

*Model United Nations of Bucharest
2023*

The Human Rights Council



Addressing the Human Rights Violations Against Migrant Workers

-Research Report-

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I. Introduction

A “migrant worker” is defined in the International Labour Organization (ILO) instruments as a person who migrates from one country to another (or who has migrated from one country to another) with a view to being employed other than on his own account, and includes any person regularly admitted as a migrant for employment.

The United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families defines a migrant worker as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen.

The United Nations Population Division defines irregular migrants (or undocumented migrants) as individuals who enter a country often in search of employment without the required documents or permits, or who overstay the authorized length of stay in the country.

The International Labour Organization estimated in 2019 that there were 169 million international migrants worldwide.[1] Some countries have millions of migrant workers. Some migrant workers are undocumented immigrants or slaves.

II. Key terms

Exploitation- a situation in which somebody treats somebody else in an unfair way, especially in order to make money from their work

Working Conditions- aspects of an employee's terms and conditions of employment. This covers such matters: health, safety, well-being; and working time

Labour Laws - aspects that concern legislation, which specifies responsibilities and rights in employment, particularly the responsibilities of the employer and the rights of the employee.

III. Key Issues

Migrant workers can make a positive contribution to business performance and productivity by filling skill gaps, increasing access to international knowledge, and strengthening contacts in international networks and local networks through new language skills and cultural awareness.

However, migrant labour can also pose a dilemma to businesses as migrant workers — whether in a regular or an irregular situation — can face a range of challenges to their rights, including discrimination from other workers, employers, and laws, unfair working conditions, and harmful recruitment practices. Migrant workers are particularly at risk of other human rights violations, such as being trapped in forced labour due to abuse of vulnerability, a lack of understanding of their rights, and a lack of social capital or power.

Businesses can struggle to ensure that migrant workers in their operations and supply chains have their rights upheld, especially when Governments do not fulfil their duty to protect and their obligations under international human rights instruments.

Migrant workers often face challenges and abuse of their human and labour rights in the workplace due to discrimination against them. This can occur in many ways, such as:

- Unfair recruitment practices, such as charging fees, requiring migrants to put up a bond, or giving misleading or incorrect information about a promised job;
- Trafficking or smuggling workers across borders for work, and/or entering the worker into forced labour in the new destination'
- Unequal access to employment rights, remuneration, social security, trade union rights, employment taxes, or access to legal proceedings and remediation;
- Workplace racism or discrimination.

IV. History

When referring to the current global context, one may be impressed by the figure of one million migrants coming to Europe in one year. Without making light of the challenges involved, there are historical migrations that far surpass this number.

After the First World War, five million people were relocated.

During the Second World War, 90 million civilians moved to China. After the Second World War, 11–12 million people went westwards from German-speaking areas in the Balkans, Czechoslovakia, and Poland to Germany.

In the partition of India and Pakistan, 14 million were on the move. Estimates say that roughly one million died along the road. If we classify according to cause, there are migrations that we might categorize as ‘flights’ for political or other reasons (religion, ethnicity, gender, politics, or environmental reasons).

There is also a long history of migrations for economic reasons: from around the beginning of the 16th century, people moved into labour markets or at least quasi-markets for labour power. These migrations may be understood as successive steps towards the creation of a world market for labour.

- First there was voluntary migration, in the sense of colonizing from centres to peripheries. Examples are Portuguese trading stations in East Africa, India and South East Asia, the so-called old immigration in the US; other overseas migration from Europe; movements from Russia eastwards into Asia and settler colonies in Africa, such as Kenya and South Africa.

- Slavery is also an aspect that must be brought to the discussion when referring the migration. The labourer and his or her labour power were the property of other men. The peak period was

from the 16th century, culminating in the 18th century and mainly terminating during the 19th century, being abolished in the United States in 1865, eight years after the Ottoman Empire abandoned slavery. Slavery's rationale was founded in the plantation economy, which was labour intensive and relied on the gathering of many cheap hands in the same place. The regions for plantations were the western parts of South America, the Caribbean, and the southern states in the US. We should also add African and other slaves in the Arab region, more frequently carrying out household tasks than productive labour.

- The next form of labour mobility represented a step forward concerning voluntary migration and legal status. This was indentured labour or contract labour. Now the workers were free to enter into a contract. The agreements were protracted, yet there was a time limit when they expired. There were also strong elements of coercion and no room for proper negotiations. Many workers were never free — they had to buy food in the shops of the company at prices that secured permanent debt slavery. This system actually mobilized more labour than the slave trade and was widely practised in the then British Commonwealth, with large numbers of workers coming from India. These workers were also used on plantations and for railway construction, a reminder that the system was geared towards the export of food and raw materials in a global market. From the point of view of the employers, indentured labourers fulfilled some of the same functions as slaves, but saved them the costs of paying for the upbringing and reproduction of new labour: the migrants were young.

- Whereas slavery and indentured labour link to mercantile capitalism, plantation economies, and colonialism, the fourth type of economic migration links intimately to industrial capitalism, namely labour migrants. The migrants concerned might not have any particular skills in demand, and they usually enter the labour market at the lower rungs of the social ladder. They differed from slaves by being, in principle, free to sell their labour power after negotiations and agreements. Examples of huge labour migrations are represented by the three million contadini who went from Mezzogiorno in Italy to the United States, or the so-called Ruhrpolen, Polish miners and construction workers arriving in Germany at the end of the 19th century. In American

history, this is known as the ‘new’ immigration, with people coming from Southern and Eastern Europe and other areas of the world.

- From the point of view of the employers, migrants offered sufficient, cheap, often socially subordinate and flexible labour — the classical reserve army. Many ideological movements - including the one initiated by Karl Marx - have come to shape the way social categories are divided. Because of this, when referring to the wage-earning class, it should be mentioned that it has been identified, on numerous occasions, as being free (from a judicial point of view) They were not bound to the soil and had, in principle, the freedom to enter into an agreement.

We may speak of wage slavery. Selling labour power was necessary to survive, and having sold the labour power, it belonged to somebody else. Added to this economic coercion is the social and political power of the bosses.

- We should also see that, in a market economy, labour might be carried out by unfree workers, a classification which belongs to sociologist Robin Cohen. He lists serfdom, debt bondage, apprentice labour, child labour, contract labour and penal labour; forms of domestic service; concentration camp labour and so-called corrective labour as “involuntary” labour. Such unfree forms combine with free wage labour in various ways.

- The end of the typical era of labour migration dates back to the beginning of the oil crisis in the 1970s. From then on, employment sank in the receiving countries. The so-called “Labour Society” with large amounts of general labour was at an end, and migrants now had fewer job options abroad. Historical parallels are never perfect. The history of labour migration shows us that integration processes were not without pain. However, by and by things settled down following large migrations. Today an estimated 3 percent of the world population are migrants, and despite this — important as it is — most people stay in their country of birth. This raises “the immobility paradox”, an issue that will be further discussed in the following paragraphs.

V. Timeline

Throughout history, there have been many waves of migrants, but those from antiquity and the Middle Ages are not very relevant to our subject, although they faced serious abuses.

Some of the most relevant migrant waves have been those from the 1850s to the 1920s in the US and recently those from Syria and other war-torn nations.

During the migration process after 1800, the US saw millions and millions of migrants of German, Irish, Italian, Polish, or other origins. Most of them arrived in the US in search of a new life and more opportunity. But many of them ended up working very demanding but low-paying jobs, while also being discriminated against and judged by the locals or the employers. This cycle repeated through the years, but in time the migrants integrated into the host country, and the labour laws got better and better, thus preventing any more abuses such as too long work hours and insufficient payment. These millions of migrants, who were initially abused and overworked are those who lead to economic development and then to new generations of functional and useful citizens. In time the foreign heritage was mostly lost, therefore the employers did not identify them as easily as exploitable workers and the laws and regulations further helped in preventing abuses. This is also the case in many other countries that saw many migrants coming throughout their history. All these phenomena have been seen during the last century in the US and they influenced the evolution of immigration policies.

Another relevant example of the abuses of migrants is the situation of the millions of migrants and refugees that came to Europe from Syria and other middle eastern countries since 2011. Often they were hired for illegal jobs, underpaid and kept in inhumane conditions.

The authorities stopped some of the perpetrators, but the migrants are uneducated and unaccustomed to the ways the host countries' work legislation works, therefore they are easy targets.

VI. Evaluation of previous attempts

The main standards protecting migrant workers come from the United Nations agency devoted to labour issues, the International Labour Organization (ILO). The ILO has two legally binding instruments relating to migrant workers: Convention No. 97 of 1949 (C97) concerning Migration for Employment, and Convention No. 143 of 1975 (C143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Both are complemented by non-binding recommendations.

C97, which applies to the whole labour migration continuum from entry to return, covers the conditions governing the orderly recruitment of migrant workers. It also articulates the principle of their equal treatment with national workers regarding working conditions, trade union membership and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes and legal proceedings relating to matters outlined in the convention.

The content of C143 is broader. Adopted at a time when particular migration abuses, such as the smuggling and trafficking of migrant workers, were attracting the attention of the international community (which remains the case today), this instrument devotes a whole section to irregular migration and to interstate collaborative measures considered necessary to prevent it. It also imposes an obligation on states "to respect the basic human rights of all migrant workers," confirming its applicability to irregular migrant workers.

Moreover, the United Nations, which has a broad mandate to protect human rights, adopted the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW) in 1990; it came into force in July 2003. Like the ILO instruments, it covers the entire migration process. However, only 27 states have ratified the ICMW, none of them major receiving countries.

In addition to underlining many of the traditional civil and political rights found in other, more general human rights instruments that apply to all persons, including migrant workers and their

families, the ICMW clarifies that basic economic, social, and cultural rights apply to both regular and irregular migrant workers. However, the ICMW permits states to limit the rights of certain specific categories of temporary migrants, such as seasonal workers, project-tied workers, or specified-employment workers.

Despite their comprehensive nature, these instruments provide inadequate protection because the labour migration landscape has changed since they were first adopted. These changes include

- The decreasing significance of the state in recruiting migrant labour and the increasing importance of private agents and intermediaries;
- The feminization of migrant labour with women migrant workers predominant in the sex sector and domestic work — areas characterized by a strong bond of subordination between the employer and employee, and usually beyond the protection of labour law;
- The increasing short-term nature of labour migration;
- The considerable growth in irregular migration and the need for states to balance control measures with measures that facilitate labour migration and protect migrant workers.

In particular, the feminization of the migrant labour force and states' increasing reliance on temporary workers are not adequately reflected in ILO instruments or the ICMW. Another major obstacle is the chronic reluctance of states to agree to legally binding, multilateral instruments that regulate international labour migration and protect the rights of migrant workers. These three challenges are explored in more depth below.

VII. Possible solutions

1. Engaging public support through events and consumer campaigns.

Undocumented workers are too often thought of as taking advantage of public benefits and causing native workers to become unemployed. Changing the unfavourable image of undocumented workers and gaining public support is paramount in protecting their rights. Without public support, undocumented workers stand little chance of fighting exploitation and abuse, a reality that many endure on a daily basis. Numerous organizations engage in awareness-raising initiatives to dispel the negative images of undocumented workers by highlighting that these workers are human beings and that they contribute considerably to our economies.

2. Collecting data policies in the fields of migration, employment, and social inclusion are often developed in the absence of concrete data about undocumented workers. As a result, many of these policies lose their effectiveness. Collecting both qualitative and quantitative data on undocumented workers is thus of utmost importance. NGOs play a crucial role in setting a relevant research agenda and in overcoming the many difficulties of gathering essential information about undocumented workers, who tend to live in the shadows.

3. Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labour standards

One way to prevent violations of undocumented workers' workplace rights is to work with employers. There are several successful examples of organizations that invite – and sometimes pressure – employers to respect well-defined minimum standards of employment. But there is also a need for legal measures to hold employers accountable if they exploit or abuse their undocumented employees. Such measures are indispensable to attain effective protection of undocumented workers' rights.

4. Building capacities through empowerment.

In order to prevent and stop exploitation and abuse, undocumented workers must be able to effectively exercise their rights. Empowering and developing undocumented workers' leadership capacities counteracts a system of dependency. Instead, workers are able to defend themselves

and even engage in and influence the decision-making affecting their lives. These capacities are essential if workers are to become agents of their own rights.

5. Paradoxical as it seems, protecting migrants' rights may be the best way to enhance state sovereignty in a globalized world. The protection of fundamental human rights and freedoms should not depend on where one is in the world. However, it is the state's responsibility to uphold human rights through its laws and enforcement.

Migration management laws that protect the human rights of migrants can effectively work to enhance state sovereignty by protecting national security and public order. For instance, by developing laws and practices that protect the human rights of irregular migrants, such as victims of trafficking and smuggling, states can better address issues of corruption and transnational organized crime which are often associated with trafficking or smuggling in persons. These laws promote the protection of national security and public order. Furthermore, instituting anti-human trafficking legislation that requires states to protect victims of trafficking from exploitation and assist victims in rehabilitation by providing them with appropriate housing, counselling, and medical, psychological and material assistance, does not challenge state sovereignty, and does not infringe upon the right of the state to protect its borders and those within them.

VIII. Major Parties Involved

1. USA

There are approximately 14 million non-permanent workers in the United States. Today it is estimated that there are about 10.7 million undocumented migrant workers in the United States. Many of them come from Mexico and other countries in Central America. These workers often travel to the United States to look for occupational opportunities and to provide economic stability for their families. These workers risk their lives to cross the border, confronting extreme heat and the risk of being caught by border control to find jobs in the United States, often facing

language barriers, cultural shock, stigma, and discrimination upon reaching the United States. In the United States, 65% of farmworkers are Latino, with about half of the workers being undocumented.

The jobs available to undocumented migrant workers in America are often in the domestic, industrial, and agricultural fields. These jobs are often physically demanding and dangerous. All of these workers are exposed to fast paces and repetitive motions at work which can easily lead to injury. In the domestic field, numerous migrant workers -workers from which a large majority is represented by females - are subject to physically demeaning cleaning jobs that involve harsh chemical cleaners that have adverse health effects. Industrial workers often have to use heavy machinery without proper training or safety protocols. In the agricultural field, the workers spend long days doing intense physical labour often in extreme weather conditions such as storms and heat. The workers are also exposed to unsafe levels of pesticides, herbicides, and fertilizers,[6] which can lead to respiratory illness, dermatitis, cancer, and reproductive problems. If these workers do get injured or sick from work, they are left to navigate the American healthcare system without insurance or any help considering dealing with the language barrier. The

undocumented nature of many migrant workers in the United States leads to the exploitation of the population as a whole. The lack of government regulation of employers that hire migrant workers means that the workers work long hours in adverse conditions for little pay. These workers often live in unsafe living conditions that are overcrowded and often unsanitary. Additionally, they are at constant risk of sudden deportation, which leads to migrant workers accepting poor working conditions and low wages from their employers. This leads to employers exploiting migrant workers by subjecting them to unhealthy working conditions for poverty wages. Socially, migrant workers face social stigma and discrimination as they are referred to as "illegal migrants".

2. *Germany*

The great migration phase of labour migrants in the 20th century began in Germany during the 1950s (in sovereign Germany, since 1955), due to repeated pressure from NATO partners yielded to the request for closure of the so-called 'Anwerbe' Agreement (German: Anwerbeabkommen). The initial plan was a rotation principle: a temporary stay (usually two to three years), followed by a return to their homeland. The rotation principle proved inefficient for the industry because the experienced workers were constantly replaced by inexperienced ones. The companies asked for legislation to extend the residence permits. Many of these foreign workers were followed by their families in the following period and stayed forever. Until the 1970s, more than four million migrant workers and their families came to Germany like this, mainly from the Mediterranean countries of Italy, Spain, the former Yugoslavia, Greece, and Turkey. Since about 1990, with the disintegration of the Soviet bloc and the enlargement of the European Union, guest workers have primarily been coming to Western Europe from Eastern Europe. Sometimes, a host country sets up a program in order to invite guest workers, as did the Federal Republic of Germany from 1955 until 1973, when over one million guest workers (German: Gastarbeiter) arrived, mostly from Italy, Spain, and Turkey.

3. *China*

Overall, the Chinese government has tacitly supported migration as means of providing labour for factories and construction sites and for the long-term goals of transforming China from a rural-based economy to an urban-based one. Some inland cities have started providing migrants with social security, including pensions and other insurance. In 2012, there were a reported 167 million migrant workers in China, with trends of working closer to home within their own or a neighbouring province, but with a wage drop of 21%. Because so many migrant workers are

moving to the city from rural areas, employers can hire them to work in poor working conditions for low wages. Migrant workers in China are notoriously marginalized, especially because of the hukou system of residency permits, tying one stated residence to all social welfare benefits.

4. India

Migration in India is induced by both penuriousness and prosperity. India has an immense migrant population as every third person in India is a migrant. As per the 2011 census, migrants constitute approx. 455.8 million of India's approx. 1.21 billion population, which is 37.68 percent of the total population. This includes inter-state migrants and intra-state migrants. Out of 455.8 million migrants, 67.93% are women and 32.07% are men. The predominant reason for migration among women was cited as marriage. This reason for migration was stated by around 42.4 million migrants out of 65.4 million female migrants in total. Among males, 'Work/Employment' was the most significant reason for migration, 12.3 million out of 32.8 million total male migrants cited this reason for migration. There has been a substantial flow of people from Bangladesh and Nepal to India over recent decades in search of better work. Researchers at the Overseas Development Institute found that these migrant workers are often subject to harassment, violence, and discrimination during their journeys at their destinations and when they return home. Bangladeshi women appear to be particularly vulnerable. The findings highlight the need to promote migrants' rights with, among others, health staff, police, and destination employers.

5. UK

In the United Kingdom, migrant workers, including seasonal workers, are protected by national employment laws. They should receive equal pay to British workers doing the same job and must be paid at least the national minimum wage.

Migrant workers can be denied National Health Service treatment unless they can afford to pay. Untreated illnesses can worsen and migrant workers can die from treatable illnesses that remain untreated.

6. Finland

According to the Finnish trade union organizations SAK (Central Organisation of Finnish Trade Unions) and PAM Finnish Service Union United PAM, foreign workers were increasingly abused in the construction and transportation sectors in Finland in 2012, in some cases reporting hourly wages as low as two euros. Bulgarians and Estonians were the most likely victimised in the building trade.

IX. Appendices

- I. [Migrant worker numbers rise by five million: ILO | UN News](#)
- II. [Article: Protecting Migrant Workers in a Globalize.. | migrationpolicy.org](#)
- III. [Protection of Migrants' Rights and State Sovereignty | United Nations](#)
- IV. [Protecting migrant workers \(ilo.org\)](#)
- V. [Ten Ways to Protect Migrants.pdf](#)
- VI. [Migrant Workers - the issues | Canadian Council for Refugees \(ccrweb.ca\)](#)
- VII. [International Labour Standards on Migrant workers \(ilo.org\)](#)
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