
  - Social security - Art 27

Economic, Social, and Cultural Rights

- Emergency medical care - Art 28
- Equal access with to education - Art 30
  - Primary education not to be refused to children of irregular migrants
Migrant-specific rights

- Effective protection by the State against violence, physical injury, threats and intimidation – Art 16(2)
- Prohibition on confiscation and destruction of identity and travel documents (e.g. passports) – Art 21
- Recourse to protection and assistance of consular/diplomatic authorities of State of origin – Art 23
- Transfer of earnings and savings (remittances) – Art 32
- Free provision of information on Convention rights and conditions of admission and, as far as possible, in a language migrants can understand – Art 33
Obligations upon States to

• consult and cooperate to promote sound, equitable and humane migration conditions - Art 64(1)
• collaborate to prevent and eliminate irregular migration - Art 68
• punish traffickers, smugglers and those who exploit migrant workers (e.g. employers) - Art 68(1)-(2)
  • see also Trafficking and Smuggling Protocols to International Convention against Transnational Organized Crime 2000 (Palermo Convention)
<table>
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<tr>
<th>ILO Convention No. 97 (1949)</th>
<th>ILO Convention No. 143 (1975)</th>
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<tr>
<td>48 States parties</td>
<td>23 States parties</td>
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<tr>
<td>Only applicable to lawfully resident migrant workers</td>
<td>Protects basic human rights of all migrant workers, including irregular migrants</td>
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<td>Recruitment and orderly migration of foreign workers</td>
<td>Specifically, the rights of irregular migrants arising out of past employment (unpaid wages, social security) are safeguarded</td>
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<td>Equal treatment with nationals in respect of wages and working conditions, trade union rights, social security, accommodation, access to courts</td>
<td>Principle of equal treatment of regular migrants with nationals</td>
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UN Convention Against Transnational Organized Crime, 2000

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- Protocol Against the Smuggling of Migrants by Land, Sea and Air

The number of countries that have signed and ratified the instruments (Status as of March 2009):

- The Convention: Signatories: 147, Parties: 147
The Crime of Trafficking in Persons

Art 3(a): “Trafficking in persons” shall mean
...the recruitment, transportation, transfer, harbouring or receipt of persons

...by means of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,

...for the purpose of exploitation.”
Victim Protection: Trafficking Protocol

- Art 6: protect privacy and identity of VoT
- Information in court proceedings
- Measures for the physical, psychological and social recovery of victims
  - Appropriate housing
  - Counselling and information
  - Medical, psychological and material assistance
  - Employment education and training
- Take into account age, gender and special needs of VoTs
- Art 7: Consider measures that permit VoT to remain on territory temporarily or permanently.
- Art 14: Saving clause
Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.

Art 3, Smuggling Protocol
Smuggling Protocol: Protection of Victims

- Art 16, States parties shall
  - Take appropriate measures to preserve and protect rights of persons, in particular right to life, freedom from torture, inhumane and degrading treatment
  - Take appropriate measures to afford physical protection against violence by reason of having been smuggled
  - Take account special needs of women and children
  - Right to consular protection

- Art 19: Saving clause
3. Law and Practice

- 1. Incorporation
- 2. Knowledge
- 3. Accountability
- 4. Cooperation
Key Policy Elements

Shared Responsibility/Co-operation

- Human rights relevant at all stages of the migration process and to broad range of players:
  - Role of Inter-State co-operation; engagement in global and regional processes;
  - Role of country of origin does not cease when migrants leave home: consular assistance & protection;
  - Role of private sector in recruitment and employment;
  - Role of communities, neighbourhoods, trade unions, migrants.