

Summary

Model International Mobility Convention

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While people are as mobile as they ever were in our globalized world, the movement of people across borders lacks global regulation. This leaves many refugees in protracted displacement and many migrants unprotected in irregular and dire situations. Meanwhile, some states have become concerned that their borders have become irrelevant.

International mobility—the movement of individuals across borders for any length of time as visitors, students, tourists, labor migrants, entrepreneurs, long-term residents, asylum seekers, or refugees—has no common definition or legal framework. To address this key gap in international law, and the growing gaps in protection and responsibility that are leaving people vulnerable, the “Model International Mobility Convention” proposes a framework for mobility with the goals of reaffirming the existing rights afforded to mobile people (and the corresponding rights and responsibilities of states) as well as expanding those basic rights where warranted.

In 213 articles divided over eight chapters, the Convention establishes both the minimum rights afforded to all people who cross state borders as visitors, and the special rights afforded to tourists, students, migrant workers, investors and residents, forced migrants, refugees, migrant victims of trafficking and migrants caught in countries in crisis. Some of these categories are covered by existing international legal regimes. However, in this Convention these groups are for the first time brought together under a single framework.

The Preamble of the Mobility Convention establishes the complementarity of the Convention with existing international legal instruments. These include the United Nations Charter,² the Universal Declaration of Human Rights³ as well as other core international human rights treaties, thereby explicitly signaling that the Convention builds upon the rights and protections embodied in these documents. None of the provisions in the Convention should be interpreted as undermining such rights, nor should any rights be regarded as negated by this Convention should they not be explicitly embodied in its articles. The focus of the Mobility Convention is with the rights and protections that are of special relevance to people on account of their moving across national borders. Accordingly, individuals enjoy these rights without prejudice to all other rights they are entitled to as persons, as embodied in the wide range of existing human rights treaties.

An essential feature of the Convention is that it is cumulative. This means, for the most part, that the chapters build on and add rights to the set of rights afforded to categories of migrants covered by earlier chapters.

Chapter I on visitors articulates the minimum set of rights afforded to all mobile people, independent of their immigration status and whether they entered a state regularly or not. As chapters and new categories of migrants are consecutively introduced in the Convention additional rights are added to this minimum base-line of rights. Thus, Chapter II specifies the rights enjoyed by tourists, which are provided in addition to those spelled out in Chapter I. Similarly, Chapter III, on students, builds on and add to the rights embodied in the previous two chapters.

Chapter IV covers migrant workers, investors and residents. These provisions address the rights that can be claimed by any migrant working within the territory of any States Parties, including undocumented migrants or those in an irregular situation. The chapter also outlines the additional rights that can be claimed by documented migrant workers and investors. Migrant residents—also covered by this chapter—have, in addition to a few specific rights related to residency, full access to the non-work related rights enjoyed by undocumented and documented migrant workers alike.

¹ This summary draws on Emma Borgnäs’s summary analysis of the Convention forthcoming in the CJTL (Fall 2017).

² United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

Chapter IV also outlines the rights of temporary migrant workers. In order to open pathways that meet the demand for temporary labor through orderly migration, these provisions introduce exceptions to the otherwise cumulative nature of the rest of the Convention: temporary workers do not have access to all the rights afforded to documented migrant workers that have been admitted on a permanent basis. Article 98 lists the conditions placed on specific rights. Importantly, the Convention makes clear that these conditions can only be justified for temporary workers for a limited duration.

Chapter V covers the status of refugees and forced migrants and the specific rights they enjoy—which also build on the rights set forth in earlier chapters. The chapter presents a unified approach to refugees and forced migrants and strengthens the terms of protection as compared to the existing refugee regime. Refugees and forced migrants enjoy all the rights set forth in chapters I through III and all the non-work related rights set forth in chapter IV. To the extent that they engage in employment activities, they enjoy all employment related rights as well. In addition to provisions governing their general treatment by States Parties, they enjoy additional rights primarily related to protection and access to asylum.

The next two chapters diverge from the earlier sections of the Convention by addressing cross-cutting rights entitlements. Chapter VI addresses migrant victims of trafficking and migrants caught in countries experiencing crises. These provisions are cross-cutting in the sense that these rights are applicable to any migrant category that should find itself in any or both of these two scenarios. Thus these rights can apply equally across all categories of migrants. Chapter VII is similarly issue-specific and spells out the rights relating to family reunification enjoyed by different mobility categories.

The Convention contains not only provisions that afford rights to migrants and, to a lesser extent, States (such as the right to decide who can enter and remain in their territory). It also articulates the responsibilities of migrants vis-à-vis States and the rights and responsibilities of different institutions that do not directly respond to a right held by migrants. An example is the bundle of articles in Chapter II on tourists regarding the protection of the environment and those in Chapter III on the rights of educational institutions.

Finally, Chapter VIII on the Treaty Body is entirely dedicated to ensuring implementation of the Convention. It spells out the terms and conditions for international cooperation on international mobility. It includes provisions for the establishment of a Committee with the responsibility to review the application of the Convention by considering reports by States on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention. The Committee is also charged with providing authoritative guidance on the interpretation of the Convention. The Committee invites civil society, including migrants and their representative organizations, to participate fully in the independent monitoring process that is to be established by each State to promote, protect and monitor implementation of the Convention. The Chapter moreover includes provisions relating to dispute resolution in cases when States Parties consider that another State Party is not fulfilling its obligations under the Convention, and outlines the specific procedures and remedies that should be taken under such circumstances.

The Convention and the Treaty Body chapter conclude by proposing that the Committee establish a number of mechanisms to more comprehensively and equitably deal with refugee and migration flows. These mechanisms include establishing a Mobility Visa Clearing House and a Remittance Subcommittee for facilitating international economic migration. The chapter also introduces a number of innovations for supporting and strengthening the provision of international protection, key aspects of which include a Responsibility Sharing framework, a Comprehensive Global Planning Platform and a Global Refugee Fund.

Please consider expressing your support by signing the Model International Mobility Convention. The full convention and signature form are available at globalpolicy.columbia.edu/mobility-convention.