



LEGAL REGULATION OF INTERNATIONAL LABOUR MIGRATION: CONTEMPORARY CHALLENGES AND INSTITUTIONAL FRAMEWORKS¹

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ABSTRACT

International labour migration has emerged as one of the defining phenomena of the 21st century, involving approximately 169 million migrant workers worldwide. This article examines the complex legal and institutional frameworks that govern labour migration, analyzing the interplay between national legislation, international conventions, and regional agreements. Drawing on recent scholarship and empirical research, the article identifies key challenges in protecting migrant workers' rights, including the persistence of exploitative practices, gaps in legal implementation, and tensions between economic interests and human rights protections. The analysis demonstrates that while international labour standards provide a normative foundation, significant disparities exist between de jure protections and de facto implementation. The article argues for a more comprehensive, rights-based approach to labour migration governance that balances the legitimate interests of origin and destination countries while ensuring fundamental protections for migrant workers and their families.

1. Introduction

Labour migration represents a fundamental dimension of contemporary globalization, with the International Organization for Migration (IOM) estimating that migrant workers constitute approximately 169 million of the world's 281 million international migrants [1]. These workers are predominantly governed by temporary labour migration programs, which have been subject to intense criticism for exposing migrant workers to extreme vulnerabilities and exploitation [2]. The regulation of labour migration occurs at the intersection of multiple

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legal domains, encompassing immigration law, labour law, human rights law, and social security provisions, creating a complex and often fragmented governance landscape.

The impacts of migration on labour markets are deep and variegated, with legal institutions playing a mediating role in determining how migration affects employment conditions, wage levels, and workers' rights [3]. This institutional mediation operates through various mechanisms, including work authorization systems, employment protection legislation, and enforcement regimes. However, labour migration laws and regulations often interact in ways that affect migrant workers' ability to navigate legal frameworks and exercise their rights.

The regulatory landscape has undergone significant transformations in recent decades, driven by demographic shifts, economic restructuring, and evolving policy priorities. Europe faces demographic changes with a rapidly aging population and low birth rates, with pensioners expected to account for about one third of the EU population by 2050, necessitating policy responses to address labour shortages and skill gaps [4]. These demographic pressures have prompted destination countries to develop more sophisticated legal frameworks for managing labour migration, though tensions persist between restrictive immigration policies and labour market needs.

This article examines the legal regulation of international labour migration from multiple perspectives, analyzing international labour standards, national legislative frameworks, and emerging challenges in implementation and enforcement. The analysis is organized into five main sections: international legal frameworks and ILO conventions; national regulatory approaches and their variations; rights protection and implementation gaps; temporary labour migration programs and their challenges; and contemporary reforms and future directions.

2. International Legal Frameworks and ILO Conventions

2.1 The Foundation of International Labour Standards

The ILO has developed two dedicated conventions to regulate labour migration and safeguard the rights of migrant workers: the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) [5]. These instruments establish fundamental principles for the governance of labour migration and the protection of migrant workers' rights.

Convention No. 97 aims to regulate the conditions under which labour migration occurs, including recruitment, and requires States to ensure equal treatment between nationals and regularly employed migrant workers in areas such as remuneration, working conditions, social security, and trade union membership [5]. This principle of equal treatment represents a cornerstone of international labour standards, seeking to prevent discrimination and exploitation based on nationality or migration status.

Convention No. 143 requires States to take action against abusive forms of labour migration while upholding the basic human rights of all migrant workers, and promotes equality of opportunity and treatment for regular migrant workers and their families in terms of employment, social security, trade union and cultural rights, and individual and collective freedoms [5]. The convention also addresses irregular migration and explicitly incorporates reference to fundamental human rights norms.

2.2 Fundamental Conventions and Their Application

All ILO fundamental Conventions apply to migrant workers, regardless of their status, residence, or nationality, as reaffirmed in the 1998 Declaration on Fundamental Principles and Rights at Work, as amended in 2022 [5]. This universal applicability is crucial, as it establishes baseline protections that should extend to all workers, including those in irregular situations.

Under Convention No. 111, migrant workers must be protected from discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction, or social origin, which can also include other grounds such as nationality or migrant status identified in national law [5]. These anti-discrimination provisions are particularly important given the vulnerability of migrant workers to various forms of differential treatment.

The international legal framework has also evolved to address specific vulnerabilities. The Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 recognize the particular vulnerability of migrants to trafficking and forced labour, and urge States to protect them from abusive and fraudulent recruitment practices [5].

2.3 Implementation Challenges and Ratification Gaps

Despite the comprehensive nature of these international instruments, significant challenges persist in their implementation. A 2016 General Survey by the Committee of Experts on the Application of Conventions and Recommendations emphasized the need for a rights-based approach to labour migration that responds to national contexts and increased reliance on bilateral, regional, and multilateral agreements to manage migration effectively [5].

The ratification rates for key migration-specific conventions remain relatively low compared to other fundamental ILO conventions, reflecting political sensitivities around migration governance and concerns about sovereignty [6]. This creates a fragmented international landscape where protections vary significantly depending on which instruments states have ratified and how effectively they implement them in national legislation.

3. National Regulatory Approaches and Variations

3.1 Divergent Models of Labour Migration Governance

National approaches to regulating labour migration vary substantially, reflecting different historical trajectories, economic structures, and political priorities. The periodization of British regulation from 1945 shows distinct phases: high migration responding to labour market gaps in a high-growth economy (1945-80), followed by growing restrictions, and then radical reforms from 1980 onwards addressing economic restructuring [3]. This historical evolution illustrates how labour migration regulation adapts to changing economic and political circumstances.

European countries have developed complex regulatory frameworks where migration law and labour law interact to determine access to employment and working conditions, with legally required employment authorisations regulated through multiple legislative instruments [7]. These frameworks typically distinguish between different categories of migrant workers, such as highly skilled workers, seasonal workers, and posted workers, each subject to distinct regulatory regimes.

Research on midsize cities demonstrates that local governance actors exhibit hyper-fixation on migrant categories—especially labour migrants and refugees—with often unrealistic assumptions about their length of stay, resulting in largely fragmented and uncoordinated policy responses with limited engagement of business actors [8]. This local-level

analysis reveals how national regulatory frameworks may not adequately address the realities of migration dynamics on the ground.

3.2 Authorization Systems and Labour Market Access

Work authorization systems constitute a primary mechanism through which states regulate labour migration. For lawful entry, third-country nationals need a valid travel document and residence authorisation, which could be either a residence title granted for settlement purposes, or a visa or residence permit granted for short-term purposes [7]. The complexity of these systems can create barriers to legal migration and inadvertently push workers into irregular situations.

The EU has been revising its single work permit system, which will no longer be tied to a specific employer, allowing workers to change jobs and reducing the worker's vulnerability to exploitation [4]. This reform represents a significant shift toward more flexible labour migration systems that enhance worker agency and reduce the power imbalances that facilitate exploitation.

Workers who have had the single work permit for under two years would be allowed to retain it while unemployed for up to three months, while those who have had the permit for over two years can retain it for up to six months of unemployment [4]. Such provisions balance the interests of destination countries in maintaining labour market control with the need to provide workers with reasonable security and protection against immediate destitution.

3.3 Sector-Specific Regulations and Vulnerabilities

Different sectors of employment are subject to varying regulatory approaches, with some occupations receiving special attention due to heightened risks of exploitation. South Korea and Thailand, as major destination countries for low-wage migrant labour in East and Southeast Asia, have developed specific regulations for sectors such as agriculture, manufacturing, and domestic work, though significant challenges persist in protecting workers' rights [9].

Sexual harassment disproportionately affects women, with particular risks for those in precarious, insecure and informal employment, and there are specific risks in domestic work where susceptibility to abuse is fuelled by the concealed nature of work within a private home [10]. These sector-specific vulnerabilities require targeted regulatory interventions that account for the distinct characteristics of different types of employment.

4. Rights Protection and Implementation Gaps

4.1 The Gap Between De Jure and De Facto Protection

One of the most significant challenges in labour migration governance is the persistent gap between legal protections on paper and their actual implementation. Research examining 45 destination states found that 61% of indicators of migrant rights derived from international human rights baseline are reflected in national law—nearly two out of every three—but national authorities implement these de jure protections only 71% of the time [11].

Taken together, about 44% of migrant rights are both protected and implemented in the countries examined, revealing substantial deficits in the translation of international standards into effective national practice [11]. This implementation gap reflects various factors, including inadequate enforcement resources, lack of political will, resistance from employers, and practical difficulties in monitoring working conditions, particularly in sectors with dispersed workplaces.

4.2 Barriers to Accessing Rights and Justice

Even where legal protections exist, migrant workers face substantial barriers to accessing rights and obtaining remedies for violations. The structures of temporary labour migration programs and the temporary visa statuses that guestworkers have can make it difficult for them to access legal services or representation, or avail themselves of the protections that labour standards enforcement agencies could provide [2].

Employers may fail to enforce contracts, including legally stipulated worker protections; states may fail to hold employers accountable or act on migrant worker complaints; and migrants may be afraid to complain out of fear of losing their job, being deported, or being unaware of their rights or conditions in their contracts [12]. These structural barriers are compounded by power asymmetries between employers and workers, language barriers, and unfamiliarity with legal systems.

The hostile environment approach in some destination countries heightens susceptibility to exploitation by concentrating migrants with irregular status into precarious, exploitative and hidden sectors of the labour market and by making it difficult to change employer or seek redress for abuse [10]. Such policies effectively create a two-tier system where irregular migrants are denied basic protections, incentivizing their exploitation.

4.3 Specific Vulnerabilities of Women Migrant Workers

Women migrant workers face particular challenges that require targeted attention. Research consistently shows that around 75 per cent of detected victims of human trafficking are women and girls, with women migrant workers often concentrated in precarious sectors where they are exposed to heightened health risks and labour exploitation without access to protections for their human rights or social protection and health services [13].

Research on migrant domestic workers reveals thousands of human rights violations including long working hours with no breaks, less than average monthly wages, sexual and verbal abuse, and a lack of protective regulations under labour codes [14]. The Kafala or sponsorship system in several Arab countries plays a particularly negative role, with passports often confiscated and movement restricted by employers and recruiting agencies [14].

4.4 Conceptualizing Labour Exploitation from Workers' Perspectives

Research with migrant workers has generated a contextually and culturally specific conceptual framework of labour exploitation that details three key dimensions: poor employment conditions and lack of protection; poor treatment and lack of respect; and health and safety issues and lack of health protection [15]. This framework, developed from workers' own perspectives, highlights aspects that matter most to those experiencing exploitation.

The dimension of poor employment conditions includes uncertainty over the future and lack of stability, as well as poor contract and payment issues, reflecting the lack of a safety net when workers experience irregular or delayed payment [15]. Understanding exploitation from workers' viewpoints is essential for developing effective regulatory responses that address the actual harms experienced rather than abstract legal categories.

5. Temporary Labour Migration Programs and Their Challenges

5.1 The Structure and Prevalence of TLMPs

Temporary labour migration programs (TLMPs) have become the dominant model for managing labour migration globally, despite persistent concerns about their impacts on workers' rights. Most of the world's 169 million international migrant workers are governed

by temporary labour migration programs, which are strongly criticized for exposing migrant workers to extreme vulnerabilities and exploitation [1, 2].

Labour shortage is the major rationale for the creation and operation of temporary labour migration programs; however, the need for guestworkers is generally determined by employers rather than governments, and many employers are not required to prove that labour shortages exist before hiring migrant workers [2]. This employer-driven model creates inherent tensions between economic efficiency and rights protection.

5.2 Exploitation and Abuse in TLMPs

As a result of the structures of TLMPs, guestworker abuses are common across the wage and skill spectrum, with migrants traveling to and from every region facing fraud, discrimination, economic coercion, retaliation, blacklisting, and in some cases forced labour, indentured servitude, debt bondage, and human trafficking [2]. These systematic problems suggest fundamental design flaws rather than isolated incidents of non-compliance.

Research combining doctrinal and empirical approaches, reviewing South Korea and Thailand's low-wage labour migration laws and analyzing available data on recruitment costs, ability to change jobs, and wages, reveals significant gaps between regulatory frameworks and outcomes for workers [9]. The ability to change employers emerges as a particularly critical factor affecting workers' vulnerability to exploitation.

5.3 Workers' Perceptions and Experiences

Large-scale, nationally representative surveys of low-wage migrant workers in Qatar provide insights into how migrants understand and experience their rights and wellbeing, and how these views have changed as the country has embarked on key labour law reforms in response to international pressure [12]. Such empirical research is essential for understanding whether legal reforms translate into meaningful improvements in workers' lives.

Central to debates about global justice for temporary migrant labour is the importance of minimally fair contracts, with rights that protect migrants' abilities to make informed choices about employment and provide rights of exit should arrangements violate contract terms [12]. However, the extent to which migrants can exercise meaningful choice and agency within existing regulatory frameworks remains highly contested.

6. The Gig Economy and Platform Labour Migration

6.1 New Forms of Precarity

The emergence of platform-based gig economy has created new challenges for labour migration governance. In urban gig economies around the world, platform labour is predominantly migrant labour, yet research on the intersection of the gig economy and labour migration remains scant [16]. This gap in research and regulation leaves migrant gig workers particularly vulnerable.

Platform labour simultaneously degrades working conditions while offering migrants much-needed income opportunities, and granting gig workers employee status is by itself not enough to counter the precarisation of migrant gig work [16]. The debate should not be narrowly focused on issues regarding misclassification but requires thorough revision of existing regulation at the intersection of immigration and employment law and welfare policy.

6.2 Regulatory Challenges in Platform Work

As long as immigrants' access to welfare services and decent work is restricted by their residency status as well as inconsistent processes of bureaucratic discrimination, platform

companies can promote themselves as offering a quick and accessible source of income [16]. This creates a feedback loop where regulatory restrictions push migrants into platform work, which in turn operates outside traditional labour protections.

Better representation and engagement of migrant gig workers in unions and other labour market institutions is essential, with workers given advice in their native language and empowered to define the themes and terms of labour struggle while playing a formal role in regulatory enforcement regimes [16]. The expansion of struggle from sites of production to spaces of social reproduction represents a promising approach to addressing the multidimensional precarity faced by migrant gig workers.

7. Social Protection and Migrant Workers

7.1 Gaps in Social Protection Coverage

Access to social protection represents a fundamental challenge for migrant workers globally. In the GCC countries, migrant workers make up between 76% and 95% of the workforce, predominantly in low-paid or precarious employment, yet most face severe obstacles in accessing even basic protections like health care, maternity benefits, unemployment insurance, or compensation for work-related injuries [17].

Legal restrictions, administrative hurdles, limited portability of benefits, and widespread informality leave many migrant workers and their families vulnerable to poverty, exploitation, and exclusion [16]. The exclusion of migrant workers from social protection systems reflects broader tensions between the temporary nature of their presence and the need for comprehensive social rights.

7.2 Initiatives for Extending Social Protection

Recent initiatives aim to transform the social protection landscape by promoting an inclusive, gender-responsive, and rights-based approach to expanding social protection coverage to migrant workers across major migration corridors [18, 19, 21]. These efforts involve legal and policy assessments, evidence-based research, and policy dialogue with multiple stakeholders.

The portability of social security benefits across borders represents a particularly complex challenge, requiring bilateral or multilateral agreements and administrative cooperation between origin and destination countries [19]. Progress in this area has been limited, leaving many migrant workers without access to accumulated benefits when they return home.

8. Recent Reforms and Emerging Directions

8.1 European Union Reforms

Recent EU reforms have focused on improving legal pathways for labour migration, with Parliament endorsing updated rules on single permits in March 2024 and the Council following in April 2024, with EU countries given two years to introduce the revised rules in national laws. These reforms aim to address some of the structural vulnerabilities inherent in existing systems.

In 2019, about 48% of highly-skilled migrants worked in low or medium skilled jobs, compared with just 20% of EU citizens, highlighting the need for better recognition of qualifications and skills to reduce brain waste and improve labour market matching. The underutilization of migrant workers' skills represents both an economic inefficiency and a justice issue.

8.2 Sponsorship System Reforms

In the Arab States region, the ILO works with constituents to improve governance of labour migration through supporting reforms to dismantle the Kafala sponsorship system and enhance internal labour market mobility for migrant workers. These reforms represent significant structural changes to systems that have long been criticized for facilitating exploitation.

Promoting fair and ethical recruitment practices, including ensuring that recruitment fees and related costs are covered by employers rather than migrant workers, aligns with international labour standards and the ILO Fair Recruitment Initiative. The principle that workers should not pay for their own recruitment addresses a major source of debt bondage and exploitation.

8.3 Recognition of Qualifications and Skills

In November 2023, the European Commission issued a recommendation that countries should work to reduce barriers to the recognition of skills and qualifications that make it difficult for people to legally migrate. Streamlined and fairer procedures for qualification recognition can significantly improve labour market outcomes for migrant workers.

The issue of qualification recognition intersects with broader questions about labour market segmentation and the channeling of migrant workers into specific occupational niches regardless of their actual skills and education. Addressing these patterns requires both regulatory reforms and changes in employer practices and attitudes.

9. Bilateral and Regional Agreements

9.1 The Role of Bilateral Labour Agreements

Bilateral labour agreements (BLAs) have proliferated as mechanisms for managing labour migration between specific countries. Research identifies gaps between bilateral regularizing of migration and workers' rights, particularly in sectors such as agriculture where enforcement challenges are acute. While BLAs can provide frameworks for cooperation, their effectiveness depends heavily on implementation and monitoring mechanisms.

These agreements vary substantially in their provisions, with some providing comprehensive protections and others focusing primarily on facilitation of migration flows. The negotiating power of origin and destination countries affects the balance struck between recruitment facilitation and rights protection, often to the disadvantage of workers from less powerful sending countries.

9.2 Regional Frameworks and Cooperation

Regional approaches to labour migration governance offer potential advantages in terms of policy coordination and harmonization. The European Union represents the most developed regional framework, though significant variations persist among member states. The EU's legal migration acquis presents a fragmented system which impacts the coherence and effectiveness of the system as a whole, despite the objectives of legal migration directives remaining relevant to the EU's needs.

Regional cooperation mechanisms such as the Colombo Process and the Abu Dhabi Dialogue provide forums for dialogue between origin and destination countries, though translating dialogue into concrete improvements in governance and protection remains challenging. The asymmetry of power between sending and receiving countries limits the effectiveness of such mechanisms in promoting stronger protections.

10. Conclusion and Policy Implications

The legal regulation of international labour migration remains characterized by significant tensions between competing objectives and persistent gaps between normative frameworks and actual practice. While international labour standards provide a comprehensive foundation for rights protection, their translation into effective national regulation and implementation faces numerous obstacles.

Several key findings emerge from this analysis. First, the gap between de jure legal protections and de facto implementation represents perhaps the most significant challenge in labour migration governance. Nearly half of migrant rights remain either unprotected in national law or inadequately implemented, leaving workers vulnerable to exploitation despite the existence of international standards. Second, the predominance of temporary labour migration programs has created structural vulnerabilities that facilitate abuse, with employer-driven demand determination and restrictions on worker mobility concentrating power in the hands of employers. Third, specific groups of migrant workers—particularly women, domestic workers, and those in irregular situations—face compounded vulnerabilities requiring targeted interventions.

Fourth, emerging forms of labour organization, particularly platform-based gig work, present new challenges that existing regulatory frameworks struggle to address. Fifth, the exclusion of migrant workers from social protection systems leaves them exposed to risks of poverty and insecurity, undermining the principle of equal treatment. Finally, while recent reforms in various jurisdictions show promise, fundamental restructuring of temporary labour migration systems may be necessary to adequately protect workers' rights while meeting legitimate labour market needs.

Moving forward, several policy directions merit consideration. First, strengthening enforcement mechanisms and closing implementation gaps must be prioritized, including adequate resourcing of labour inspectorates and creation of accessible complaint mechanisms for migrant workers. Second, regulatory frameworks should enhance worker agency and mobility, including provisions allowing workers to change employers without jeopardizing their immigration status. Third, comprehensive social protection coverage should be extended to all migrant workers regardless of status, with attention to portability of benefits. Fourth, gender-responsive approaches are needed to address the specific vulnerabilities faced by women migrant workers. Fifth, qualification recognition systems should be streamlined to reduce brain waste and improve labour market matching. Sixth, recruitment practices must be regulated to prevent debt bondage, including employer payment of recruitment fees. Finally, meaningful participation of migrant workers themselves in policy development and implementation is essential for ensuring that regulatory frameworks address their actual needs and experiences.

The regulation of labour migration ultimately requires balancing multiple legitimate interests—the sovereign prerogatives of states to control their borders, the economic needs of destination countries, the development objectives of origin countries, and most fundamentally, the human rights and dignity of migrant workers themselves. Achieving this balance demands moving beyond narrow securitization approaches toward comprehensive, rights-based frameworks that recognize labour migration as a normal social and economic process requiring fair and effective governance rather than exceptional treatment. Only through such

reorientation can the international community ensure that labour migration fulfills its potential to benefit all stakeholders while protecting the fundamental rights of those who cross borders in search of opportunity and a better life for themselves and their families.

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