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**ALTERNATIVE REPORT ON THE INTERNATIONAL CON-  
VENTION ON THE PROTECTION OF THE RIGHTS OF ALL  
MIGRANT WORKERS AND MEMBERS OF THEIR FAMI-  
LIES (ICRMW)**

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**Prepared and Submitted**

**By**

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**October 2017**



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## **ABBREVIATIONS**

<b>CMW:</b>	The UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>CSO's:</b>	Civil Society Organisation(s)
<b>G.L.I.H.D:</b>	Great Lakes Initiative for Human Rights and Development
<b>ICRMW:</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>ILO:</b>	International Labour Organisation
<b>MINIJUST:</b>	Ministry of Justice
<b>RSSB:</b>	Rwanda Social Security Board

## I. Executive Summary

1. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>1</sup> was ratified by the government of Rwanda by the Presidential Order n° 33/01 of 17/05/2010.
2. In accordance with article 7, States parties undertake to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction, the rights provided for in the ICRMW without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.<sup>2</sup>
3. Moreover, States parties in accordance with article 70 are obliged to take measures which are not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in accordance with the standards of fitness, safety, health and principles of human dignity.<sup>3</sup>
4. In this regard, this report seeks to provide key findings on the implementation status of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) in general, and that of the previous concluding observations issued by the Committee to the Government of Rwanda in 2012 during its Sixteenth session of 16–27 April 2012 in particular.
5. This report has been prepared by G.L.I.H.D in anticipation of the submission of the second periodic report by the Government of Rwanda to the Committee on the Migrant Workers (CMW). It reflects the concerns, needs and issues of the migrant workers and their families that need to be addressed in order to effectively protect them and thus comply with the ICRMW.
6. The report is structured along the Committee’s “concluding observations” on Rwanda’s last report to the ICRMW.

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<sup>1</sup> Adopted by the United Nations General Assembly Resolution 45/158 of 18 December 1990.

<sup>2</sup> WHO, Protection of the Rights of Migrant Workers, Health and Human Rights, on <http://www.who.int/hhr/Migrants.pdf?ua=1> visited on 18 June 2017.

<sup>3</sup> Ibid.

7. Moreover, this report considers issues related to the implementation of the following selected provisions of ICRMW: articles 7 & 83 (non-discrimination & effective remedy), article 10 (prohibition of torture, cruel, inhuman and degrading treatment), article 11 (Prohibition of slavery, servitude and forced labour), article 27 (non-discrimination with respect to social security), articles 32 and 47 (right to transfer of earnings and savings and article 43(1) (e) and (2) (access to social and health services).

## II. Methodology

8. This report was created by a combination of desktop and field research in the form of interviews with key stakeholders<sup>4</sup> and migrants workers as to the implementation of the ICRMW.
9. While the desktop research assisted in reviewing relevant documents on migrant workers such as laws, policies, guidelines, previous reports by the Government to the Committee and published research, interviews with key stakeholders from both public and private institutions as well as SCSOs working with migrants workers were conducted in order to get an overview of the situation of migrant workers and members of their families.

## III. Key findings

10. GLIDH acknowledges the significant efforts made by the Government of Rwanda to comply with the ICRMW and enhance the protection of migrant workers and their families. G.L.I.H.D also acknowledges the progress made by the Government of Rwanda in ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) as well as most of the core UN human rights instruments and, to a large extent, their implementation into the domestic legal framework.
11. However, two ILO conventions that are key for migrant workers, namely the Convention No. 97 (Migration for Employment Convention)<sup>5</sup>, and Convention No. 143

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<sup>4</sup> CASTRAR, MIFOTRA, MINEDUC, RSSB, LEGAL AID FORUM (LAF), ORGANISATION DES CONGOLAIS RESIDENT AU RWANDA and Labour Inspector at the level of district in MUSANZE, RUBAVU, HUYE and NYARUGENGE.

<sup>5</sup> *Convention concerning Migration for Employment (Revised 1949) (Entry into force: 22 Jan 1952)* on [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242), consulted on 30/05/2017. It provides foundations for equal treatment between nationals and regular migrants in recruitment procedures, living and working conditions, and access to justice, tax and social security.

on Migrant Workers (Supplementary Provisions)<sup>6</sup> have not been ratified by the Government of Rwanda.

#### **A. The ICRMW' domestic legal framework**

12. In line with the Constitution of Rwanda,<sup>7</sup> the ICRMW is part of the Rwandan legal framework and can be invoked by migrant workers and members of their families.<sup>8</sup>

13. Article 95 of the constitution<sup>9</sup> places the ratified international conventions/treaties such as ICMW at the third (3<sup>rd</sup>) place in the hierarchy of norms after the constitution itself and organic laws and sets the constitutional principle that “[A] law cannot contradict another law that is higher in hierarchy”. Thus, ICRMW applies only when not in conflict with an existing organic law and the constitution.

14. In this regard, the lower binding force conferred upon ICRMW (and all international conventions) by the revised constitution of 2015 vis à- vis organic laws creates potential risk of non-compliance with ICRMW in cases of its contradiction with a domestic organic law and/or the constitution.

15. While the ICRMW is recognized in domestic law, labour law in Rwanda is basically regulated by law N° 13/2009 of 27 May 2009<sup>10</sup> and applies to both national and foreign workers<sup>11</sup>. It explicitly prohibits any discrimination aimed at denying the worker the right to equal opportunity and salary.<sup>12</sup>

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<sup>6</sup> Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Entry into force: 09 Dec 1978) on [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C143](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143), consulted on 30/05/2017. It provides specific guidance regarding treatment of irregular migration and facilitating integration of migrants in host societies.

<sup>7</sup> The constitution of the republic of Rwanda of 2003 revised in 2015, Official Gazette n° Special of 24/12/2015.

<sup>8</sup> Article 168 of the constitution of the republic of Rwanda reads: “[up] on publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of this Constitution.”

<sup>9</sup> Article 95 reads: “The hierarchy of laws is as follows: 1° Constitution; 2° organic law; 3° international treaties and agreements ratified by Rwanda; 4° ordinary law; 5° orders. A law cannot contradict another law that is higher in hierarchy. (...)”

<sup>10</sup> Law N° 13/2009 of 27/05/2009 regulating labour in Rwanda, *O.G. n° special of 27/05/2009*.

<sup>11</sup> *Idem*, article 18. It reads: Apart from issues related to working permits for foreigners working in Rwanda that are determined by immigration and emigration laws, the contract of employment for foreigners working in Rwanda shall be governed by this law and shall be written

<sup>12</sup> *Idem*, article 12. It reads: it shall be forbidden to directly or indirectly make any discrimination aiming at denying the worker the right to equal opportunity or to the salary.

16. Nevertheless, although foreign workers are subjected to the same law governing labour in Rwanda, they have to first comply with the requirements of legal entry and stay in Rwanda regulated by relevant immigration laws.

17. As it is explained below,<sup>13</sup> while regular migrant workers enjoy to a certain extent similar rights as national workers, irregular migrant workers do not benefit from the same protection.

18. It is also worth noting that the majority of migrant workers in Rwanda are working in the informal sector and are not covered or protected by the labour law.

## **B. Government compliance with the Committee's concluding observation**

19. In the assessment by G.L.I.H.D of the government of Rwanda's compliance with the recommendations of the ICRMW Committee, the following issues were identified as needing to be addressed by the Government of Rwanda if it is to fully comply with the ICRMW:

### **i. Declaration under articles 76 and 77 of the ICRMW**

20. The Committee invited the Government of Rwanda to make declarations provided for in articles 76 and 77 of the Convention, recognizing the Committee's competence to receive communications from States parties and individuals. This invitation has however not been responded to.

### **ii. Ratification of ILO conventions**

21. The Committee also invited the Government of Rwanda to ratify the ILO Conventions Nos. 97<sup>14</sup>, 143<sup>15</sup>, 181<sup>16</sup> and 189<sup>17</sup> for the better protection of migrant workers and the effective enforcement of the ICRMW in Rwanda, but so far this has not been done.

22. However, it must be mentioned that according to the recent ILO report on non-ratified Conventions and Recommendations submitted by the Ministry of Public Service and

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<sup>13</sup> See gaps in the implementation of ICRMW.

<sup>14</sup> Migration for Employment Convention, 1949: Convention concerning Migration for Employment (Revised 1949) (Entry into force: 22 Jan 1952)

<sup>15</sup> Migrant Workers (Supplementary Provisions) Convention, 1975: Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Entry into force: 09 Dec 1978)

<sup>16</sup> Private Employment Agencies Convention, 1997: Convention concerning Private Employment Agencies (Entry into force: 10 May 2000)

<sup>17</sup> Domestic Workers Convention, 2011: Convention concerning decent work for domestic workers (Entry into force: 05 Sep 2013)

Labour in May 2017,<sup>18</sup> the ratification of the above mentioned ILO conventions and other related recommendations is in the pipeline although no time framework has been set by the Government.

**iii. Numerical data and statistical information on migrant workers employment areas and conditions as well as data on Rwandan migrant workers and members of their families abroad**

23. The Committee requested the government of Rwanda to provide in its next report, numerical data and statistical information on the areas where migrant workers, including those in an irregular situation, are employed and on their conditions of employment. Unfortunately G.L.I.H.D has noticed that no such data is publicly available and neither is there any indication that a survey has been conducted so far in this regard. The only data G.L.I.H.D was able to access concerns the number of regular migrant workers in the formal employment sector. This data is kept by the immigration office and only accessible on the special authorization of the Director of Immigration.<sup>19</sup>

24. G.L.I.H.D also observed that, while regular migrant workers are employed in the formal sector (Banks, Schools, government institutions, etc.), a significant number of irregular migrant workers are employed in the informal sector such as beauty Saloons, garages as well as domestic workers.

25. Interviewed irregular migrant workers informed G.L.I.H.D that work conditions in informal sector is characterized by a number of abuses. For instance, none of them is affiliated to social security (RSSB) and the agreed salary is hardly ever paid on the due date and sequence. No medical care services are provided to them and most of the time they are not paid for overtime work. Moreover, irregular migrant workers suffer from illegal termination of employment contracts which are in most cases verbal anyway, and proving that the contracts existed in the first place or that abuses were suffered is difficult.

26. As to the number of Rwandan migrant workers and members of their families abroad (including those in irregular situation), there is no set mechanism to know the exact

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<sup>18</sup> MIFOTRA, Report on unratified Conventions and Recommendations, Government of Rwanda, Period 2012-2016, May 2017, pp. 11-18.

<sup>19</sup> Interview with the Director of Labour Administration within the Ministry of Public Service and Labour held on 2 June 2017.



number of Rwandans involved in either regular or irregular jobs and no survey in this regard has been conducted.

**v. Regular trainings for the judges, prosecutors, police officers, immigration officials, labor inspectors, social workers and other agents of the Government**

27. Even though the Committee recommended the government of Rwanda to regularly organize training for the judges, prosecutors, police officers, immigration officials, labor inspectors, social workers and other agents of the Government dealing with migrant workers, it is unfortunate to note that no such trainings have so far been organized.

**vi. Access to effective remedy**

28. The committee recommended that the government of Rwanda ensure that migrant workers and members of their families (including those in irregular situations) enjoy in law and in fact the same rights as nationals to lodge complaints and have access to effective remedies.

29. In this regard, it is to be observed that even though the Constitution of Rwanda guarantees equal protection of the law without discrimination, migrant workers and members of their families in both regular and irregular situations face many challenges when seeking redress before the courts of law. Foreign plaintiff migrant workers are requested to provide an amount of money in form of security to be determined by the court before having the substance of their claim heard. This security is determined by the court upon request by the defendant. The obligation to provide a determined amount of money in form of security is provided for in articles 87<sup>20</sup> and 88<sup>21</sup> of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

30. In light of article 7 of the ICRMW that prohibits discrimination with respect to rights read together with article 83 of the ICRMW that requires each State party to provide effective remedy to migrants workers whose rights are violated, the requirement to deposit security by a foreign plaintiff in order to be heard by the court is a form of

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<sup>20</sup> Article 87 reads: “With exception of cases where they institute claims related to their property and of which they have evidence, all foreign nationals, with the exception of East African Community nationals, whether original plaintiffs or joined to the proceedings, must, if the defendant so requires, before other objections, deposit an amount of security which is enough to satisfy the costs and damages that might arise from the case, unless there are agreements by which foreign States entered with Rwanda exempting their nationals from depositing such a security. The defendant may also request that the security be paid for the first time on appeal”.

<sup>21</sup> Article 88 reads: “The judgment ordering the payment of the security shall fixe the manner in which it has to be paid as well as its amount. A foreign plaintiff shall be exempted from depositing the required security if he/she proves that he/she owns an immovable property in Rwanda which covers the required security.”

discrimination based on nationality and thus, constitutes a violation to the migrant workers' right to effective remedy as per article 83 of the ICRMW.

#### **vii. Decriminalizing immigration offences**

31. The Committee recommended that the Government of Rwanda revise Law No. 04/2011 of 21 March 2011 on immigration in line with the spirit of the Convention, in order to decriminalize immigration offences committed by migrant workers or members of their families. This is yet to be done.
32. Informal sector migrant workers in irregular situations are exposed to the risk of being abused and exploited by employers. Criminalization of irregular entry and/or stay provided by the article 18 read together with article 40 of the law N° 04/2011 of 21/03/2011 on immigration and emigration in Rwanda puts irregular migrants in a vulnerable situation and they can easily be exploited by employers.
33. Irregular migrant workers are often subject to exploitation and abuse that may amount to cruel, inhuman or degrading treatment. G.L.I.H.D observed that such malpractices are not reported by the victims (irregular migrant workers) because they are afraid of being prosecuted for breach of immigration laws.
34. Bad and dangerous working conditions and environment, and none or less payment of agreed salary are some of the abuses and forms of exploitation that irregular migrant workers are likely to face due to the criminalization of immigration offences. There is no doubt that such criminalization undermines the protection of migrant workers under articles 10 and 11 of the ICRMW.

#### **viii. Subscription to mutual health insurance scheme and conclusion of bilateral and multilateral social security agreements**

35. The Committee recommended that the Government of Rwanda ensure that all migrant workers and members of their families subscribe to a mutual health insurance scheme and conclude bilateral and multilateral social security agreements to guarantee the social protection of migrant workers. Migrant workers in Rwanda are not eligible to the community-based health insurance scheme, and consequently, their access to health services is expensive as compared to nationals. Interviewed migrant workers have expressed the need to benefit from the community-based health insurance like nationals on the basis that they also contribute to the development of the country through payment of taxes and participation to community services such as '*Umuganda*'.

36. The exclusion of migrant workers from the benefits of the community based health insurance scheme is contrary to the State obligation under article 43(2) of the ICRMW which requires the effective equality of treatment enabling migrant workers to enjoy the rights provided for in the paragraph 1 of the same article including access to social and health services.
37. As to the conclusion of bilateral and multilateral social security agreements that guarantee the social protection of migrant workers by facilitating their rights to pension, and whereas the Government of Rwanda ratified ILO Convention N° 48 (1935) on the conservation of rights to pension of the migrant, and whereas the Rwanda Social Security Board (RSSB) is member of the International Social Security Association, the lack of social security agreements or policies facilitating the transfer of migrant workers' pension contributions from or to Rwanda undermines the effective protection by the ICRMW.
38. Article 27 of the ICRMW recognizes for migrant workers the same rights to social security as nationals and calls upon the State of origin and the State of employment to enter into necessary bilateral and multilateral treaties. Articles 32 and 47 of ICRMW emphasize the right of migrant workers and members of their families to transfer their earnings and savings, upon the termination of their stay in the State of employment.
39. However, migrant workers in Rwanda face several challenges while accessing and enjoying their rights in relation to pension contribution when they decide to return to their countries of origin, upon termination of their stay in Rwanda. The transfer of their pension contribution in RSSB is not possible because of lack of bilateral or multilateral agreement between Rwanda and other countries.
40. Migrant workers can only request payment of their pension contributions when they fulfill the condition of the age of retirement. In the latter case, migrant workers or eligible members of their family can make a request through RSSB and open a bank account in Rwanda where a unique allocation calculated on the basis of the period of contribution will be deposited.
41. Therefore, lack of mechanisms through which RSSB can work together with the social security systems of different countries to facilitate the transfer of migrant workers' pension contributions and thus benefit from a continuous social security protection,

undermines the rights of migrant workers and members of their family under articles 27, 32 and 37 of the ICRMW.

#### **IV.G.L.I.H.D RECOMMENDATIONS**

42. Whilst acknowledging the significant efforts made by the Government, G.L.I.H.D suggests that the Government addresses the following issues that continue to undermine effective implementation of the ICRMW:
43. The Government of Rwanda should make a declaration under article 76 and 77 of the Convention recognizing the Committee's competence to receive communications from States parties and individuals.
44. The Government of Rwanda should also be encouraged in the process of ratifying the ILO conventions Nos. 97, 143, 181 and 189 on migrant workers and to provide a clear ratification time framework.
45. The Government of Rwanda should provide reliable data on the areas where migrant workers (regular and irregular) are employed and on their conditions of employment as well as information on the number of Rwandan migrant workers and members of their families abroad.
46. The Government of Rwanda should provide trainings on the ICRMW to all persons dealing with migrant workers such as Judges, prosecutors, police officers, immigration officials, labor inspectors, social workers, etc.
47. In order to comply with article 7 (Non- discrimination) and 83 (effective remedy) of the ICRMW, the Government of Rwanda should extend the exemption from depositing the Security required for foreign plaintiffs (now recognized for EAC nationals) to all migrant workers and members of their families. In other words, article 87 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure should be repealed to comply with the ICRMW standards as for the prohibition of discrimination based on nationality and access to effective remedy.
48. The Government of Rwanda should take steps to decriminalize immigration offenses because their criminalization leads to the exploitation of migrant workers and members of their families in irregular situations. Employers make profit of such criminalization by abusing and exploiting irregular migrant workers as they know very well that such mal-practices will not be reported by the victims (irregular migrant workers).

49. The government of Rwanda should allow access to the community-based health insurance scheme to migrant workers and members of their families like other nationals in order to fulfill its obligation under the Convention.
50. The Government of Rwanda should enter into agreements with other countries' social security systems with the aim of facilitating migrant workers returning to their States of origin to transfer their pension contributions and thus continue to enjoy their pension rights.
51. The Government of Rwanda should review the labour law in order to protect also workers working in informal sector as the majority of migrant workers are employed in such sector.