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Developing Legislation to Protect the Rights of Migrant Workers

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Introduction

Migrant workers represent the backbone of many national economies, yet remain among the most legally vulnerable groups in a society^[1]. Across sectors like agriculture, healthcare, construction, and particularly blue collar work, migrant workers maintain production and boost the economy while simultaneously being *grossly* unpaid for their efforts^[2]. Migrants are disproportionately exposed to unsafe working conditions, exploitation, wage theft, and discrimination, and in the case of undocumented immigrants, they are unable to seek official help, often due to fear of deportation or even imprisonment^[3]. As international labour mobility increases, the lack of adequate legislation to protect the rights of migrant workers becomes more and more of a pressing global concern^[4].

The matter of migrant workers protection is a complex one, intersecting with labour law, immigration policies, and human rights^[5]. Many migrants often operate using temporary visas or employer dependent visas, restricting their freedoms and placing them under constant fear of having their visa be removed due to any form of corruption. Language barriers, limited citizenship, and often a lack of understanding to their legal rights only further exacerbates these vulnerabilities. With regards to undocumented immigrants, a lack of *official* citizenship leaves them outside of the standard legal barriers used to protect workers, placing them in positions where they function on shaky agreements with employers, and causing them to be exploited with no other alternatives.

However, labour exploitation has impacts beyond individual harm; it undermines fair competition, distorts labour markets, places downward pressure on wages, and pushes governments to raise taxes under the pressure of a population unable to pay them.

On a global scale, the protections for migrant workers is fragmented, and substantial international legislation is scarce. While various agreements emphasize the importance of human rights and a state's duty to provide asylum to immigrants in need, it lacks the necessary framework for fair implementation of migrants into a society's workforce. These inconsistencies leave migrant workers trapped between international obligations and national governance, further emphasising the disparities they face.

The mistreatment of migrant workers is not only an individual problem, but represents a divide in society *as a whole*, and therefore must be addressed as such. Proper legislation, restructuring of immigration systems, and a general reform of the labour market is required if we are to achieve a reality in which migrant workers are treated *not only fairly, but equitably*.

This report examines the social, humanitarian, and economic impacts of the mistreatment of migrant workers while emphasising the need for coordinated international engagement to develop sustainable legislation to prevent the further exploitation of migrant rights.

Definition of key terms

Blue collar work

Blue collar work typically involves manual labour, skilled trades, industrial work, all typically done using physical (as opposed to mental) effort. Blue collar work is almost never done in office buildings and pays significantly lower than 'white collar work' as it often doesn't require educational degrees, whereas white collar work usually does.

Collective bargaining

Collective bargaining is a negotiation process whereby employer representatives discuss employment conditions with a group of workers (typically a union)^[6]. This can range from hours, benefits, safety, workplace rules, maternity leave, sick leave, and essentially any other conditions under which an employee functions. It empowers workers to get what they want through their numbers, non-negotiation by the employer would severely harm their business.

Exploitation

Exploitation occurs when workers are subject to unfair working conditions or compensation due to the fact that they are unable or unwilling to seek help^[7]. This includes, unfair working hours, inadequate pay (often below the minimum wage), unsafe working conditions, forced labour, and any form of coercion. Exploitation disproportionately impacts migrant workers, particularly those with limited legal access or job dependent visas.

Irregular migrant worker

An irregular migrant worker is someone who works in a country without the necessary legal authorization to do so, for example a migrant without a worker visa, permit or legal citizenship^[8]. While they are still entitled to basic human rights, their irregular status makes them vulnerable to exploitation and unfair treatment.

Labour migration policy

Labour migration policy encompasses all of the laws and regulations surrounding the employment of migrant workers^[9]. It discusses the legal citizenship of a migrant worker and establishes policies that regulate disputes, work permits, and employment contracts.

Migrant

A migrant is someone who moves from their home country or area to another^[10]. Migrants can move for a variety of reasons; from education, work, family, higher standards of living, or even to escape conflict. Immigrants are *not* the same. Immigrants are migrants who move with the intent to settle *permanently*, often through legal processes.

Remittances

Remittances are funds that are sent by migrant workers to their home of origin, often to support family members. They represent a leakage within the economies the migrants reside in as they lead to less money circulating the economy.

General Overview

Labour migration has rapidly increased in recent decades due to globalisation, demographic changes, and a more varied demand for skills, with it now representing a top aspect of the global economy, despite this however, the legal protections afforded to migrant workers remain fragmented, and insufficient across many regions in the world^[11]. Across many sectors of the economy, migrant workers fill gaps that domestic workers cannot^[12]. However, the rights of migrants remain consistently unprotected by national governments, as they view migrants as the responsibility of their home country and do not feel a strong obligation to them, leading to insufficient legislation, exploitation by employers, vulnerability, and a general lack of action^[13].

The growth of migrant workers across the globe has helped to highlight the gaps in modern labour legislation, both on the national and international scale^[14]. Migrant workers, particularly those with irregular status or employer dependent visas, often operate under conditions that undermine their bargaining power and restrict their ability to report employer abuse. Even regular migrants often face language barriers or discrimination within the workplace, further exacerbating their unfair treatment and unequal protections when compared to domestic workers.

Legal frameworks and international obligations

There already exists a number of instruments which aim to regulate international migrant workers' rights. The '*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*', passed in 1990, sets a basic set of standards and a comprehensive framework for maintaining employment conditions, health care, and freedom from exploitation^[15]. The International Labour Organization (ILO) also established conventions concerning minimum wage, working hours, and labour standards^[16]. While these agreements do establish basic regulation, their outdated nature and lack of ratification leaves their effectiveness in question. Many governments around the world have yet to adopt comprehensive legal frameworks to ensure the ethical employment of immigrants or they lack the mechanisms to enforce those frameworks^[17].

In addition to international agreements, it is predominantly national governments that dictate the laws surrounding migrant work, and these laws vary substantially between Member Nations. Some states allow for easier processing of migrants and provide work visas on longer timeframes and on far less conditions whereas other states tie migrant visas to employer compliance and economic contributions, creating vulnerability for abuse. These differences in approach contribute to irregular labour practices, human trafficking, and illegal or unfair work arrangements that often bypass regulatory oversight^[18].

Economic and social implications

A lack of protection for migrant workers impacts not only the well-being of the migrants in question, but the society they live in as a whole. Exploitation of migrant workers undermines fair labour practices, decreases average wages, and creates the incentive for irregular employment. The irregular labour market creates a parallel to the standard legal market, it decreases tax revenue and limits the health and safety of workers, while simultaneously combating the business of legal practices who pay the regular wages for their employees^[19].

Beyond the economic impacts, social division and segregation arise as migrant communities feel unfairly treated and under supported by governing bodies.

Migrant workers contribute heavily to knowledge and cultural transfer, allowing the growth of knowledge in both their home countries and the country in which they reside, spreading both previously held and newly acquired knowledge. Remittances can also help improve the quality of life for migrant workers' families in their home countries who often live in far worse conditions. Remittances do however contribute to a worsened economy in the migrant's country of work as it can reduce the flow of money within that society's economy.

Challenges with implementation

Even in more developed countries where legislation exists and the resources to enforce those mechanisms are available, practical action still remains a challenge. Business inspections are often limited in scope and only serve to confirm that practices are regular, as opposed to searching for exploitation of workers. Employers may exploit legal loopholes or coerce migrant workers through threats of visa removal or firing. Additionally, cooperation between international policing agencies, and different sectors of government is often scarce and coordination fragmented. Rising temporary and circulatory migration between countries adds complexity to the issue as consistent monitoring is difficult and national policy can vary extremely^[20].

Towards comprehensive protection

Developing comprehensive legislation to protect the rights of migrants is challenging and requires balancing economic demand, state sovereignty, and humanitarian rights. Legislation strategies must aim to address both regular and irregular migrant workers, providing social protections, employment guarantees, and fair legal representation. In order to create long term function laws, multiple stakeholder groups should be addressed and perspectives accounted for, this including; governments, international organizations, employers, and civil society.

Major parties involved

Germany

As one of the biggest destinations for migrant workers in Europe^[21], Germany plays a major role in the migration policies of the European Union. Migrant labour is key in sectors such as manufacturing, agriculture, and healthcare, all sectors that Germany is consistently developing and growing in^[22]. However, large challenges have arisen regarding enforcement, integration, and equality surrounding migrant laws passed both within Germany and the EU (European Union)^[23]. Internationally, Germany is a strong advocate for equal rights of migrant workers, quality working conditions, equal pay, and non-discrimination, balancing both their domestic responsibilities and international obligations^[24].

Gulf Cooperation Council (GCC)

The Gulf Cooperation Council is an intergovernmental union formed in 1981. The GCC includes six Arab countries surrounding the Persian Gulf (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) with the goal to foster cooperation, coordination, and generally stronger ties, for the benefit of all societies within the region^[25]. The countries within this council are highly dependent on migrant workers to keep their economies and industry stable, however in past years these states have faced international scrutiny over labour laws and practices employed^[26]. Now, some countries within this bloc have set goals to reform their laws for the benefit of migrant workers. The GCC represents a tension between a state's economic reliance on the labour of migrants and the international pressures for humanitarian legislation reform.

International Labour Organization (ILO)

Founded in 1919 alongside the League of Nations (the forerunner of the UN), the ILO is the oldest United Nations agency^[27]. The ILO is given the task of promoting social justice, standards of work, and labour rights globally, bringing together governments and organizations to work together in establishing the legal framework for migrant workers around the world. They have established many conventions on forced labour, minimum wages, discrimination, and safe work environments^[28]. The ILO oversees the implementation and fair treatment of migrant workers in all Member States, and as such plays a key role in the further development of migrant worker legislation.

International Organization for Migration (IOM)

As a key aspect of the UN system, the International Organization for Migration plays a substantial role in ensuring international labour standards and promoting decent work. The IOM promotes orderly and humane migration, helps find solutions to migration issues and provides help to migrants in need^[29]. While not as internationally prominent as the ILO, the IOM is more directly connected to the matter of migration. Through consistent supervision, technical expertise and research initiatives the IOM is able to support Member States in supporting the creation of functional and ethical frameworks, ensuring migrant workers receive fair and equitable treatment^[30].

Philippines

The Philippines stands as one of the largest senders of immigrants in the world, with there being over 10 million Filipinos currently living abroad, that represents nearly 10% of their global population^[31]. Due to their high level of external citizens, the Philippines has dedicated a substantial number of their resources to protecting their overseas workers. The Philippines recognises the risk of migrant labour and works to ensure that they provide safe and reliable pathways for those who seek external employment. Internationally the Philippines is a strong advocate for ensuring the safety of migrant workers when abroad, and creating laws that guarantee the equal treatment of those workers^[32].

Saudi Arabia

Saudi Arabia holds a complex and dual-sided perspective on migrant labour. While publicly advocating for modernization and drop in reliance on international workers, the state has consistently and repeatedly been called upon by humanitarian organisations for their blatant disregard of labour rights, inadequate pay, and unsafe working conditions, with some cases resulting in death^[33]. The Saudi Arabian economy is highly dependent on migrant work, and as such the ability to reform policy is risky and government officials fear an economic downturn.

United States of America (USA/US)

The United States of America stands as one of the largest destinations for migrant workers globally. With the US being framed as a “land of opportunity”, migrant workers have gained the hope of finding a new and better life there, however now more than ever migrants have been left disappointed. While the US maintains strong legislations on both a federal and state level, access to legal representation and enforcement of these frameworks is often scarce^[34]. Migrant workers are often left unprotected and discriminated against by the federal system. 47th President of the United States, Donald J. Trump, alongside members of his administration, have established a culture of discrimination and a system of laws fighting both the existence and rights of migrants within the US^[35]. Internationally, the United States of America supports general human rights, but has yet to ratify existing agreements on the fair treatment of migrant workers, bringing forth questions of their commitment to migrants^[36].

Timeline of events

1990 December 18th The United Nations General Assembly adopts the ‘*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*’, creating the first comprehensive piece of legislation for the rights of migrant workers.

1997 July 1st The International Labour Organization (ILO) expands monitoring of states’ labour standards, levels of discrimination, existence of forced labour, and the fair treatment of migrant workers.

2001 September 11th The events of ‘9/11’ occur in which the Twin Towers in New York, USA, get hit with a terrorist attack, resulting in many states around the world tightening their migration policies and border security.

2011 June 16th The ILO adopts ‘Convention 189’ on “*Decent Work for Domestic Workers*”, increasing the ILO jurisdiction further into domestic workforces, a sector primarily made up of migrant workers.

2015 September 25th The UN adopts the ‘Sustainable Development Goals’, outlining a large aspect of the UNs purpose. Goal 8 emphasises decent work for all, further bringing attention to the international community that even migrants have the right to fair work.

2018 December 10th The ‘*Global Compact for Safe, Orderly and Regular Migration*’ is officially adopted by the IOM, creating the basis for cooperative frameworks to improve migrant worker rights and labour migration legislation.

2020 March 11th The COVID-19 pandemic demonstrates the issues in government migrant work structures, including job insecurity and limited access to healthcare.

2022 November 15th Many Member States reform international labour agreements to allow for more migrant workers and strengthen their protections when abroad. It focuses on recruitment, wages, and safe dispute mechanisms.

2024 May 1st International labour and humanitarian organizations continue to advocate for migrant work policy reform amidst greater international labour exchanges and human trafficking incidents.

Relevant UN treaties and events

A/RES/45/158; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: This resolution establishes regulation to the rights and protections of both documented and undocumented migrants, it establishes their rights to healthcare, employment options, justice, and protections from exploitation, 18 December 1990

A/RES/71/1; New York Declaration for Refugees and Migrants: This represents a commitment by Member States to improve the protections of migrants and refugees, emphasising human rights, migration governance and heightened international cooperation in the processing of labour, 19 September 2016

A/RES/72/1; Global Compact for Safe, Orderly, and Regular Migration: This resolution formally endorses a framework on international dialogue regarding migration, including the need for fair recruitment, decent work, and the prevention of exploitation of migrant workers, 19 September 2017

A/RES/70/1; Transforming our world: the 2030 Agenda for Sustainable Development: This resolution creates the sustainable development goals, the goals upon which the UN bases all of its missions and goals on. Goal 8 discusses the need for decent work and goal 10 on reducing inequalities, both relevant and applicable to the realm of migrant workers, 25 September 2015

A/RES/74/148; Human rights of migrants: This resolution acts to reaffirm member states commitment to upholding and protecting the human rights of migrants, regardless of their status. It outlines discrimination, fair pay, and equality, 18 December 2019

A/RES/76/168; Promotion and protection of the human rights of migrants: Highlights the ongoing challenges faced by migrants and calls for governments around the world to adapt and develop policy to better enforce mechanisms, and address exploitation and abuse in the work place, 16 December 2021

Previous attempts to solve the issue

Filipino and Middle Eastern bilateral labour agreements

The Philippines has actively negotiated to create bilateral agreements with many states with the middle east in order to improve the working conditions of their overseas workers. These agreements cover a variety of aspects including working conditions, wages, and mechanism for dispute resolution^[37]. These implementations, while not entirely effective, have reduced incidents of wage theft and discrimination. These agreements however lack concrete mechanisms of enforcement preventing its full potential.

ILO technical cooperation programmes

The ILO has implemented several initiatives to establish cooperation between countries in the creation of legislation to protect the rights and safety of migrant workers^[38]. These initiatives include the training of labour inspections, developing fair recruitment strategies, and giving governments the guidance they need to create good social structures in which migrants can flourish. Several countries, especially in South-East Asia have adopted these programmes and the results have shown.

Germany's migrant skill recognition initiatives

Germany has created systems to recognise the skills of migrant workers, allowing them to climb into higher positions more fitting to their skills set, as opposed to in other countries where discrimination results in migrants often holding blue collar jobs regardless of their skills^[39]. By integrating migrants into more formal positions with higher average pay, Germany hopes to reduce labour exploitation. These programmes also provide migrants with language education courses and vocational training to allow them to be more autonomous and more easily integrate into German society.

COVID-19 emergency labour protections

During the Corona crisis many countries around the world closed their border or tightened migration policies. Many countries put in place legal protections for migrant workers preventing their exploitation during lockdown and the continuity of their employment^[40]. While these measures were temporary, they demonstrated how rapid deployment of government legislation can produce very large results.

ASEAN's regional cooperation framework

The Association of Southeast Asian Nations, has begun the coordination of regional mechanisms to establish labour migration policies, improve the supervision of labour practices, and share the most effective method with one another for the betterment of the bloc as a whole^[41]. ASEAN's approach encourages voluntary cooperation and provides a framework for management of migrant workers that, while not legally binding, has been effective in providing a better living standard for migrant workers.

Possible solutions

Standardized national legislation

One potential approach could be to mandate that all Member States provide roughly equal minimum wages, as well as standardise the basic employment requirements and safety regulations within the workspace. This would obviously have to be done on a state to state basis as the economic situation of every country varies however with enough oversight and diplomatic negotiations a unified framework could be produced.

Enhancing bilateral and multilateral agreements

The UNGA could build better communication channels between major migrant sending and receiving countries, allowing for enforceable standards of processing, employment contracting, and recruitment. Coordinated oversight and information sharing could also allow governments to better keep track of migrant movements and prevent the undocumented residence of individuals within states.

Establishing a UN dedicated international oversight body

The UN could create a sub-body or office dedicated to the specific oversight of migrant workers. UN employees could be sent out to Member States and ensure that governing bodies are overseeing that businesses are registering all workers as well as providing them with safe working environments, and of course adequate pay for their efforts. This body could work similarly to and in cooperation with the ILO, monitoring state mechanisms but doing so with a stronger mandate for enforcement and cooperation to international law.

Migrant workers unions given greater influence

Of all the voices to be heard in the discussion of migrant workers and the legislation surrounding their lives, who better to hear than the migrants themselves. Unions for migrant workers already exist however their voice and influence on political legislation on both the national and international level is limited. The UNGA could motion for Member States to guarantee that migrant worker unions are not only given a seat at the table, but allowed to propose ideas and solutions and be taken seriously. Additionally, a sub-body of IOM could incorporate migrant workers with political ties who can represent a 'delegation', and be given an observer position at relevant UN meetings.

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