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PROTECTING MIGRANT WORKERS UNDER INTERNATIONAL LABOUR LAW:

CONTEMPORARY CHALLENGES AND REFORMING THE GLOBAL PROTECTION FRAMEWORK

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ABSTRACT

Today, international labour migration underpins the economies of origin and destination States alike, with the International Labour Organization estimating that international migrants made up 167.7 million, or 4.7 per cent, of the global workforce in 2022, a number that is over thirty million greater than in 2013.[3]

Nevertheless, the international legal regime intended to protect such workers is still underdeveloped, poorly ratified, and unenforceable against those States that receive the most immigrants. This article will first outline this regime - two conventions adopted by the International Labour Organization, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the non-binding 2018 Global Compact for Safe, Orderly and Regular Migration - and examine why neither has been universally or widely ratified amongst the major destination States.

The article will then consider three modern instances of worker vulnerability: the kafala system operated by the GCC States; the lack of access by migrant domestic workers to minimum labour standards; and the increased risk of exploitation and forced labour faced by irregular migrant workers. Finally, the article will assess some suggestions for reforming the international protection regime, namely bilateral labour agreements, sectoral treaty-making, and a very closer look into the amalgamation of the International Labour Organisation's supervisory function and the Global Compact's voluntary review process.

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[3] International Labour Organization, ILO Global Estimates on International Migrant Workers: International Migrants in the Labour Force 12 (4th ed. 2024).

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It then examines three contemporary sites of acute vulnerability: the sponsorship-based kafala systems of the Gulf Cooperation Council states, the exclusion of migrant domestic workers from baseline labour protections, and the disproportionate exposure of irregular migrant workers to exploitation and forced labour. The article concludes by evaluating proposals for reforming the global protection framework, including strengthened bilateral labour agreements, sectoral treaty-making, and closer integration between the International Labour Organization's supervisory machinery and the Global Compact's voluntary review process.

Keywords: migrant workers, International Labour Organization, ICRMW, Global Compact for Migration, kafala system, forced labour, domestic workers.

I. INTRODUCTION

Labour migration is neither a marginal nor a recent phenomenon in the international economy; it is estimated that migrant workers account for over sixty-five per cent of the world's roughly 281 million international migrants, and that most contemporary migration is linked, directly or indirectly, to the pursuit of decent work.[4]

Despite this scale, the international legal regime governing the treatment of migrant workers has developed unevenly across three distinct tracks: a labour-rights track anchored in International Labour Organization conventions predating the modern human-rights treaty system; a human-rights track built around the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and, since 2018, a soft-law governance track embodied in the Global Compact for Safe, Orderly and Regular Migration. None of the three tracks commands the adherence of the States that host the largest migrant workforces, producing what this article terms a persistent protection gap between the normative content of international labour law and its practical availability to the individual migrant worker.

This article proceeds in five further parts. Part II examines the foundational International Labour Organization instruments addressing labour migration. Part III examines the human-rights track

[4]International Labour Organization, The Global Compact for Safe, Orderly and Regular Migration, https://www.ilo.org/global/topics/labour-migration/migration/lang--en/index.htm (last visited Sept. 2, 2026).

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represented by the 1990 Convention. Part IV assesses the Global Compact for Safe, Orderly and Regular Migration as a governance innovation. Part V identifies three contemporary sites of acute regulatory failure. Part VI evaluates reform proposals before Part VII concludes.

II. THE INTERNATIONAL LABOUR ORGANIZATION FRAMEWORK

A. The Constitutional Foundation

The protection of migrant workers has been embedded in the International Labour Organization's mandate since its foundation, with the Preamble to the ILO Constitution identifying "the protection of the interests of workers when employed in countries other than their own" as one of the conditions of labour whose improvement is urgently required to secure universal peace.[5]

As a general matter, International Labour Organization standards apply to all workers irrespective of nationality or migration status unless a particular instrument expressly provides otherwise, meaning that the broader corpus of core labour standards — including on forced labour, freedom of association, and non-discrimination — extends to migrant workers even in the absence of migration-specific ratification.[6]

B. Convention No. 97 and Convention No. 143

Two International Labour Organization instruments deal specifically with labour migration. The Migration for Employment Convention (Revised), 1949 (No. 97) covers the entire migration continuum from recruitment through return, and requires ratifying States to accord migrant workers lawfully within their territory treatment no less favourable than that accorded to nationals

[5]ILO Constitution pmbl. (1919).

[6]International Labour Organization, International Labour Standards and Labour Migration, https://www.ilo.org/topics-and-sectors/labour-migration/international-labour-standards-and-labour-migration (last visited Sept. 2, 2026).

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in respect of conditions of work, trade union membership, accommodation, social security, and access to legal proceedings.[7]

Convention No. 97 is accompanied by the non-binding Migration for Employment Recommendation (Revised), 1949 (No. 86), which annexes a model bilateral agreement for use between sending and receiving States and specifically addresses the transfer of migrants' earnings and savings.[8]

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) supplements Convention No. 97 and extends protection further: Article 1 commits ratifying States to respect the basic human rights of all migrant workers, including those in an irregular situation, while Part II of the Convention requires States to promote equality of opportunity and treatment for regularly admitted migrant workers in respect of employment, trade union rights, and cultural rights, subject to a narrow set of permissible restrictions on access to limited categories of employment under Article 14(a).[9]

Convention No. 143 is itself understood as supplementary to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), reinforcing the principle that migrant workers must be protected from discrimination in employment on grounds of race, sex, religion, or national extraction.[10]

C. The Ratification Deficit

Notwithstanding their normative significance, both conventions suffer from persistently low ratification, and the International Labour Organization's own supervisory bodies have repeatedly urged States to consider ratification through tripartite social dialogue, while noting that the

[7]Migration for Employment Convention (Revised), 1949, No. 97, arts. 2, 6, 36 U.N.T.S. 85 (entered into force Jan. 22, 1952).
[8]Migration for Employment Recommendation (Revised), 1949, No. 86, art. 9.
[9]Migrant Workers (Supplementary Provisions) Convention, 1975, No. 143, arts. 1, 10, 14(a), 1120 U.N.T.S. 323 (entered into force Dec. 9, 1978).
[10]International Labour Organization, supra note 5.

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objectives of the instruments retain their relevance for all migrant workers irrespective of gender, origin, skill, or status.[11]

Crucially, none of the States that today host the largest migrant workforces — including the Gulf Cooperation Council states, the United States, and most of the major European destination economies — has ratified Convention No. 143, meaning its equality-of-treatment guarantees bind only a minority of the States in which migrant workers are actually employed.[12]

III. THE 1990 CONVENTION: A HUMAN-RIGHTS TRACK WITH LIMITED REACH

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations General Assembly in 1990 and entered into force in July 2003, thirteen years later, after accumulating the requisite twenty ratifications.[13]

Unlike the International Labour Organization instruments, the 1990 Convention was drafted expressly to take into account the principles embodied in the core United Nations human-rights instruments, and to build upon the standards already set by Conventions No. 97 and No. 143, extending protection explicitly to migrant workers in an irregular situation and to members of their families.[14]

Despite this comprehensive design, the Convention has attracted ratification from only a small number of States, overwhelmingly countries of origin rather than destination, with commentators noting that not one major migrant-receiving country — including the states of Western Europe, North America, or the Gulf — is a party.[15]

[11] International Labour Organization, ILO Conventions on Migrant Workers Promote Safe, Orderly and Regular Migration 2 (2018), https://www.ilo.org/media/407116/download.

[12] Id. at 3–4 (listing States that have reported an intention to consider ratification without having ratified either instrument).

[13] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 87, Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003).

[14] Id. pmbl.

[15] Ryszard Cholewinski, Protecting Migrant Workers in a Globalized World, Migration Policy Institute (Mar. 1, 2005), https://www.migrationpolicy.org/article/protecting-migrant-workers-globalized-world.

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This asymmetry is not incidental. Because the Convention imposes binding, justiciable obligations extending to irregular migrants, ratification requires destination States to accept international scrutiny over precisely the population — irregular and low-wage migrant labour — over which they are most reluctant to cede regulatory discretion. The result is a treaty whose comprehensiveness on paper is matched by its practical marginality: it binds States of origin to standards over which they have little control, while the States most responsible for the treatment of migrant workers in practice remain outside its reach.

IV. THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION: GOVERNANCE WITHOUT BINDING FORCE

Adopted at an intergovernmental conference in Marrakesh on 10 December 2018 and endorsed by the United Nations General Assembly nine days later, the Global Compact for Safe, Orderly and Regular Migration was the first intergovernmentally negotiated agreement to address all dimensions of international migration in a single instrument.[16]

The Compact expressly describes itself as a non-legally binding, cooperative framework grounded in the Charter of the United Nations, the Universal Declaration of Human Rights, and existing international labour standards, and it commits the 164 States that adopted it to pursue twenty-three objectives at the national, regional, and global levels, taking into account differing national realities and capacities.[17]

Several of the Compact's objectives speak directly to labour migration: Objective 5 commits States to expand and diversify pathways for regular migration; Objective 6 calls for fair and ethical recruitment practices that safeguard conditions ensuring decent work; and Objective 18 commits States to invest in skills development and to facilitate the mutual recognition of skills and qualifications.[18]

[16]G.A. Res. 73/195, Global Compact for Safe, Orderly and Regular Migration (Dec. 19, 2018).

[17]United Nations Network on Migration, Implementing the Global Compact for Safe, Orderly and Regular Migration: A Guide for Practitioners 4 (2020).

[18]International Labour Organization, UN Global Compact for Safe, Orderly and Regular Migration, https://www.ilo.org/resource/un-global-compact-safe-orderly-and-regular-migration (last visited Sept. 2, 2026).

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The Compact's own drafting history illustrates the limits of its ambition: its chapeau language commits States merely to "review and revise existing options and pathways for regular migration," phrasing that preserves maximum State discretion over implementation and imposes no obligation to adopt any specific policy option listed beneath each objective.[19]

The Compact's fragility as a governance instrument was underscored when the United States, having participated in the Compact's negotiation under the preceding administration, withdrew from the process in December 2017 on the stated ground that the Compact's provisions were inconsistent with its immigration and border-security policies, and the United States has since continued to decline participation in the Compact's implementation review mechanisms.[20]

The Compact's implementation review mechanism, the International Migration Review Forum, meets periodically to assess State progress, but because reporting is voluntary and the Compact creates no supervisory body comparable to the International Labour Organization's Committee of Experts, the review process functions as a diplomatic stocktaking exercise rather than a mechanism of accountability. This structural weakness compounds, rather than remedies, the ratification deficits already present in the two binding tracks examined in Parts II and III.

V. CONTEMPORARY SITES OF PROTECTION FAILURE

A. Sponsorship-Based Labour Systems in the Gulf

The kafala, or sponsorship, system that governs migrant labour across the Gulf Cooperation Council states ties a migrant worker's immigration status directly to a single employer, who typically must consent before the worker may change jobs or, in some jurisdictions, before the worker may exit the country, a structure that has been widely documented as fostering forced labour, wage theft, passport confiscation, and physical abuse.[21]

[19] Joshua Appleby, The Global Compact for Safe, Orderly, and Regular Migration: The Implementation Phase, Ctr. for Migration Studies of N.Y. (2018), https://cmsny.org/publications/appleby-gcm-implementation/.

[20] Permanent Mission of the United States to the United Nations, Explanation of Position on the Global Compact for Migration (Dec. 2, 2017); see also G.A. Res. 73/195, supra note 15.

[21] Americans for Democracy & Human Rights in Bahrain, Trapped in the System: Women Domestic Workers and Kafala in the Gulf States 1–2 (2025).

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None of the six Gulf Cooperation Council states has ratified the Domestic Workers Convention, 2011 (No. 189), the instrument specifically designed to establish minimum standards of treatment — including weekly rest periods, written contracts, and freedom from confiscation of travel documents — for domestic workers, a category disproportionately staffed by migrant women.[22]

Some incremental reform has occurred: Saudi Arabia and Qatar have introduced measures permitting sponsorship transfer without an employer's consent prior to contract expiry in defined circumstances, Kuwait and Qatar have extended minimum-wage regulation to domestic workers, and Saudi Arabia has introduced a digital labour-contract platform intended to improve enforcement.[23]

These reforms, however, operate within rather than against the kafala structure itself, leaving intact the fundamental power asymmetry between employer and worker that International Labour Organization officials and civil-society organizations alike have identified as the root cause of continuing abuse. Structural reform — rather than incremental adjustment of an employer-tied visa system — remains the central unmet demand of labour and human-rights organizations engaging with Gulf labour migration governance.

B. The Exclusion of Domestic Workers from Baseline Protection

Migrant domestic workers occupy a distinctive position of vulnerability within the broader migrant workforce because their labour is typically performed inside a private household, placing them outside the reach of conventional labour inspection and largely invisible to public oversight.

Convention No. 189 was adopted in 2011 specifically to close this gap by establishing that domestic workers are entitled to the same basic labour protections available to other workers,

[22]Domestic Workers Convention, 2011, No. 189 (entered into force Sept. 5, 2013); see also Using System Justification Theory to Explain the Support of Migrant Sponsorship in Gulf Countries, J. Int'l Migration & Integration (2026).

[23]Georgetown J. Int'l Aff., Reforming the Kafala System: Persistent Violations of the Rights of Migrant Domestic Workers and the Role of Private Recruitment Agencies (Mar. 21, 2025), https://gjia.georgetown.edu/2025/03/21/reforming-the-kafala-system-persistent-violations-of-the-rights-of-migrant-domestic-workers-and-the-role-of-private-recruitment-agencies/.

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including minimum wage coverage where such coverage exists, rest periods, and the right to retain their own travel and identity documents.[24]

Yet many national labour codes continue to exclude domestic workers from mainstream labour protection altogether by classifying them outside the statutory definition of "employee," a drafting technique that removes them from minimum-wage coverage even in jurisdictions that formally prohibit discrimination against migrant workers.[25]

C. Irregular Migration, Forced Labour, and the Enforcement Gap

Migrant workers in an irregular situation occupy the most precarious position within the international protection architecture: although Convention No. 143 extends its basic human-rights guarantees to irregular migrants, the equality-of-treatment provisions that give those guarantees practical content apply, by the Convention's own terms, principally to regularly admitted migrant workers.[26]

This gap is compounded during periods of economic shock: the International Labour Organization has documented that migrant workers were disproportionately excluded from social-protection and income-security measures introduced by many States during the COVID-19 pandemic, notwithstanding that migrants are frequently the first to lose employment during economic downturns.[27]

The consequence is a structural feedback loop: workers who migrate irregularly, or whose regular status becomes irregular through no fault of their own — for example, following termination by a sponsoring employer — lose access to precisely the equality-of-treatment protections that formal ratification of the ILO framework was designed to secure, leaving criminal-law enforcement

[24]Domestic Workers Convention, 2011, No. 189, arts. 6, 9–10.

[25]Int'l Trade Union Confederation, Facilitating Exploitation: A Review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries 15–17 (2017).

[26]Migrant Workers (Supplementary Provisions) Convention, 1975, No. 143, art. 1 (basic human rights) & pt. II (equality of treatment for lawfully resident migrants).

[27]International Labour Organization, cited in Using System Justification Theory to Explain the Support of Migrant Sponsorship in Gulf Countries, J. Int'l Migration & Integration (2026).

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against trafficking and forced labour as the primary, and inherently reactive, remedy available to them.

VI. REFORMING THE GLOBAL PROTECTION FRAMEWORK

Three overlapping reform strategies emerge from the preceding analysis, each addressing a distinct point of failure in the existing architecture.

First, because bilateral labour agreements already operate as the primary practical mechanism regulating labour flows between many origin and destination States, Convention No. 97's model agreement, annexed to Recommendation No. 86, offers an underused template for embedding binding equality-of-treatment and grievance-redress clauses directly into instruments that Gulf and other destination States are, in practice, willing to conclude even where they resist multilateral ratification.[28]

Second, sectoral standard-setting focused specifically on domestic work and other high-vulnerability occupations has demonstrated more traction than comprehensive migrant-worker treaties: even States that have not ratified Convention No. 189 have, under sustained civil-society and Abu Dhabi Dialogue pressure, adopted elements of its substantive content into domestic labour codes, suggesting that incremental sectoral pressure can achieve partial convergence with binding standards even absent formal ratification.[29]

Third, closer institutional integration between the International Labour Organization's supervisory machinery and the Global Compact's International Migration Review Forum could partially offset the Compact's lack of binding force, since the Compact's own indicator framework already incorporates the International Labour Organization's global estimates on migrant workers as background indicators for monitoring State progress, providing an existing institutional bridge that could be extended to substantive reporting on labour-standard compliance.[30]

[28]Migration for Employment Recommendation (Revised), 1949, No. 86, annex.

[29]Int'l Trade Union Confederation, Gulf Countries: Increase Migrant Worker Protection (2014), https://www.ituc-csi.org/gulf-countries-increase-migrant.

[30]ILOSTAT, International Migrants in the Labour Force: ILO Modelled Estimates, https://ilostat.ilo.org/topics/labour-migration/international-migrants-modelled-estimates/ (last visited Sept. 2, 2026).

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None of these three strategies substitutes for the deeper political obstacle identified throughout this article: destination States' reluctance to accept binding, externally supervised obligations toward a workforce whose vulnerability is, in significant part, a function of the very immigration-control architecture those States are unwilling to subject to international scrutiny. Reform strategies that work with, rather than against, this political constraint — bilateral agreements, sectoral pressure, and institutional bridging — are accordingly more likely to yield incremental protection gains than renewed efforts to secure universal ratification of the existing comprehensive instruments.

VII. CONCLUSION

The international legal framework for protecting migrant workers is not lacking in normative ambition. Between the International Labour Organization's Conventions No. 97 and No. 143, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 2018 Global Compact for Safe, Orderly and Regular Migration, the content of migrant workers' entitlements — equality of treatment, freedom from forced labour, access to social protection, protection of travel documents — is comprehensively articulated across multiple, mutually reinforcing instruments.

What the framework lacks is not content but reach. Each instrument's binding force is inversely proportional to its ratification by the States that actually host large migrant workforces, producing a protection architecture that binds States of origin more tightly than States of destination, and that relies, in its most recent and most broadly endorsed iteration, on a voluntary review process with no enforcement teeth. The persistence of the kafala system, the continuing exclusion of domestic workers from baseline protection, and the acute vulnerability of irregular migrants during economic crises are not instances of poor legal drafting; they are the result of an inherent misalignment between the multilateral treaty form and the economic realities of labour-receiving countries. Overcoming this challenge may require not only obtaining additional ratifications to existing comprehensive agreements but also more difficult, incremental efforts to implement their substance within bilateral agreements and sectoral arrangements which the destination countries are already willing to entertain.

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