



# Handbook for Applying the International Migrants Bill of Rights

GEORGETOWN LAW



**THE INTERNATIONAL MIGRANTS BILL OF RIGHTS INITIATIVE**

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# Handbook for Applying the International Migrants Bill of Rights

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“The treatment of non-nationals must observe the minimum standards set by international law. Human rights are not reserved for citizens only, or for people with visas. They are the inalienable rights of every individual, regardless of his or her location and migration status.”

— Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights

## INTRODUCTION

The purpose of this Handbook is to help migrants, advocates, governments, and academics protect and promote the universal rights and norms that apply to all migrants, regardless of their migration status or reason for migration, as outlined in the International Migrants Bill of Rights (IMBR). While the rights in the IMBR are enshrined in international human rights law, regional human rights treaties, and in the national law of various countries, violations of these human rights remain rampant. The IMBR Handbook **communicates the content** of the IMBR in non-technical language and **promotes universal protections** of the rights of migrants.

This Handbook is part of a collection of documents designed to help migrants, advocates, governments, and academics better understand the ways in which rights are applicable to migrants.

- **The International Migrants Bill of Rights** contains 23 articles outlining the rights of migrants. It draws upon existing sources of human rights law, refugee law, and labor law, and also suggests positive developments in areas where new norms are emerging.
- **The IMBR Commentaries** provide in depth analysis, looking at the sources of law drawn upon in each article of the IMBR.
- **The IMBR Principles** are contained in a quick-reference document that lists each of the rights protected in the IMBR and captures the essence of the Initiative’s goals.
- **The IMBR Handbook** explains the rights enumerated in these documents in an easily understandable, unified, and action-oriented format to guide migrants, advocates, and policy makers in the application of the IMBR.

## About the IMBR

The IMBR creates, for the first time, a single legal framework that protects the rights of all international migrants. This framework is a tool for migrants and advocates seeking to protect the rights of migrants and for states reforming migration policy to better comply with existing international law.

Inspired by the Guiding Principles on Internal Displacement, which consolidated different areas of international law related to the treatment of internally displaced persons, the IMBR compiles this law to make clear that a comprehensive set of fundamental human rights protects all migrants. The IMBR also advances positive developments in migration law and practice consistent with progressive values. In contributing to both a conversation and a movement, the IMBR Initiative aims to help secure a global legal architecture for *all migrants* on the basis of their dignity and humanity.

The IMBR draws from a range of international and regional human rights law instruments, including:

- The Universal Declaration of Human Rights (UDHR),
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The 1951 Convention Relating to the Status of Refugees, and the Protocol thereto (1951 Refugee Convention and Protocol),
- The International Covenant on Civil and Political Rights (ICCPR),
- The International Covenant on Economic, Social and Cultural Rights (ICESCR),
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
- The Convention on the Rights of the Child (CRC),
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention),
- The Convention Against Transnational Organized Crime and the Protocols thereto, including the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol),
- The Convention on the Rights of Persons with Disabilities (CRPD),
- The International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), and
- International Labour Organization Conventions concerning Decent Work for Domestic Workers (ILO 189), concerning Migration for Employment (ILO 97) and concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ILO 143).

## How to use this Handbook

The Handbook divides the rights enumerated in the IMBR into five categories: (1) cross-cutting themes; (2) rights protecting life, liberty, and personal security; (3) those protecting rights in society and community; (4) those protecting rights in the polity; and (5) those protecting economic, social, and cultural rights. Each chapter of the Handbook provides a simple summary of a right and then suggests action items for protecting these rights under the headings: *What Migrants Can Do*, *What Advocates Can Do*, and *What Governments Can Do*. Some of the suggestions are for specific actions, and others are for broader policy change. As a tool, the Handbook may be used differently depending on the problem at hand and whether it is a short-term crisis or protracted situation.

You can read the Handbook cover-to-cover if you are looking for a general overview of the rights of migrants; or you can use it as a reference guide when looking for information related to a specific problem. Either way, a helpful way to start is by skimming the Table of Contents and the Principles in order to have a better sense of the various rights covered in the Handbook.

A quick hypothetical should help you better understand how to put the Handbook to use: Imagine a situation where a natural disaster has forced families to flee across a border. The closest region in a neighboring state is overwhelmed and is debating sending migrants back to the disaster zone or re-opening an old prison to detain these migrants. Take a look at the Table of Contents and think about what rights this could implicate.

You might want to look at the chapters on Expulsion; Asylum and *Non-refoulement*; and Liberty and Security of Person. If you were a lawmaker or advocate and were particularly concerned about children being detained in prison, you would see that the section on Liberty and Security of Person explains that detention should always be used as a last resort and that children should never be detained based on their migration status because they are particularly vulnerable to harm caused by detention. Several other rights may be implicated that you may not have otherwise considered. For example, if children will be detained, you may also want to look at the sections on Vulnerability and Family. Additionally, you may refer to the sections on Health and Education in order to incorporate those rights in any response plan.

After getting a sense of the rights that are relevant in a given situation, migrants, advocates, and government officials may next look to the action items for guidance and relevant suggestions on how to formulate a response. Policymakers would particularly benefit from using the Handbook to formulate a comprehensive checklist of rights to protect when acting to address a problem that impacts migrants. In addition to referring to the Handbook as a resource, migrants can partner with local civil society organizations that advocate for human and migrants' rights. The Handbook can be a powerful tool and framework to discuss, strategize, and respond to the problems that affect migrants.

The Handbook is meant to be a starting point for understanding the rights of migrants, but if you need a more detailed legal analysis, you can look up the corresponding article in the full text of the IMBR or IMBR Commentaries.

## WHO IS A MIGRANT? ARTICLE 1

The IMBR affirms that *all* migrants are entitled to human rights protections, regardless of the cause of their migration. The term “migrant” is defined and used in many ways depending on context; but in the IMBR, a migrant is generally any person who is “outside of a State of which the migrant is a citizen or national.” Individuals are migrants regardless of whether their migration is temporary, lawful, regular, irregular, forced, for protection, for economic purposes, or for any other reason.

The rights in the IMBR apply during the entire migration process. Migration is often cyclical, and the IMBR recognizes that the fundamental rights of migrants apply throughout the migration process, including departure, transit through a third country, admission, stay in a host country, expulsion, repatriation, and during return to the country of nationality. The IMBR's definition of migrant is tied to movement across an international border, and thus does not include stateless persons who remain in their country of birth or habitual residence, or internally displaced persons. A person ceases to be a migrant either when the person settles in their country of citizenship or habitual residence, or when the person acquires the citizenship of the host country in which the person resides.

## JURISDICTION MEANS RESPONSIBILITY

A state has jurisdiction over individuals with whom it comes in contact. Whether the individual is inside the borders or in a boat hundreds of miles from a border, a government has the power and authority to enforce laws. Responsibility to enforce the rule of law and to protect human rights accompanies this jurisdictional connection. All too often, governments act as though their responsibility to protect human rights ceases at citizenship or at the border. It does not. Sovereign states have the responsibility to respect, protect, and promote the human rights of every single individual within their jurisdiction, regardless of whether the individual lacks valid immigration status, has recently crossed the border, or is on a vessel intercepted on the high seas.

## IMBR PRINCIPLES

- Every migrant has the right to **dignity**, including physical, mental, and moral integrity.
- Every migrant has the right, without any discrimination, to the **equal protection** of the law of any State in which the migrant is present.
- **Vulnerable migrants**, including children, women, and migrants with disabilities, have the right to the protection and assistance required by their condition and status and to treatment which takes into account their special needs.
- Every migrant has the inherent right to **life**.
- Every migrant has the right to **liberty and security of person**.
- Every migrant has the right to recognition everywhere as a **person before the law**.
- Every migrant has the right to an effective **remedy**.
- Every migrant has the right to **due process** of law.
- Every migrant **victim of crime** has the right to assistance and protection, including access to compensation and restitution.
- Every migrant has the right to protection against discriminatory or arbitrary **expulsion** or deportation, including collective expulsion.
- Every migrant has the right to seek and to enjoy in other countries **asylum**.
- Every migrant has the right **against refoulement**.
- Every migrant has the right to a **nationality**.
- Every migrant **family** has the right to protection by society and the State.
- Every migrant has the right to **freedom of thought, conscience, and religion or belief**.
- Every migrant has the right to **freedom of opinion and expression**.
- Every migrant has the right to **freedom of peaceful assembly and association**.
- Every migrant has the right to participate in the **civil and political life** of the migrant's community and in the conduct of public affairs.
- Every migrant has the right to be **free from slavery**, servitude, or forced or compulsory labor.
- Every migrant has the right to **work** and to just and favorable conditions of work.
- Every migrant has the right to the highest attainable standard of physical and mental **health**.
- Every migrant has the right to an **adequate standard of living**.
- Every migrant has the right to **education**.
- Every migrant has the right to enjoy the migrant's own **cultures** and to use the migrant's own languages, either individually or in community with others, and in public or private.



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## CROSS-CUTTING THEMES: ARTICLES 2-4

Three broad themes provide the foundation for the application of the rights in the IMBR. These principles support and inform each of the rights in the handbook.

### Dignity—Article 2

Every migrant has the inherent right to dignity. The concept of human dignity is a foundational concept in the UDHR and the U.N. Charter, and numerous international human rights instruments confirm the status of human dignity as the cornerstone of international human rights law. Every single migrant has dignity and worth and deserves to be treated—in all situations—as part of the human family. The value and integrity of each individual migrant must be respected based on a shared humanity.

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- **All human beings are born free and equal in dignity and rights.**

UDHR ARTICLE 1

- **Every migrant has the right to dignity, including physical, mental, and moral integrity.**

IMBR ARTICLE 2

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### Equal Protection—Article 3

As human beings, all migrants are equal before the law. Migrants do not forfeit basic rights or surrender individual equality simply because they are outside their countries of origin. They have the right to non-arbitrary treatment, even when a law or action does not implicate an independent human right. In addition, all migrants have a complementary right to actual and effective protection of the law. Discriminatory laws violate a migrant's right to equal protection. Laws must *at a minimum* afford migrants equal protection of the laws and protection against discrimination on the basis of migration status.

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- **All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination...**

UDHR ARTICLE 7

- **All persons, including migrants, are equal before the law. Every migrant has the right, without any discrimination, to the equal protection of the law on the same basis as nationals of any State in which the migrant is present.**

IMBR ARTICLE 3(1)

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Freedom from discrimination lies at the heart of the basic right to equal protection. The IMBR applies in its entirety to all migrants. Migrants face discriminatory treatment in many contexts. Yet, they are entitled to equal and effective protection against discrimination on all grounds, including sex, race, color, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, property, marital status, disability, birth, gender, sexual orientation; gender identity; or other status. Discrimination against citizens cannot justify discrimination against migrants.

Although equal protection prohibits all forms of discrimination, certain distinctions among migrants and between migrants and citizens are permissible. Distinctions are consistent with international law only if they are pursuant to a legitimate aim, have an objective justification, and reasonable proportionality exists between the necessary means and legitimate ends. First, legitimate aims will accord with national, regional, and international norms. Second, justifications must be identifiable and reasonable in light of particular circumstances. Third, proportionality assessments will grant considerable attention to a migrant's relationship with the host country. As the amount of time that a migrant has spent within the country increases, ties to the host country will increase and the migrant should be subject to fewer distinctions based on status as a migrant. For example, laws may provide for different benefits to short-term tourists than they do to long-term migrants.

## Vulnerability—Article 4

Not all migrants have the same needs. For instance, a migrant child traveling alone may require extra protection to prevent exploitation. A migrant who is pregnant requires access to pre-natal services. A migrant with a mental disability may require support and assistance in understanding legal rights and protections. When the special need of a migrant is not identified or met, the individual becomes vulnerable to rights violations. Those who interact with migrants—including government agencies, advocates, service providers, and other migrants—should identify and address these special needs.

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- **Every vulnerable migrant has the right to protection and assistance required by the migrant's condition and status and to treatment which takes into account the migrant's special needs.**

### IMBR ARTICLE 4

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Current human rights law protects the special needs of certain groups of people who have been identified as particularly vulnerable to rights abuses. The CRC protects the rights of children. The IMBR emphasizes that migrant children are particularly vulnerable to violence and exploitation. They may have an increased chance of exploitation because they often lack documentation and/or access to birth registration and have little or no access to services. This exploitation could even take the form of sex or labor trafficking. All migrant children, including unaccompanied children, should be provided basic services, including health and education services. In all contexts involving migrant children, the best interests of the child must be the primary consideration.

The CEDAW protects the rights of women. Migrant women are often not afforded equal rights and freedoms as compared to men. Migrant women can face explicit or implicit discrimination under the law of the origin, transit, or host country. For instance, in some countries, domestic workers, a labor force often consisting of mostly migrant women, are not afforded the right to organize, strike, and bargain collectively. Migrant women are particularly vulnerable during pregnancy and while nursing, and these women have a right to special protection and access to services.

The CRPD protects the rights of persons with disabilities. Migrants with disabilities may face significant barriers to the realization of their rights. Psychosocial disabilities and related needs, for example, may go unnoticed or may result in discrimination. Migrants with disabilities should be provided the access to the same essential services as others.

Other groups, as well, may become vulnerable during the process of migration, whether because of their legal status or because particular needs or characteristics of the group or individuals are not addressed. For example, lesbian, gay, bisexual, and transgender migrants may face discrimination because of their sexual orientation or gender identity. Sexual minorities may be particularly vulnerable to physical or sexual assault if detained or otherwise deprived of liberty. Transgender migrants may lack access to gender-appropriate identity documents, require medical care unique to the transition from their birth-assigned gender to their self-identified gender, or, in the exceptional case when such migrants are lawfully detained, may require housing arrangements in accordance with their self-identified gender. Because not every group with a potential vulnerability is defined in the IMBR, the IMBR seeks to provide a framework for articulating how international human rights law protects migrants who become particularly vulnerable during the migration process.

The IMBR also recognizes that movement across an international border may create vulnerability. International migration is complex and dynamic, and a migrant's situation may change during transit or upon arrival to a destination. Irregular migrants are particularly vulnerable because governments often use irregular status as a reason to avoid respecting an individual's human rights.

Because the potential for vulnerability exists among all migrants—and the intersection of multiple vulnerabilities creates unique cases—governments should take vulnerability into consideration when assisting all migrants and should explicitly protect the rights of vulnerable migrants through their national law or policy.

## PROTECTING LIFE, LIBERTY, AND PERSONAL SECURITY RIGHTS: ARTICLES 5-10

### Life—Article 5

All migrants have the inherent right to life. Migrants are often in life-threatening situations during transit, while in a host country, and when returned. In transit, migrants face harsh and life-threatening circumstances as a result of extreme climates, smuggling, trafficking, dangerous border crossings, and unsafe and overcrowded boats and other means of transportation. At sea and land border crossings, migrants are sometimes left to die as a result of state migration policies designed to restrict the influx of migrants, even if their deaths could have been prevented. Migrants in any situation may experience unsafe conditions that threaten their health and safety and deprive them of basic needs such as food and water.

- **Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.**

ICCPR ARTICLE 6

- **No migrant shall be arbitrarily deprived of his or her life.**

IMBR ARTICLE 5

Inside a host country, migrants frequently lack access to basic health care and social benefits. They may live in unsafe conditions that threaten their health and safety. When migrants are placed in detention as a result of their status, they are frequently subjected to conditions that fall below minimum standards of health and safety. Migrants may even die as a result of direct abuse at the hands of government officials or employers who act with impunity.

#### WHAT MIGRANTS CAN DO

- Report traffickers and smugglers who threaten the lives of migrants to law enforcement.
- Educate your community about the life-threatening risks of migration and ways to avoid deadly circumstances.

#### WHAT ADVOCATES CAN DO

- Advocate for migration policies that target organized crime groups that engage in trafficking and smuggling.
- Propose policies that allow migrants to access the national health care system and provide adequate health care to detained migrants.
- Promote policies that guarantee that migrants are not physically harmed or tortured, for example, in detention centers.
- Raise awareness about deadly migration routes and border crossings.

#### WHAT GOVERNMENTS CAN DO

- Ensure that migration policies do not have unintended effects of encouraging unsafe border crossings.
- Create training programs for border authorities, law enforcement, detention officers, and other government personnel to prevent violations of the right to life for migrants.
- Establish special life-saving assistance and emergency health programs for migrants crossing dangerous borders.
- Allow judicial bodies to adjudicate claims against traffickers and smugglers.
- Investigate and prosecute violations of migrants' right to life committed by private actors.
- Ensure that migrants enjoy a presumption against detention.

### Liberty and Security of Person—Article 6

Every migrant has the right to not be arbitrarily arrested, detained, or otherwise deprived of liberty, regardless of immigration status. Migration alone is an insufficient basis for depriving migrants of liberty, particularly as robust alternatives to detention exist. Detention of migrants is generally incompatible with the human right of liberty and security of person. Irregular or undocumented status should not be treated akin to a violation of criminal law; the vast majority of detained migrants do

not pose a security threat. Restraints on liberty are only permissible when pursuant to an individualized determination of the need to restrict liberty.

- **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

ICCPR ARTICLE 9(1)

- **Detention shall occur only as measure of last resort and shall last no longer than required by the circumstances. Detention shall occur only pursuant to an individualized determination of the need to detain, and the migrant shall have the right to appeal conditions, legality, and length of detention.**

IMBR ARTICLE 6(3)

A presumption against detention is crucial to protecting the human rights of migrants. Governments must utilize alternatives to detention and detention should always be a measure of last resort. States should enact legislation and policies that allow for migrants to reside freely in the community while their migration status is being resolved or while they await deportation. Programs should focus on assessing each case and only applying detention conditions if necessary.

If detention is determined to be necessary as a measure of last resort, it must be reasonable and proportionate to a legitimate objective. It must also be for the shortest possible time as required by an individual's circumstances, with defined limits on the length of detention. Decisions to detain must be exercised in accordance with fair policy and procedures, authorized by law, and subject to regular independent judicial review. Detainees must have the right to challenge the lawfulness of their detention, and to ensure this right, migrants must have access to legal counsel. Any detention that does not adhere to these protections violates the right to liberty and security of person.

States should immediately cease the detention of children. Detention is always contrary to the best interests of the child. A child's immigration status, or a child's parent's immigration status, is never a valid reason to detain. Migrant children who are unaccompanied minors or separated from their families must never be detained, as they are especially vulnerable.

States should also enact policies to prevent the detention of other vulnerable migrants. Elderly migrants, women at risk, migrants at risk due to sexual orientation or gender identity, migrants with disabilities, and migrants with other protection needs are all at a higher risk of harm if detained.

#### WHAT MIGRANTS CAN DO

- Demand alternatives to detention.
- Speak out to government officials about the illegality of arbitrary detention under international law and the human consequences of the impermissible uses of immigration detention.
- Appeal the unreasonable conditions, legality, and length of detention in the host country's judicial system.

#### WHAT ADVOCATES CAN DO

- Advocate for development and implementation of alternatives to detention.
- Demand the immediate and absolute end to detention of children.
- Raise awareness that detention of migrants should occur only as a last resort.
- Propose legislation and policies that restrict administrative detention to a measure of last resort only and the shortest possible duration.
- Suggest policies that guarantee that migrants do not suffer from poor conditions and abuse in detention centers.
- Recommend the prohibition of mandatory detention.
- Demand the immediate end to the use of solitary confinement, and other inhumane conditions of confinement, in detention centers.

**WHAT GOVERNMENTS CAN DO**

- Prohibit mandatory detention.
- Cease the detention of children.
- End the detention of other vulnerable migrants.
- Create processes in which the government must define precisely the cases in which deprivation of liberty is permissible (to prevent arbitrary detention and deprivations of liberty).
- Implement a presumption against administrative detention.
- Create training programs for border authorities, law enforcement, detention officers, and other government personnel to treat migrants with humanity and respect during deprivations of liberty.
- Create legally enforceable standards for conditions in detention.
- Support regular monitoring of conditions in detention centers by independent monitoring bodies and require immediate redress for violations of detention standards.

**Legal Personhood—Article 7**

Every person and every migrant has the right to recognition as a person in the eyes of the law. This right ensures that each individual is recognized as having rights, privileges, protections, responsibilities, and liabilities under law by any state that has jurisdiction over them. Migrants must be acknowledged as deserving legal protection and must have access to the legal system. While this right does not necessarily guarantee migrants all the rights awarded to citizens, the basic right of recognition before the law is inalienable.

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■ **Everyone shall have the right to recognition everywhere as a person before the law.**

ICCPR ARTICLE 16

■ **Every migrant has the right to recognition everywhere as a person before the law.**

IMBR ARTICLE 7

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Legal personhood is recognized as fundamental by international law norms, and is sometimes referred to as the right to have rights. One of the most fundamental ways governments can ensure this right is protected is to provide an official record of a person’s existence. Governments can issue identification documents and other legal documents (e.g. work permits, residency documents) to all of their residents. This practice should begin at birth with the registration of all children born within a country (both citizens and migrants). The right to legal personhood is further protected by laws that criminalize the destruction of migrants’ identity and permit documents. Access to and protection of these identity documents ensure that an individual preserves her right to recognition as a person before the law.

**WHAT MIGRANTS CAN DO**

- Do not surrender identify documents to anyone other than a government official duly authorized by law. Also, do not sign anything that you do not understand and that is not in your own language.
- Insist upon written contracts with employers that reaffirm rights to documents.

**WHAT ADVOCATES CAN DO**

- Highlight that migrants possess the right to identity documents in know your rights presentations.
- Assist migrants in obtaining or regaining possession of identity documents.

**WHAT GOVERNMENTS CAN DO**

- Document and register all births that occur within country borders, regardless of the child’s citizenship or residency status.
- Issue documents that reflect migrants’ identity, residency status, work status, and marital status, and that accord with a migrant’s self-identified gender.
- Prohibit the confiscation or destruction of identity and other documents by any person who is not officially allowed to do so by law.
- Provide and facilitate consular processes for citizens residing abroad to obtain identity documents and eliminate barriers to accessing such processes.

## Due Process and Remedy—Articles 9 and 8

Migrants have the right to due process and to an effective remedy. Every migrant deserves equal access to the justice system, particularly when they seek protection for their rights. A migrant must have the same ability as a citizen to pursue recourse if the migrant's rights are violated by either the government or by private parties. A migrant must not be discriminated against in the legal system or limited from accessing the courts based on legal status.

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### ■ All persons shall be equal before the courts and tribunals.

ICCPR ARTICLE 14

### ■ Every migrant has the right to due process of law before the courts, tribunals, and all other organs and authorities administering justice, as well as those specifically charged with making status determinations regarding migrants.

IMBR ARTICLE 9

### ■ Every migrant has the right to an effective remedy for acts violating the rights guaranteed to the migrant by the relevant domestic law as well as international law, including those rights or freedoms herein recognized.

IMBR ARTICLE 8

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Access to counsel is a core component of due process. Without access to counsel, migrants are deprived of, among others, the right to present evidence and to make their case heard. In all proceedings related to an individual's legal status as a migrant, governments should provide migrants with legal aid and representation. This obligation is heightened for vulnerable migrants, and in particular, migrants with limited competency to understand judicial proceedings. Proper interpretation is crucial for many migrants to understand important proceedings.

#### WHAT MIGRANTS CAN DO

- Inquire about the proper forum to bring your claims.
- Insist on telling your side of the story in legal forums.

- Educate yourself about the particular legal system of the host or transit country.
- Ask for an attorney to advise and represent you.

#### WHAT ADVOCATES CAN DO

- Create know your rights training programs to inform migrants of their right to due process.
- Encourage and create pro bono legal assistance networks for migrants.
- Advocate for universal access to counsel in proceedings related to migration status.
- Research outcomes in judicial proceedings and demand data collection to assess the effects of policy on due process.

#### WHAT GOVERNMENTS CAN DO

- Implement policies that provide legal aid and representation for migrants in all legal proceedings.
- Provide interpreters for all migrants and inform migrants of their right to interpretation.
- Train public defenders and attorneys to know the specific needs and rights of migrants in relation to due process, especially any immigration consequences of criminal convictions.
- Assure that judicial bodies charged with determinations related to migration status receive adequate funding and oversight.
- Collect data on judicial proceedings to inform due process considerations.

## Victims of Crime—Article 10

All migrant victims of crimes have a right to protection and assistance regardless of status. In order to ensure this right, law enforcement must not play the role of immigration control. Rather, law enforcement must work to ensure that migrants can come forward to report crimes and receive treatment equal to that of citizens. Without this separation, many migrant victims of crime are wary to report crimes for fear of adverse consequences. Migrants become especially vulnerable to exploitation by criminals and abusers who threaten to report them to immigration

authorities if they report crimes. To protect against such abuse, some governments have provided special protections and visas for migrant victims of crime who report abuses. Such meaningful protections are especially necessary when migrant victims of crime are dependent on their abusers for immigration status. Furthermore, migrant victims of crime should have the right to compensation and restitution and should be aided in efforts to initiate legal action and recover from abuse.

- **Each State Party shall take appropriate measures within its means to provide assistance and protection...[and] to provide access to compensation and restitution for victims of offences covered by this Convention.**

PALERMO PROTOCOL ARTICLE 25(1)-(2)

- **Every migrant victim of crime has the right to assistance and protection, including access to compensation and restitution.**

IMBR ARTICLE 10(1)

To aid migrant victims of crime, governments should provide special assistance and programs to address the physical, psychological and legal needs of victims. Such assistance may include translation and counseling services, housing, medical assistance, victims advocate services or employment opportunities. Consideration of the individual situation and characteristics of each migrant victim of a crime should be taken into account when providing these services. This individualized special assistance is especially important in the case of victims of trafficking, victims of sexual violence and victims of domestic violence. To help facilitate these programs, nongovernmental organizations should aid governments in providing these services and reaching out to communities.

**WHAT MIGRANTS CAN DO**

- Raise awareness in communities about the rights of migrant victims of crime and the services available.
- Reach out to law enforcement to strengthen ties between migrant communities and the police.

- Document any situations where law enforcement officers act as immigration control or intimidate victims when talking to migrant victims of crimes.
- Create community response networks to support migrant victims of crime and their families.

**WHAT ADVOCATES CAN DO**

- Aid in community outreach programs that build trust between law enforcement and migrant communities.
- Campaign against racism, racial discrimination, and xenophobia.
- Create ‘know your rights’ programs to educate migrants on their right to protection and assistance if victims of crime.
- Advocate for the creation of special legal protection or status for migrant victims of crime.
- Expand available services for migrant victims of crime.

**WHAT GOVERNMENTS CAN DO**

- Prohibit law enforcement from sharing a migrant victim of crime’s immigration status with immigration enforcement for removal reasons.
- Enact hate crime legislation, including, at a minimum, hate crimes based on nationality, ethnicity, and immigration status.
- Develop legislation that includes provisions for restitution, asset forfeiture, civil liability, or causes of action for victims of trafficking.
- Pass legislation that includes a provision for a crime victim’s restoration fund.
- Legislate meaningful protections from expulsion for migrant victims of crime.
- Adopt a policy to notify all migrant victims of crime of the possibility of applying for a form of status based on being a victim of crime.

## PROTECTING RIGHTS IN SOCIETY AND COMMUNITY: ARTICLE 11-15

### Expulsion—Article 11

Virtually every major international or regional human rights convention has recognized the need for limits on the expulsion of migrants. That is not to say that migrants have an absolute right against expulsion, but rather that no person should have to suffer arbitrary or discriminatory expulsion. Expulsion should be governed by legal standards and migrants have a right to challenge their expulsion.

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- **An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law...**

ICCPR ARTICLE 13

- **Every migrant has the right to protection against discriminatory or arbitrary expulsion or deportation, including collective expulsion.**

IMBR ARTICLE 11(1)

Although the prohibition against arbitrary expulsion is well-settled in the law, many countries continue to expel migrants with little regard for the migrants' rights. As more migrants, both documented and undocumented, move across borders, even those governments with standards have struggled to apply them consistently.

Migrants should not be sent back *en masse* or without an opportunity to submit reasons why they should not be expelled, although there are limited exceptions in extreme national security situations.

When a decision is made to expel a migrant, a migrant has the right to be notified by the government, with an explanation of the reason for expulsion. Being expelled also should not affect a migrant's basic international and domestic rights. For example, a migrant being expelled should have the opportunity to settle any claims for wages an employer failed to pay for work already performed.

### WHAT MIGRANTS CAN DO

- Ask the government on what grounds you are being expelled.
- Request information on your rights and the expulsion process.
- Demand an individualized hearing regarding your expulsion.
- Notify the authorities of any special circumstances, such as being the victim of labor exploitation or human trafficking, and tell officials if you are afraid that you would be persecuted or otherwise harmed if returned to your home country.
- Ask to contact your country of origin embassy or consular official.

### WHAT ADVOCATES CAN DO

- Educate migrants, particularly those who are detained, of their rights in expulsion proceedings.
- Provide legal services or advice to help migrants present reasons against expulsion.
- Monitor detention conditions to ensure humane treatment of detained migrants during expulsion proceedings.
- Establish a network of attorneys to offer pro bono services to migrants in expulsion proceedings.
- Advocate for the government reforms listed below.

### WHAT GOVERNMENTS CAN DO

- Adopt regulations that outline specific criteria and procedures for expulsion.
- Require that migrants receive notification of expulsion, including an explanation of the grounds for expulsion.
- Provide a legal forum in which migrants can meaningfully protest their expulsion before any decision to order expulsion.
- Create special guidelines for expulsions involving families to ensure the protection of their rights and to prevent wrongful expulsion.



- Explicitly recognize the right to humane treatment during the expulsion process and put in place standards for humane treatment.
- Never detain migrants as a matter of first resort. First, seek alternatives to detention, and only detain as a last resort, consistent with respect for migrant life, liberty, and security of person.
- Provide channels for expelled migrants to seek outstanding wages and other entitlements to prevent employers and others from taking advantage of migrant labor.
- Create procedures to determine the best interests of migrant children and incorporate best interests determinations into the substance of decisions to expel migrant children or their parents.

### **Asylum and *Non-refoulement*—Articles 12 and 13**

*Non-refoulement* is a right that forbids governments from returning migrants to countries where they would be subjected to torture or cruel, inhuman, or degrading treatment or punishment; threats to life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion; serious deprivation of fundamental human rights; or other serious deprivations of human rights. Asylum is a related concept through which a country grants protection to a migrant.

Under Article 12 of the IMBR, every migrant has the right to seek and enjoy asylum, and Article 13 prohibits *refoulement*. Both *non-refoulement* and asylum are broadly-accepted principles in international law.

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- **Everyone has the right to seek and to enjoy in other countries asylum from persecution.**

UDHR ARTICLE 14(1)

- **Every migrant has the right to seek and to enjoy in other countries asylum.**

IMBR ARTICLE 12(1)

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The difference between asylum and *non-refoulement* is that *non-refoulement* merely stops a country from expelling someone to a country where there is a risk that they will be subjected to harm in the future. Asylum goes beyond mere non-return by a grant of admission to stay in a country for some period of time. Asylum can also apply to cases where there has been past persecution even though there is no risk of future harm.

The core content of the principle of *non-refoulement* creates an absolute right that protects migrants from being returned to a country when they have substantial grounds to believe they would be subjected to torture or cruel, inhuman, or degrading treatment or punishment; threats to life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion; or serious deprivation of fundamental human rights. For example, the return of a migrant to a country where the migrant's life would be seriously at risk because of a civil war or other general violence could qualify as a serious deprivation of a fundamental human right. The IMBR also urges governments to consider an expanded conception of *non-refoulement* by protecting migrants against expulsion or return when they would face other serious deprivations of human rights.

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- **No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.**

CAT ARTICLE 3(1)

- **Every migrant has the right against refoulement.**

IMBR ARTICLE 13(1)

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Protection against *refoulement* applies to anyone in a government's custody, even outside that country's borders. A country must not intercept and return people before they can enter the country if those people are attempting to seek protection. Governments also must not return migrants to a country that will, in turn, send them to a third country where their right to protection from *refoulement* would be violated. So-called “chain deportation” is a serious challenge to *non-refoulement* and asylum.

Sending a migrant to a country that will turn the migrant over to the country the migrant has fled for fear of torture merely adds a middle man without changing the tragic end result.

Countries sometimes fail to identify migrants who qualify for asylum or *non-refoulement* because of insufficient screening. In order ensure that migrants are not sent back to face torture or other risks covered by asylum and *non-refoulement*, governments should ask migrants if they have reason to fear return prior to expulsion. Governments also should provide a legal forum where migrants have a due process opportunity to show they qualify for asylum or *non-refoulement*. Asylum proceedings should be standardized in order to prevent discriminatory practices.

Governments are increasingly applying a broader definition of *non-refoulement* that covers refugees from other forms of suffering, such as general violence, armed conflict, famine, human trafficking, environmental degradation and disasters, and domestic abuse.

#### WHAT MIGRANTS CAN DO

- Notify authorities that you fear return to your home country if you believe you would be at risk of persecution, torture, or other human rights abuses.
- Request information on asylum and *non-refoulement* proceedings.
- Educate yourself about options for non-return. Some countries have additional protections for victims of human trafficking, domestic violence, or severe medical conditions.
- Ask whether there are agencies that provide free or reduced-cost legal services or guidance on asylum and *non-refoulement*.
- If you plan to seek asylum, notify authorities quickly upon arrival in a new country because some countries have time limits for asylum applications.
- Avoid criminal activity, which disqualifies migrants from asylum in some countries.

#### WHAT ADVOCATES CAN DO

- Encourage government or civil society screening of migrants to help find and educate migrants with potential asylum claims.
- Provide legal and social services to migrants pursuing asylum or *non-refoulement* claims.
- Tell the stories of refugees to increase public support for asylum and *non-refoulement*.
- Advocate that asylum and *non-refoulement* protections should apply to broader classes of people who would be at risk if expelled, such as environmental refugees.
- Advocate for the government reforms listed below.

#### WHAT GOVERNMENTS CAN DO

- Require that immigration officials notify all migrants of the possible availability of asylum or protection from *refoulement* prior to expulsion.
- Adopt regulations that outline specific criteria and procedures for criteria for granting asylum and protection against *refoulement*.
- Ensure these procedures explicitly ban discrimination based on race, religion, nationality, sexual orientation or gender identity, or disability.
- Narrowly define any national security exceptions for asylum.
- Provide access to an independent tribunal where migrants can apply for asylum or protection from *refoulement* with an appeals process.
- Adopt a policy of not returning migrants interdicted on the high seas or outside a country's borders if the migrants would qualify for asylum or protection from *refoulement*.

#### Nationality—Article 14

Every migrant has the right to a nationality. The absence of nationality is perhaps one of the most serious problems affecting marginalized groups, including migrants. Where no other nationality would attach, individuals have the right to the nationality of the country in which they have genuine links, through birth, family ties, long-time residence or other considerations.

- **A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.**

1961 STATELESSNESS CONVENTION ARTICLE 1

- **Every migrant has the right to a nationality.**

IMBR ARTICLE 14(1)

Under the right to a nationality, governments must not permit involuntary renunciation of a migrant’s citizenship or nationality. Governments should also not unreasonably burden the free movement of persons with unduly restrictive citizenship and nationality laws.

The IMBR encourages the naturalization of migrants. Naturalization furthers the exercise of a migrant’s other rights and preserves the right to change nationality. During naturalization, governments should consider, among other factors, the duration of residence; economic, social, and family ties; community and linguistic integration; legal status; the best interests of the child; and humanitarian grounds. The absence of any one factor should not bar a migrant’s application for naturalization, while a very strong claim under any one factor may suffice on its own to sustain a claim. A necessary result of this balancing of factors favoring or disfavoring a claim to naturalization is that the unlawful status of a migrant’s entry into a state or unlawful presence in that state shall not absolutely bar the migrant’s ultimate naturalization in that state.

Men and women must receive equal protection of their own nationality through marriage and the nationality of their children. Marriage must not result in gender discrimination by automatically changing the nationality of one spouse to reflect that of the other. Women must also have the same rights as men to pass on their nationality to children and non-citizen spouses.

**WHAT MIGRANTS CAN DO**

- Highlight positive factors during naturalization processes, including the duration of residence; economic, social, and family ties; community and linguistic integration; legal status; the best interests of the child; and humanitarian grounds.

- Help gather accurate information about stateless populations.
- Ask for paths to citizenship.

**WHAT ADVOCATES CAN DO**

- Propose legislation that prevents and reduces statelessness.
- Raise awareness about stateless populations around the world and in your country.
- Advocate for elimination of gender discrimination in nationality laws at home and abroad.
- Encourage naturalization policies.

**WHAT GOVERNMENTS CAN DO**

- Ensure that there is an expedited process for acquiring nationality for those who would otherwise be without a nationality.
- Remove unreasonable barriers to citizenship or acquisition of a nationality.
- Provide paths to citizenship.

**Family—Article 15**

All migrants have the right to the protection of their family. Encompassed in this right is the right of family members to live together. A government must protect all families, without discrimination between citizens and migrants, by promoting respect for family unity and recognizing that the family is a fundamental group in society. The rights to family unity and reunification are especially crucial for migrants, considering that they are particularly vulnerable to family separation as a result of the migration process. Separation can occur at all stages of migration and the right to family unity must be protected accordingly.

- **The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.**

UDHR ARTICLE 16, ICCPR ARTICLE 23

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■ **Every migrant family is entitled to protection by society and the State.**

**IMBR ARTICLE 15(1)**

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Children who are separated from their families during migration are especially vulnerable to exploitation. As such, they are entitled to special protection and should be treated in the same manner, and afforded the same rights, as other children in the country who are permanently or temporarily deprived of their family environment.

In order to protect these children's rights to family unity, family reunification should always be pursued unless it is contrary to the best interests of the child. Differences in citizenship should not prevent children from being reunified with their parents. Furthermore, governments should work to reduce the negative consequences that immigration enforcement policies can have on family unity and parental rights by using risk assessments to avoid family separation. Some examples of good practices in this area include allowing for extensions in the family reunification periods to permit more comprehensive searches for parents who may be deported or in detention; ensuring that immigration status is not a disqualifying factor in placing a child with a relative; taking into consideration a detained parent's circumstances if hearings on terminating parental rights are taking place; and assuming that family unity is a substantive determination in relief from expulsion.

Additionally, governments should facilitate the right of dependent family members of legally-settled migrants to migrate and reunify. Such dependent family members include minor, dependent, unmarried children; spouses; and persons with a relationship equivalent to marriage to the migrant. Governments should also consider granting legal status to non-dependent family members of lawfully-settled migrants such as adult children, siblings, and parents. Expanding family reunification and processing all reunification applications in a positive and humane manner enforces the right to family protection for all migrants.

**WHAT MIGRANTS CAN DO**

- Notify nongovernmental organizations any time immigration enforcement actions separate families.
- Raise awareness over the devastating effects of policies that separate families or prevent family reunification.

**WHAT ADVOCATES CAN DO**

- Facilitate the creation of pro bono services that aid in family reunification applications.
- Advocate for migration policies that ensure family unity.
- Create special assistance programs for separated migrant children.
- Monitor immigration detention policies to ensure that parents and families are not detained.

**WHAT GOVERNMENTS CAN DO**

- Implement substantive laws based on the best interests of migrant children.
- Enact legislation that grants legal status to family members of lawfully-settled migrants, including non-dependent family members.
- Ensure policies that guarantee that migrant children are not stateless and have an effective nationality.
- Implement risk assessment policies that ensure that immigration enforcement does not place children in vulnerable situations or lead to the termination of parental rights.

**PROTECTING RIGHTS IN THE POLITY:  
ARTICLES 16-19**

**Freedom of Thought, Conscience and Religion  
or Belief—Article 16**

Freedom of thought, conscience, religion or belief is a fundamental human right. This right includes the ability to instruct one's children in accordance with one's own religious and moral beliefs.

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- **Everyone shall have the right to freedom of thought, conscience and religion.**

ICCPR ARTICLE 18(1)

- **Every migrant has the right to freedom of thought, conscience, and religion or belief.**

IMBR ARTICLE 16(1)

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Because many migrants practice faiths or hold beliefs that are unfamiliar to their destination or transit countries, too often they face stigmatization, bigotry, and persecution. Migrants often face coercion to abandon their beliefs, avoid expressing them in public, or avoid passing them on to their children because those beliefs are given unequal treatment under the law. Many countries have seemingly neutral laws that serve to discriminate against a religious group and other countries give preference in various contexts for members of certain religious groups, leading members of other groups to feel stigmatized.

For these reasons, the rights of migrants to hold and practice their beliefs must be protected from public or private discrimination that would prevent them from meaningfully exercising these beliefs. Furthermore, migrants must be guaranteed the right to build or designate places of worship and the construction or use of these places should be encouraged.

#### WHAT MIGRANTS CAN DO

- Report abuses to advocates and government.
- Educate others about the right to hold and practice beliefs.

#### WHAT ADVOCATES CAN DO

- Advocate for policies that protect the right to religious freedom under domestic law.
- Ensure that migrants have access to adequate redress in case of a violation of freedom of thought, conscience, religion or belief or in case of coercion that would impair the exercise of this right.
- Prevent violations of this right by both public and private entities.

#### WHAT GOVERNMENTS CAN DO

- Ensure that seemingly neutral laws are not applied in a way that prevents migrants from exercising their beliefs.
- Ensure that responsibilities and duties extended to migrants do not unduly impede the exercise of their religious beliefs.
- Ensure that the right to freedom of thought, conscience, and religion or belief is respected in settings where migrants are detained or deprived of liberty.

#### Freedom of Opinion and Expression—Article 17

Freedom of opinion and expression are necessary for a free society and to ensure a rich public discourse in which all viewpoints are heard. Furthermore, free expression can be used to draw attention to injustice or violations of other rights—thus making it a bulwark against all rights violations. This right is especially crucial for migrants. Lack of electoral rights, bigotry, and economic or geographic barriers often keep migrants from expressing themselves. Free expression allows migrants to ensure that they are not marginalized and that their interests are part of the public discourse. In order to ensure that the exercise of this right is meaningful, migrants must have a meaningful forum for expression.

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- **Everyone shall have the right to hold opinions without interference.**

ICCPR ARTICLE 19(1)

- **Every migrant has the right to hold opinions without interference.**

IMBR ARTICLE 17(1)

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As well as a guaranteed right to free expression, migrants must also have access to information. Freedom of expression is only meaningful when those who exercise it are also permitted to access the information necessary to form opinions. There are often economic, geographic, and linguistic barriers to migrants accessing such information. Governments should strive to guarantee access to information in the medium, language, or form

of migrants' choice. Migrants should also have access to education programs in language and literacy in order to make more information accessible to them. Host countries should encourage the dissemination of information through media and languages that are most likely to reach migrants.

Punishing or threatening to punish people for the exercise of their right to opinion and expression stigmatizes individuals who hold unpopular beliefs and discourages them from participating in the community. This danger is especially present for migrants who are human rights defenders. Migrants may face much harsher consequences than nationals, and as a result migrants are often marginalized due to the fear of repercussions if they try to contribute to public discourse. Unfortunately, these migrants are often already marginalized and would benefit the most from having their voices heard. Full protection of the right to freedom of opinion and expression can counter the marginalization of migrants, allow for their interests to be promoted, and inform the community about injustices against them that would otherwise not be part of the public debate.

#### WHAT MIGRANTS CAN DO

- Ask for information in a language you understand.
- Demand language and literacy education programs.

#### WHAT ADVOCATES CAN DO

- Advocate for policies that guarantee the right to freedom of opinion and expression.
- Make public information available in a form, medium, or language that is readily accessible to migrants.
- Provide a forum that migrants can use to express themselves, voice their grievances, and be part of the public discourse.

#### WHAT GOVERNMENTS CAN DO

- Protect migrants from being targeted or persecuted as a result of their expression or viewpoint.
- Prevent violations of the right to freedom of opinion and expression by both public and private entities.

- Ensure that prosecutorial and law enforcement discretion are not used to single out migrants who exercise their right to free expression.
- Ensure that migrants are not prevented from accessing or imparting information and work to remove legal and non-legal barriers to the exercise of their rights.

### Freedom of Peaceful Assembly and Association—Article 18

Free association and assembly are necessary to ensure meaningful participation in a given community. Civil society groups, religious groups, trade unions, and political parties play an important role in promoting economic, cultural, social, and other interests. Even in countries where migrants are guaranteed the right to vote, free assembly and association are of crucial importance.

Migrants have the right to join and form associations that promote their interests. This is especially important in the context of the promotion of cultural and social interests, which are important to many migrants who desire to maintain their cultural identity in their new country. The promotion of economic interests is important for migrants as well so that their status is not used to unjustly exploit them.

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#### ■ The right of peaceful assembly shall be recognized.

##### ICCPR ARTICLE 21

#### ■ Every migrant has the right to freedom of peaceful assembly and association.

##### IMBR ARTICLE 18(1)

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Laws requiring public permission for protests or requiring full citizenship for union formation can be used in order to impede migrants from exercising their rights. Protection of the right to peaceful assembly and association must guarantee migrants the freedom to form and join associations and must also ensure that this freedom is meaningful by removing barriers to the exercise of these rights.

**WHAT MIGRANTS CAN DO**

- Assemble and join associations.
- Document intimidation or threats in response to assembly.

**WHAT ADVOCATES CAN DO**

- Propose policies that protect the right to free association and assembly.
- Facilitate and support the formation and operation of migrants' associations.

**WHAT GOVERNMENTS CAN DO**

- Ensure that the limits on the right of peaceful assembly are not unduly restrictive.
- Guarantee the right for migrants to form or join civil society associations, trade unions, or political parties.
- Remove barriers to unionization or formation of associations based on migration or citizenship status and remove restrictions to the activities of these organizations.
- Protect migrants from intimidation or threats of repercussions in response to their exercise of their freedom of assembly.

**Civil and Political Life—Article 19**

All migrants have the right to participate in the civil and political life of their country of origin and country of residence. Migrants should have a voice in shaping the policies that affect them. This participation can be guaranteed through voting rights and through access to other forms of political participation, such as joining political movements, joining political parties, and having access to media to influence public discourse.

In addition to allowing access to the mechanisms of elections, countries can ensure that migrants' groups be included in formulating law or policy, and can facilitate the creation of migrant political groups. International law conventions and instruments do not mandate the right of migrants to vote or stand for elective office in all levels of government, but encourage countries to allow migrants to vote and stand for office in local elections. International instruments also recognize residency requirements as a reasonable restriction on this right.

- **Every migrant has the right to participate in the civil and political life of the migrant's community and in the conduct of public affairs.**

**IMBR ARTICLE 19(1)**

Different countries in different parts of the world support this right for migrants to varying degrees. Many societies still predicate full political participation on citizenship, and do not want to extend full voting or political participation rights to migrants. There is substantial variation between different areas. The countries of the European Union (EU) recognize certain voting rights for resident non-citizens from other EU member countries. A few countries, like Ireland, allow all migrants to vote and stand for office in local elections, and allow EU citizens to vote in all EU elections. Other countries, such as Uruguay and Chile, allow non-citizens to vote in all elections after passing certain timed residency requirements. It is more common for host countries to allow their citizens to vote from abroad: over 100 countries permit their expatriates when they emigrate.

**WHAT MIGRANTS CAN DO**

- Participate in political discussions.
- Attend local political and governance meetings.
- Run for local office.

**WHAT ADVOCATES CAN DO**

- Support migrant voices in the media.
- Encourage migrants to participate in local government.

**WHAT GOVERNMENTS CAN DO**

- Ensure that resident migrants have the right to vote and stand for office, at least in local elections.
- Protect migrants' rights to form political associations and take part in political parties.
- Ensure migrants' ability to create and disseminate different forms of media (including via newspaper, radio, television, and internet).

- Provide information in a language the migrant understands.
- Enact legislation that allows expatriate migrants to vote.

## PROTECTING ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: ARTICLES 20-23

### Labor—Article 20

The right to work is central to personal survival and human dignity. The essence of the right to work is the right to freely choose employment and to not be unfairly deprived of employment, rather than an absolute right to obtain employment. Even as employers and governments may distinguish between migrants with certain skills or languages, migrant workers share nearly all workplace rights and employee privileges with citizens.

At the most basic level, migrants have a right to equal protection against forced, coercive, or exploitative labor practices. Labor rights extend to cases where migrants voluntarily pursue labor opportunities. An individual's migration status is never a justification for the denial of labor rights, such as union membership or collective bargaining.

All individuals, including migrants, are entitled to protections against forced labor exploitation. Many migrants arrive in receiving states as the result of smuggling or human trafficking operations. Such migrants are typically subject to highly exploitative terms of employment and are sometimes compelled into commercial sex work or other forms of forced labor. Governments have an affirmative duty to identify and prevent these rights violations. Similarly, migrants have a right to protection against coercive labor practices.

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#### ■ No one shall be held in slavery or servitude.

UDHR ARTICLE 4

#### ■ Every migrant has the right to be free from slavery, servitude, or forced or compulsory labor.

IMBR ARTICLE 20(1)

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Certain migrant groups are especially vulnerable.

Migrant children have a right to remain free from any obligation to work below a minimum age in order to allow for physical, mental, spiritual, moral, and social development. Adults also confront exploitation in the form of false promises and debt bondage at the hands of exploitative transitional recruiters. Regardless of the location and context of recruitment, all migrants have the right to enforce employment contracts within the receiving country's labor market. Laws must ensure that migrant workers receive detailed and enforceable employment terms prior to arrival. After arrival, administrative procedures must ensure that migrants have access to translators and lawyers in the courts.

Even in cases where migrants voluntarily pursue employment opportunities, they are often subject to explicit and implicit forms of discrimination and exploitation. Migrant workers have a right to protection under national labor laws that are equality-based and non-arbitrary in application. Given employment challenges, such as language barriers, migrants can struggle to realize these basic rights. In the hiring process, no migrant worker should confront discrimination in any area, including, race, color, language, religion, nationality, marital status, disability, sexual orientation, and gender identity.

Once the formal work period begins, all migrants are entitled to equal rights with citizen workers. These include the right to fair labor conditions, such as equal pay, maximum working hours, and basic health and safety conditions. It also includes the ability to seek legal redress in the context of workplace disputes and pursue improved employment benefits through collective bargaining. Yet, it can often be difficult to attain these basic rights. Employers often exploit migrant workers' lack of knowledge about the local legal system. Governments must ensure equality within the workplace.

#### WHAT MIGRANTS CAN DO

- Insist upon valid, enforceable labor contracts.
- Report employer abuses.
- Familiarize yourself with the labor laws of the host country.



**WHAT ADVOCATES CAN DO**

- Inform employers and migrants of their legal obligations.
- Provide legal assistance to migrant workers with legal claims against exploitative employers.
- Facilitate partnerships between migrants' rights organizations and labor rights organizations.
- Campaign against xenophobic and misleading representations of migrant workers.
- Clarify the economic advantages of migrant labor to national citizens.
- Connect and coordinate with sending nation embassies to provide services to migrants.
- Identify government visa policies that discriminate on the basis of migrant nationality, especially in relation to bilateral labor migration agreements.

**WHAT GOVERNMENTS CAN DO**

- Ensure that governments take active steps to eliminate labor trafficking through partnerships with common countries of origin.
- Establish oversight bodies to prevent exploitative hiring processes, including non-enforceable contracts that lack clear details related to the employer, remuneration, and accommodation.
- Enact labor legislation that applies to all migrants.
- Ensure that migrants have the ability to access remedies for labor rights abuses, including access to lawyers and translators.
- Coordinate with sending countries to regulate and cease exploitative recruitment practices.
- Reform national laws to guarantee access to equal working conditions, including a safe and healthy working environment, treatment in case of job termination or dismissal, and wages and taxation.

**Health—Article 21**

The right to health is a human right that is intrinsically linked to the right to life and the right to dignity. Migrants have a right to the highest attainable standard of health that lies within the capacity of the government. Since some countries struggle to provide the foremost care for all citizens, this right requires equal access for migrants and citizens. This includes migrants with regular and irregular status.

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- **The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

**ICESCR ARTICLE 21(1)**

- **Every migrant has the right to the enjoyment of the highest attainable standard of physical and mental health, including equal access to preventive, curative, and palliative health services, and the right to an adequate standard of living and to the underlying determinants of health.**

**IMBR ARTICLE 21**


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All migrants have a right to health care that is available, accessible, acceptable, and appropriate. Although governments are not necessarily obligated to provide free health care, they must provide a series of basic services that guarantee migrants and citizens equal access to preventive, curative, and palliative health services. Where this care is available, migrants have a right to equal access without fear of immigration status inquiries and discrimination. Governments should likewise take steps to reduce financial, administrative, and linguistic barriers to health care access. It is important to note that distinctions between certain types of migrants are permissible. For example, pregnant mothers have a right to special protection during a reasonable period before and after childbirth.

The right to health also encompasses complementary rights to an adequate standard of living and the underlying determinants of health. This includes a right to safe

water and adequate sanitation and an adequate supply of safe food. Migrants have a right to equal access to these basic provisions. In addition, migrants frequently confront challenges related to discrimination when attempting to obtain adequate housing. A housing provider may not discriminate against migrants on any basis, including sex, disability, nationality, sexual orientation or gender identity, or language. In some cases, such as to provide additional benefits to recently arrived refugees, the government may make permissible distinctions between types of migrants. Governments should strive to provide basic food, water, sanitation, and housing to especially vulnerable groups of migrants.

#### WHAT MIGRANTS CAN DO

- Seek out preventative health care.
- Demand that health care policies cover migrants.

#### WHAT ADVOCATES CAN DO

- Identify health areas where countries are lacking in basic services.
- Advocate for quality health care for all migrants.
- Facilitate partnerships with unions and employers to expand health care services.

#### WHAT GOVERNMENTS CAN DO

- Eliminate policies that encourage and mandate immigration status inquiries in the context of health care provision.
- Ensure that there are government programs to provide specialized health services to particularly vulnerable groups, such as women, children, and persons with disabilities.
- Expand the quality of free or reduced price services available to migrants with low incomes.
- Regulate employer-provided health, housing, and other benefits.

- Regulate labor camps and provide migrants with alternative, affordable housing options.
- Ensure that health care programs do not exclude individuals on the basis of nationality or citizenship.

#### Education—Article 22

Every human being, including migrants and their children, has the right to education. In spite of the numerous international conventions that recognize and reiterate this right, education has not always been practically accessible to migrants and their children. The right to education includes the right to free, compulsory primary education. Because linguistic barriers can further disadvantage migrants and their children, access to preschool education is likewise encouraged.

The inaccessibility of education is particularly acute for migrants and children whose parents are not lawfully settled in the host country. Migrant parents often fear that school lists will be used to identify and remove irregular migrants. Such practices, or threats of such practices, violate the right to education.

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#### ■ The States Parties to the present Covenant recognize the right of everyone to education.

ICESCR ARTICLE 13

#### ■ Migrants and their children have the right to education.

IMBR ARTICLE 22

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The IMBR recognizes that, in addition to the obligation for authorities to provide compulsory primary education, authorities must provide migrants and their children equal access to secondary and higher education. Migrant girls are disproportionately affected, resulting in proportionally fewer female children receiving secondary education and professional opportunities. International human rights law clearly provides for gender equality in access to education.

**WHAT MIGRANTS CAN DO**

- Seek out information about school enrollment processes.

**WHAT ADVOCATES CAN DO**

- Encourage language training and assistance navigating enrollment processes.
- Highlight areas where migrant children have trouble attending school.

**WHAT GOVERNMENTS CAN DO**

- Provide assistance and programs to address the educational needs of migrant children.
- Enact legislation that protects the rights of migrant children to go to school.
- Provide language training and assistance navigating enrollment processes.
- Immediately cease the detention of migrant children and provide adequate education in any shelter services housing migrant children.

**Culture—Article 23**

Every migrant has the right to enjoy the migrant's own culture and language. The IMBR promotes a framework that respects the communal nature of cultural development and practice, and reaffirms that countries must provide equal protection for the cultural rights of all people, including migrants. Migrants also have the right to accept or reject, in whole or in part, any particular group's identity. A person's cultural background should not dictate how a country or cultural group views them.

In order to further the right to culture, countries should encourage and support efforts to preserve migrant cultures by promoting understanding and tolerating cultural differences. Governments should also respect practices that may be communal in nature, and encourage the creation of cultural organizations and religious entities.

**WHAT MIGRANTS CAN DO**

- Promote awareness that a person's cultural background does not automatically demonstrate adherence to particular loyalties, beliefs, or practices.
- Communicate and celebrate diversity in cultural practices.

**WHAT ADVOCATES CAN DO**

- Encourage language and cultural preservation.
- Promote awareness, acceptance, and integration of various cultures.

**WHAT GOVERNMENTS CAN DO**

- Implement measures to ensure that decisions regarding preserving and maintaining culture for children promote consideration of the best interests of the child and the discretion of the child's parents.
- Ensure laws exist to allow for freedom of religious, linguistic, and cultural expression.

For more information on how to protect the rights of migrants, please contact [migrantsrights@law.georgetown.edu](mailto:migrantsrights@law.georgetown.edu).

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- **Everyone has the right freely to participate in the cultural life of the community.**

UDHR ARTICLE 27(1)

- **Every migrant has the right to enjoy the migrant's own cultures and to use the migrant's own languages, either individually or in community with others, and in public or private.**

IMBR ARTICLE 23(1)

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