

**MANUAL OF THE HUMAN RIGHTS OF ALL
MIGRANT WORKERS AND THEIR FAMILIES**

(presented by Dr. Jorge Palacios Treviño)

If you are contemplating migrating to work in another country in order to ensure a better life for you and your family, you must comply with the requirements imposed by the laws of the country of your nationality; in the first place, obtaining a passport issued by the Secretariat or the Ministry of Foreign Affairs. You also must remember that to enter and work in the country to where you wish to emigrate, you have to have the necessary permits, and if you have to cross other countries to reach your destination, you also need to have permits to pass through them. To find out what requirements you have to meet in order to go and work in your country of destination and travel through other countries, you need to go to the embassy or consulate of those countries.

You also have to bear in mind that if you do not have the necessary permits to enter and work in the country of destination, you are exposing yourself to many crimes, and if you are taking your family with you, you are exposing them as well, because there are always delinquents to take advantage of this situation in order to obtain some profit or gain. Remember that there are organizations or gangs that use threats or force or other forms of violence to recruit people that want to emigrate in order to exploit them. These gangs offer people their services to arrange transportation, help them enter the country of destination or find them work, and instead of doing so, they exploit the immigrant; for example, women are offered jobs as maid and are then obliged to work as prostitutes under threat of punishment; in other cases, people are made to work in conditions of slavery and in unhealthy places and have their wages stolen under the pretext of paying for transportation and other costs.

Besides failing to comply with what is offered, the traffickers often rob the people who accept their services and even, if necessary, murder them so as not to have to fulfill their part of the arrangement; sometimes they take the ID documents of migrant workers and their families to force them to stay with them and carry out work that they do not want to do. Some employers also do this in order to retain the workers and oblige them to work in unfair conditions.

For all the above reasons, it is advisable not to leave without the necessary permits and resources, especially if you are taking your family, but if nevertheless you decide to go ahead, you must take all possible precautions and at the same time remember that whatever the circumstances, you have certain rights, in other words human rights, even though you and your family have no permit nor any other document, which is why you are getting to know these rights so that you can demand them, because nobody - the authorities least of all - has the right to subject you and your family to abuse and you must never think that because you have no documents, such abuse is normal and that you deserve (although this is no justification) to be treated in this way or be intimidated or threatened or made a victim of extortion. This means that everyone, whether they have documents or not, in any circumstances and in any country, has at least the rights that are listed herein.

Always remember the words of the Universal Declaration of Human Rights, approved by all the countries in the world at the Organization of the United Nations on 10 December 1948: "All human beings are born free and equal in dignity and rights. ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", and therefore all persons have the obligation to respect the human rights of others and treat them with benevolence. So, you must remember that if you have any trouble, you can go to your country's embassy or consulate and the organizations that offer aid to migrants.

It is important that you, migrant worker, and your families demand both of the authorities and private parties that they respect the fundamental human rights, and if you

are expelled from the country where you find yourselves because you do not have the necessary documents, or any other valid reason, remember that even in this case, human rights must be respected; in turn, the migrant worker must consider that humiliating work in unfair conditions is not worth having.

You and your family have the following human rights:

1. The right to leave your country

If you wish to emigrate to another country and work there, you have the right to do so and you also have the right to leave alone or with your family, unless there is a law that prohibits this or some other valid reason, such as an epidemic. You should therefore know that nobody can oblige you to leave your own country and that you have the right to return to it whenever you wish.

This right to leave is based on the right that all persons have, namely, to provide your family with food, clothes, a home and medical services, and if you cannot obtain this in your own country, you have the right to look elsewhere.

2. The right to live in freedom and safety

This right is often exposed to infringement during the journey to the country of employment, either because of accidents due to the poor condition of the means of transportation, or because of the inadequate conditions of accommodation and food, or else on account of stricter measures to prevent migrant workers without working papers, such as fences or walls, and the excessive actions of border guards. Also, in the country of destination, life can be dangerous if work is done in inhumane conditions such as long hours without rest or in unhealthy work places or living areas, or if there are no medical services, or the necessary care and medicine are unavailable if someone falls sick.

For all these reasons, you must demand safe means of transportation and proper conditions of other services, humane treatment from the border guards in accordance with the law, and working conditions similar to those of the nationals of the country of employment.

On the other hand, you and your family should be very aware that some countries still have not abolished the death penalty for certain serious crimes, so you have to be very attentive, and if this situation unfortunately arises, the only attitude is to make sure that the penalty is not imposed arbitrarily and that the pertinent laws are applied based on due legal process, that is to say, according to the law, as explained further ahead. Likewise, you should know that no country can impose the death penalty on people over 70 or on those under 18, nor on pregnant women.

3. The human right to personal integrity

This right preserves all people from suffering lesions, torments or corporal, psychological, degrading or humiliating punishment. They are also preserved from being subjected to slavery or servitude, torture, being forced to work, inhuman working conditions such as long hours without rest or sufficient food, doing work that they do not want to, and taking experimental medicine or undergoing medical treatment without their consent. Nor can they be subjected to forced or obligatory labor, unless this is imposed as punishment "in compliance with a sentence passed by a competent court".

If any of these situations befalls you or your family, you must denounce it, and in some cases you may even have the right to reparation for the offence and harm suffered.

Experience shows that this human right is infringed above all in sectors such as domestic service, farm work, industrial workshops, restaurants and hotels.

4. The right of every individual to recognition as a legal person

This right means that people, always in accordance with the law, have the aptitude or capacity to possess rights and contract obligations, that is to say, you and your family do not need representatives to enter into a contract to work or terminate work, rent, buy or sell a house or accept or leave an inheritance, make or accept a donation, or claim before an authority for an unfulfilled work contract, or a robbery or fraud or any other matter.

Possessing a legal personality also implies that you are responsible for any act or contract that you enter into freely and in full awareness.

The family, as a collective natural person, also has a legal personality, that is, it has rights and duties as such, for example, not to separate from minor children, as explained further ahead in the item “protecting the family”. Accordingly, an unborn but already conceived human being is capable of having rights such as the right to acquire through donation, as well as having other legal effects such as when the paternity of this unborn human being is in question. This right also involves having a nationality that nobody can be deprived of arbitrarily.

5. The right of equality before the law

To be equal before the law implies the right that you and your family have not to be discriminated against, since “all human beings have the right to equal protection of the law”. This right should be respected at each and every moment of the migration process: from leaving the country of origin, in the countries of transit and during the entire stay in the country of employment. As a consequence of the right not to be discriminated against, preference cannot be given to another person applying for work instead of you, based on race, color, age, gender, married status, language, religion, ideology, sexual preference, nationality, social or economic position, or because of physical appearance or handicap. This right also protects you from violence or insults for these reasons, or being excluded from any group, or not being sold something or being able to buy something, not being rented a house or being kept waiting for a job.

The right to equality should not be infringed either, even if reasons of security are alleged, for experience shows that some accusations are only the result of racism or simply because the people concerned are aliens; consequently, this right should not be infringed on account of your being a migrant worker or the family of one, whether in possession of work permits or not.

On the other hand, it is of paramount importance that this right to equality is respected in the working place because this reflects not only on the migrant worker’s life but also on his family and so the same working conditions should be enjoyed as the nationals of the country, that is, your labor rights should not be denied or restricted, for example you should not be given a working contract as a migrant worker or paid less for the same job, or made to work more hours or granted inferior working conditions. On this point the Inter-American Court of Human Rights based in San José, Costa Rica, has determined – as explained in the following point – that when a work relationship is established, there is no difference between the rights of a worker with or without documents.

This law also protects migrant workers from being isolated from the society they have joined, for this prevents them from coming into contact with other people and integrating with the community – on equal terms and without any discrimination – which is obviously more convenient for migrant workers and their families.

The authorities have the duty to adopt effective measures to protect the right to equality of migrant workers and their families. In the case of an accusation of infringement of this right, it is essential that the human right be treated by due legal process, that is, that the process is carried out according to the laws of the country rather than in a discriminatory or arbitrary fashion.

On the other hand, migrant workers and their families who arrive in the country of employment have the responsibility and obligation to understand and respect its laws and values as well as its rights and customs. In turn, the nationals of the welcoming country also must respect the rights of migrant workers and their families and their cultural diversity. Mutual tolerance, comprehension and respect are the ingredients of the solution.

6. Labor rights and the right to social security

If you, migrant worker, establish a working relationship, even if you do not possess the appropriate documents, you have the same labor rights as the nationals of the country where you work, this being established by the human right of equality and non-

discrimination before the law; consequently, you should have working conditions that afford you and your family an existence in keeping with the dignity befitting human persons, such as the following: to earn an equal wage for equal work; not to have to perform forced labor; to have social security; to have reasonably limited working hours; to have fair remuneration for overtime; to have a weekly rest; to have leisure time; to enjoy paid periodical holidays; to set up trade unions and join them to defend your interests and your minor children's right to education. At the same time, women migrant workers, in addition to the above-mentioned rights, have the specific rights that correspond to their status as women, such as maternity leave.

The right to have the above-mentioned working conditions is confirmed by Advisory Opinion OC-18 - quoted in the preceding item – issued by the Inter-American Court of Human Rights on 17 September 2003 in respect to the Juridical Condition and Rights of Migrant Workers without Documents, which provides the following:

That the fundamental principle of equality and non-discrimination forms part of general international law, because it is applicable to all States, regardless of whether or not they are a party to a specific international treaty. ... the migratory status of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights, including those of a labor-related nature. ... That the State has the obligation to respect and guarantee the labor human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that are harmful to the latter in the employment relationships established between private individuals (employer-worker). ... workers, being possessors of labor rights, must have all the appropriate means to exercise them..... States may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character.

The Court, which is comprised of a group of eminent lawyer experts on the matter, could not be any clearer in the Advisory Opinion and the following conclusion can be reached from its reading: Employment cannot be given to a person, whatever their migrant status, without recognizing their rights born of this working relation, rights that on the other hand are protected by the internal laws of all countries in the American continent.

According to this Opinion, migrant workers also have the right to form associations with other workers or form trade unions with a view to defending their rights and preventing abuse in labor relations, which is most frequent among domestic servants, mostly women, who face more limitations than men because they are more liable to find themselves in situations that restrict their personal development; most are admitted as “family members to support” in family migration, and consequently have less opportunities to access the work market. When women migrate as workers they are usually marginalized into traditional, poorly paid female occupations and they are more vulnerable to sexual exploitation. Avoiding these results depends fundamentally on respecting and urging respect for human rights.

Furthermore, workers have the right to be able to transfer remittances of money, as well as to have retirement pensions and payments in their country of origin.

7. The right to due legal process, right to non-retroactivity and the right to obtain reparation

If you are a migrant worker and a police or public-security officer detains you or a member of your family, either to check your migrant status or because of an accusation of a criminal nature, or to determine rights or obligations of a civil nature, or for some other reason, you must know that you have the right to be informed immediately of the cause of detention in a language that you understand. In any case, you are advised to remain calm, to not run, to not hold an arm or anything that might look like one, and to not insult the person who detains you. Detention for the above reasons can only be made if the legislation of the country allows this and if the following rights are ensured: human rights must be

respected even in the case of the person being without documents; provision of the help of a translator and a lawyer; being put in contact with the nearest consulate of your nationality, which has the obligation to provide adequate consular services in any circumstances that call for them, and to provide assistance in any ensuing lawsuit, as determined by the Convention of Vienna on Consular Relations in 1963, which provides that when the authorities of a country detain an alien, in this case a migrant worker or his family, the same authorities are obliged to inform them without delay of their right to consular assistance and to communicate with the consulate of their country. Likewise, detainees have the right to communicate with an organization that provides aid to migrants, and with their family or someone who can help them; if they are accompanied by minor-age children they have the right not to be separated from them.

Other rights of detainees are: to remain silent, but to give their true name; not to sign voluntary release or any other document, if they do not wish to; to leave after paying bail in some cases; to have hygiene in the place of arrest – which must not be a jail - and to be given food and water. They also have the right against excessive force in custody, and not to be insulted or attacked, harmed by handcuffs or expelled handcuffed; and to be given medical care if necessary, and not to have their money or other valuables taken away from them. It is also advisable for the arrested not to lie, carry false documents (for example a social security document, since this is an offense in any country), not to say he is a citizen of the country when he is not, and not to drive without a license or documents. If he has a work permit he must show it if he is not a citizen of the country where he works.

If there is an accusation that you or a member of your family have committed an offense, you must know that you can only be detained in order to start a lawsuit before a court or tribunal if there is an order from a competent authority. Otherwise, you and your family should be let free. In any case, the human right to due legal process – the right to justice, as it is also called – guarantees you and your family, whatever your migrant status, that the ensuing lawsuit will be carried out in accordance with the applicable laws, and by an independent and impartial court or tribunal established by law. During the process, the minimum guarantees granted to all must be given, including the right to adequate defense, to communicate with the defender of his choice or one appointed free of charge if he cannot afford to pay, to be tried without undue delays; to be present at the trial in order to have fair judgment according to the laws in effect and not arbitrarily, that is, not in accordance with the free criterion of those executing them but rather in compliance with the essential formalities that the law indicates in order to be able to deprive someone of some right or impose punishment. To this same end, the accused has the right to a public hearing in order that all the pertinent elements be included; as well as interrogating or having interrogated the accusation and defense witnesses and obtain the appearance of the latter to be questioned in the same conditions as those for the accusation; to be assisted by an interpreter if he does not understand the language used in the court. And not to be obliged to make a statement against himself or declare himself guilty.

If a person is deported, he must be informed of the reasons for this and also the recourses he has available not to be deported. If this is not done, an infringement is also made of the right to due legal process. Persons accused of a crime have the right to be presumed innocent until proven guilty.

Migrant workers and their families have the same right to be heard when the trial takes place to determine rights and obligations of a civil nature, for example, non-compliance with a work or rental contract. The right to the due legal proceeding should also be applied to any lawsuit in relation to a job performed by an undocumented migrant worker when involving non-compliance of a verbal or written contract. It should be considered that, in any case, the arrested person has the right to receive his wage earnings.

If a person is arrested because of his physical characteristics to check his migrant status, the human right to equality is infringed before the law that prohibits all discrimination. This right is also infringed if based on these criteria distinctions are made, restrictions imposed or preferences given among the persons arrested. Police roundups, whether in the working place, public places or homes, lead to a situation of generalized terror, and

collective expulsions are illegal because each case must be judged individually, with due respect for human rights. If these rights are violated, the authorities should be denounced, or the persons responsible for such violation.

In short, the right to due legal process ensures migrant workers and their families full equality with the nationals of the country involved in a trial taken to court or tribunal.

The right to non-retroactivity means that a legal process cannot be carried out based on a law that did not exist when the crime was committed, so a trial would be held without a law to punish the offense, plus the fact that this would infringe the principles of “no crime without law” and “no punishment without law”. This right is based on the general principle that laws are made for the future and not for the past, but it should be borne in mind that if the new law benefits the accused, it should be applied.

Anyone who has been illegally detained or arrested will have the effective right to obtain reparation. Also, people have the right to indemnity according to the law in the case of having been condemned in a sentence by judicial error.

8. The right to private life and the right to protection of the family

All migrant workers and their families have the right not to be subjected to arbitrary interference at home and to authorize the inhabitants to not permit entry, even of an official, to a home unless there is a written order from a competent authority in this respect that specifies what may be done in that home. This right applies to all persons who have this home, that is, whether nationals of the State or aliens.

The right to inviolability of private communications applies to letters, telegrams, telephone calls, electronic messages, in other words, any kind of communication sent to someone. As in the preceding right, it is necessary to have an order from a relevant authority to see these communications.

All persons have the right to marry and start a family, the family being the natural fundamental element of society and entitled to protection on the part of society and the State. If children are separated from their parents because the latter have no documents, and then deported, this is a violation of the human right of persons who integrate the family.

It is important to address this section on the human rights of the family in order to preserve its unity as such. It is also important to recall the special protection required by migrant women, if they travel alone or are accompanied only by their children. Because of their status as women they are more exposed to all kinds of mistreatment, harassment, violence and abuse both in the countries through which they pass and where they are employed, even if their own country, and if they work they are generally more vulnerable in terms of employment rights. If she is married and has children and the spouse emigrates, her situation becomes more difficult because besides being separated from her husband, she must look after the children and is therefore more vulnerable to maltreatment, accusations or abuse by family members under her charge. If it is the mother who emigrates, the daughters are exposed to incest; if she accompanies her husband and they have children, very often she must not only look after them but also have an outside job. The husband does not always help take care of and educate the children.

Based on human rights, the Pastoral Letter of the Catholic Bishops of Mexico and the United States, dated January 23, 2003, proclaims: “Immigration must be based on the principle of the family unit. This principle would have to protect this natural institution, which is the family, and therefore the right of its members to live together: spouses and minor children, which unfortunately is not always the case in international migration since not only is it not beneficial but also measures are taken against national constitutional rights, such as not giving a child the nationality of the country in which it was born or postponing for years the reunion of the spouses when one of them emigrates. The separation of husband and wife has a negative influence on the professional development of the couple and on the education of the minor children. Concerning unaccompanied minors, their situation is very often worrying since they are not given the proper care and are arrested or expelled and

many of them travel alone to join their family. Measures such as those described herein favor undocumented migration.”

9. Right to freedom of thought, conscience and religion and the right to freedom of opinion and expression

These rights are also included in the Universal Declaration of Human Rights adopted by all nations:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

and

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

10. Freedom of peaceful meeting and association

Likewise, the Universal Declaration sets forth that “All persons have the right to freedom of peaceful meeting and association” and that “All persons have the right to found and join trade unions to defend their interests”.

These rights are only subject to the restrictions provided in law that are necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and liberties of others, to which is added that migrant workers and their families, being aliens, should not refer to political affairs of the welcoming country.

Evidence shows that foreign workers who work seasonally have joined trade unions.

11. Right to individual and collective private property

Migrant workers and their families have the right to individual and collective property, that is, to possess a good individually or in partnership with other persons and also to have the right not to be arbitrarily deprived of their property; nonetheless, the authorities have the right to impose on individual or collective property whatever is in the interest of society and to regulate such property in the benefit of society, but if a good that is private or collective is expropriated, fair compensation is only fair.

12. Rights of the child

The specific human rights of children, whatever may be their migrant status, are as follows: special cares and assistance – similar to maternity; equal social protection – whether born in or out of wedlock - both on the part of the family and the society and State; protection measures required by their condition as minors, without any discrimination as regards race, color, gender, language, religion, national or social origin, economic position or birth; immediate registration upon birth, and bearing a name in order to have an identity; having a nationality like everyone else, and changing it; education, which should be free, except with regard to elementary instruction, which should be aimed at full development of the human personality and strengthening respect for human rights and fundamental liberties. On their part, parents have the preferential right to choose the type of education to be given to their children.

The human rights of children are violated:

- a) if they are not registered immediately upon birth and given a name which gives them the right to have an identity that complements two others: the right to a nationality and the right to legal personality;
- b) if they are born in a country that concedes nationality to anyone born in its territory and does not grant it;
- c) if they suffer at school racial or any other kind of discrimination;

- d) if a child is forced to perform activities or work that could prove dangerous or impair their education or are hazardous to his health or physical, mental, spiritual, moral or social development;
- e) if children are recruited or enlisted in the armed forces or used to participate actively in hostilities;
- f) if they are arrested and imprisoned together with their parents – and not in adequate places - and are treated as criminals;
- g) if their parents are arrested and separated from the children; if unaccompanied minors are expelled from the country, especially if they are deported without from their family parents or at risk periods.

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