

## **INTERNATIONAL LEGISLATION FOR THE PROTECTION OF FOREIGN WORKERS: AN ANALYTICAL STUDY**

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### **ABSTRACT**

The issue of the rights of foreigners to work is currently of great importance in all countries. Most of these countries suffer from varying degrees of unemployment, and as a result, they prioritize the issue of foreign employment to protect their national workforce from the competition posed by foreign labor. Countries also consider the economic and developmental conditions of their societies when dealing with foreign workers. Even in countries not facing unemployment issues, which are considered destinations for foreign workers, they pay careful attention to the employment of foreigners. This is because they recognize the need to regulate their labor markets and control the social and economic aspects that influence migration for work in those countries. It is worth noting that the importance of this issue is prominent in the labor laws of all countries and is also recognized internationally. International law emphasizes the protection of foreign workers through international agreements that regulate the employment of foreign workers. This intervention is necessary because foreign workers are considered a vulnerable group, requiring international law to protect them and obligate the countries they work in to ensure fair treatment. The preamble of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations in 1990, highlights the need for such protection. The significance of the rights of foreigners to work in both national labor laws and international law is crucial for legal studies in various countries. Legal scholars explore these issues in the international and comparative legal frameworks to guide legislators in adopting solutions that align with societal conditions and national interests while complying with international legal provisions.

### **INTRODUCTION**

First: Definition of the Research Topic

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The functional activity in the private sector (here referring to workers, since it is evident that anyone working in the private sector is subject to labor law regardless of their status or job title) has undergone significant development. This evolution is driven by the growth of scientific research methods aimed at reaching advanced production techniques, as well as strong competition in an open economy. These factors have led to numerous issues for workers in many countries, particularly industrialized ones. This has created various problems concerning the recognition of workers' rights both during and outside of work. However, it is acknowledged that the Universal Declaration of Human Rights serves as the foundational reference for the United Nations and its member states. The Declaration is used to counteract trends and behaviors that disregard human rights and dignity. The United Nations, however, did not limit itself to this Declaration; it expanded its efforts by issuing numerous conventions and resolutions related to rights and freedoms, addressing specific humanitarian conditions such as those affecting children, refugees, and foreign workers. In the realm of labor rights, the United Nations has issued various international agreements and treaties that regulate human life broadly, as well as specific agreements that address particular groups such as foreign workers, individuals with disabilities, and other potentially vulnerable groups needing special protection.

The issue of foreign workers' rights currently holds significant importance in all countries. Most countries face varying degrees of unemployment, which influences their interest in protecting national labor from foreign competition. Countries consider their economic and developmental conditions when addressing foreign workers. Even countries that do not suffer from high unemployment, i.e., countries receiving foreign workers, do not neglect the issue but rather give it special attention. This is due to their understanding of the need to regulate their labor markets and manage the social and economic aspects influencing labor migration.

It is worth noting that this topic holds a special and prominent place in the labor laws of all countries, as well as in international law. International law's concern for foreign workers is evident in the international agreements that regulate the employment of foreign workers, as they are considered vulnerable groups. This vulnerability necessitates international legal intervention to protect them and ensure that the countries employing them provide fair treatment. The preamble of the International Convention on the Protection of the Rights of All Migrant Workers and Members

of Their Families, adopted by the United Nations in 1990, highlights this concern. It states: "The States Parties to this Convention, recognizing the principles set forth in these basic texts of the United Nations concerning human rights... and noting that one of the objectives of the International Labour Organization is to protect the interests of workers employed in countries other than their own, considering the vulnerability often faced by migrant workers and their families due to their distance from their home countries and the difficulties they might encounter due to their presence in the host country... agree to this Convention."

Thus, the significance of foreign workers' rights in national labor legislation and international law underscores the importance of legal studies on this issue across various countries. This research aims to highlight the international and comparative legal framework to guide legislators in adopting solutions that align with societal conditions, meet state interests, and comply with international law.

#### Second: Research Problem

The primary issue that prompted this study is the lack or weakness of awareness among foreign workers about the internal and international laws protecting them, both generally and specifically. Many foreign workers fall victim to ignorance of the law, resulting in the violation of their rights, exploitation, and subjugation without their knowledge. This lack of awareness means that the role of the law is diminished, as the victim is unaware of their rights and obligations under international law, leading to their exploitation and marginalization.

#### Third: Research Methodology

To achieve the best results from this research, we adopted an analytical approach to the texts of international agreements related to the topic.

#### Fourth: Research Structure

This research is divided into two main sections:

1. The First Section: Agreements related to regulating migration and protecting foreign labor.

2. The Second Section: Agreements that prohibit discrimination, regulate collective bargaining, and ban forced labor.

## **1. INTERNATIONAL LEGISLATION FOR THE PROTECTION OF FOREIGN WORKERS: AN ANALYTICAL STUDY**

It is well-established that the Universal Declaration of Human Rights serves as the fundamental reference for the United Nations and its member states, guiding them against trends and behaviors that undermine human rights and dignity. However, the United Nations has not limited itself to this Declaration alone but has expanded its efforts by issuing numerous conventions and resolutions related to rights and freedoms, specifically addressing humanitarian conditions concerning children, refugees, and foreign workers. In the field of labor rights, the United Nations has issued various international agreements and treaties. Therefore, this section is divided into:

1. First Section: Agreements related to regulating migration and protecting foreign labor.

2. Second Section: Agreements prohibiting discrimination, regulating collective bargaining, and the international convention concerning the prohibition of forced labor.

First Section: Agreements Related to Regulating Migration and Protecting Foreign Labor

This section discusses specific agreements related to workers that regulate migration and protect foreign labor. We have divided this section into:

1. First Subsection: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is one of the most important and comprehensive agreements applied to foreign workers, ensuring their rights and those of their families in all aspects.

2. Second Subsection: The 1949 Convention concerning Migration for Employment.

3. Third Subsection: International Convention No. 143 concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

### 1.1. THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

The goal of this Convention is to protect the rights of migrant workers and their families. Adopted by the United Nations on December 18, 1990, the Convention aims to affirm international principles and standards related to the international protection of human rights as outlined in the Universal Declaration of Human Rights, the International Covenants, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child, as well as standards set by the International Labour Organization. It serves the interests of migrant workers, who are considered the weakest link in labor contracts, particularly focusing on undocumented or irregular workers often employed under conditions inferior to those of other workers.

Despite the importance of this Convention for protecting migrant workers' rights, only 47 countries worldwide have ratified it. Among Arab countries, the ratifying countries include Algeria, Morocco, Libya, Egypt, and Syria, with Egypt ratifying the Convention in 1993. This Convention defines a migrant worker as: "Any person who is or has been engaged in or is seeking employment in a country of which he or she is not a national."

The Convention applies to the entire process of migrant workers and their families' migration, including preparation, departure, transit, the entire period of stay, work activity in the host country, and return to their home country or usual residence. Notably, the Convention differentiates between documented and undocumented workers, aiming to encourage regular migration and provide additional rights to regular migrant workers without undermining the fundamental rights recognized by previous international agreements.

The Convention explicitly states that it does not exempt migrant workers and their families from complying with the laws and regulations of the transit and host countries or respecting the cultural identity of those countries. It also clarifies that it does not imply any right to legalize the status of undocumented or irregular migrant workers or their families, nor does it affect measures to ensure fair and proper conditions for international migration as outlined in the Convention.

This Convention is the first international document to explicitly require migrant workers to adhere to laws in the host country and respect its customs and traditions. These principles provide a solid guarantee for the signatory parties to respect their national legislation and customs. As with previous international agreements, this Convention guarantees migrant workers' rights to life, freedom from torture, slavery, forced labor, freedom of thought, conscience, opinion, personal freedom and safety, and equality before the law, among other basic rights outlined in the Universal Declaration of Human Rights and subsequent agreements. The Convention prohibits collective expulsion of migrant workers and their families and requires that each expulsion case be considered individually. It also forbids imprisoning a migrant worker for failure to meet contractual obligations or depriving them of residence or work permits solely due to non-fulfillment of a contractual obligation unless such fulfillment is a condition for such permits.

Additionally, the Convention guarantees migrant workers' rights to participate in trade unions and any other associations established by law to protect their economic, social, and cultural interests. It allows them to join any trade union and association, subject to legal limitations necessary for national security, public order, and protection of the rights and freedoms of others.

Regarding social security, the Convention ensures that migrant workers and their families in the host country are treated on par with the nationals of that country, provided they meet the requirements set by the applicable legislation and bilateral or multilateral treaties. Authorities in the country of origin and the host country may arrange necessary measures to apply this rule. The Convention guarantees migrant workers and their families access to emergency medical care necessary to preserve life or prevent serious health damage, on equal terms with nationals of the host country, regardless of any residence or employment violations.

The Convention also affirms the rights set out in the Convention on the Rights of the Child, specifically protecting children from discrimination or punishment due to their parents' legal status. It guarantees children the right to education on equal terms with nationals of the host country and prohibits restrictions on access to public education institutions due to irregular residence or employment status of the child or their parents.

Notably, many countries in the region do not guarantee this right to the children of migrant workers, which constitutes a violation not only of this Convention but also of regional obligations under the Convention on the Rights of the Child, which ensures the right to education for all children without exception. Moreover, the Convention ensures that migrant workers and their families are informed by their home, transit, or host countries about their rights under this Convention, the conditions for entry, and their rights and obligations according to local law in a language they understand. This right is a significant guarantee for host countries, as it ensures that migrant workers are fully aware of all administrative and legal procedures, preventing exploitation of workers who are unaware of legal and administrative processes.

In summary, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides broad rights for migrant workers based on the Universal Declaration of Human Rights and subsequent covenants and agreements. It offers clear guidance on exercising these rights while providing extensive guarantees to the signatory countries, including the right to regulate these rights in line with public order and morals, and encourages migrant workers to respect the laws, customs, and traditions of the host country. This Convention addresses the needs of both migrant workers and the host countries, ensuring a balanced approach to the protection of workers' rights and national regulations.

## 1.2. CONVENTION NO. 97 OF 1949 CONCERNING MIGRANT WORKERS

This convention addresses the regulation of migrant workers in host countries. It stipulates that the contracting states must establish or verify the presence of appropriate agencies that provide free services to assist migrant workers by supplying them with accurate information. The convention also requires contracting states to take appropriate measures to combat misleading

advertisements related to emigration and immigration. Additionally, it obligates states to verify, when necessary, the health condition of migrant workers and their families either upon departure or upon arrival in the host country.

Furthermore, the convention guarantees that migrant workers and their families receive adequate medical care and good health conditions both upon leaving their country, during their travel, and upon arriving at their destination. The convention also mandates that contracting states provide non-discriminatory treatment to regular immigrants, ensuring that their treatment is at least equal to that afforded to nationals of the host country in terms of wages, union membership, social security, as well as taxes, fees, and contributions due from the worker.

Moreover, the convention encourages contracting states to enter into bilateral or multilateral agreements to regulate labor migration between them, particularly when the number of migrants from one member state to another is significant.

### 1.3. INTERNATIONAL CONVENTION NO. 143 ON MIGRANT WORKERS IN ABUSIVE CONDITIONS AND THE PROMOTION OF EQUAL OPPORTUNITIES AND TREATMENT OF MIGRANT WORKERS

This convention addresses issues related to the illegal employment of migrant labor, illegal immigration, family reunification, and other issues concerning equal opportunities and treatment.

The convention reaffirms the principles outlined in the Universal Declaration of Human Rights and subsequent international agreements, requiring contracting states to respect the fundamental human rights of all migrant workers. It also mandates that states take all necessary and appropriate measures to eliminate clandestine migration for work, the illegal employment of migrants, and to combat those who organize illegal or clandestine migration for labor purposes, thus preventing violations of migrant workers' rights.

Convention No. 143 ensures that migrant workers, in cases where national laws and regulations are not observed and their status cannot be regularized, are treated equally with respect

to any rights arising from previous illegal employment, including wages, social security, and other benefits. It provides them with the opportunity to assert their rights before a competent authority in the event of a rights dispute, without bearing the costs associated with their or their family's deportation.

The convention also requires contracting states to formulate and implement national policies aimed at ensuring equal opportunities and treatment in employment, profession, social security, and trade union and cultural rights in a manner consistent with the national conditions and practices for individuals legally residing in their territories. States are to employ all suitable national practices to obtain the cooperation of employers' organizations, labor organizations, and other relevant bodies to promote the acceptance and application of these policies, enact laws, and encourage programs that ensure this acceptance and application, including the elimination of any legal provisions and changes to instructions or administrative practices that conflict with these policies.

It is noteworthy that Convention No. 143 allows the principle of freedom of choice of employment to be subject to the condition that the migrant worker is legally residing in the country of employment for a stipulated period not exceeding two years or until the expiration of the initial employment contract. Accordingly, this convention encourages states to take all measures to combat the illegal employment of migrant workers and illegal immigration, while also promoting legal migration of workers, which aligns with the policies of most countries.

## **2. CONVENTIONS RELATED TO THE PROHIBITION OF DISCRIMINATION AND REGULATION OF COLLECTIVE BARGAINING**

This chapter covers conventions related to trade union rights and membership, as well as conventions that prohibit discrimination. This section is divided into:

1. Section One: Convention No. 98 of 1949 on the Application of the Principles of the Right to Organize and to Bargain Collectively

2. Section Two: Convention No. 111 on Discrimination in Employment and Occupation

3. Section Three: International Convention No. 138 on the Minimum Age for Admission to Employment of 1973

4. Section Four: International Convention No. 189 on Decent Work for Domestic Workers of 2011

5. Section Five: International Convention No. 29 on Forced Labor of 1930

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Section One: Convention No. 98 of 1949 on the Application of the Principles of the Right to Organize and to Bargain Collectively

This convention addresses the right to organize and join trade unions. It guarantees that workers are protected from any discrimination related to their trade union membership. It also ensures that worker and employer organizations are protected from any intervention from each other regarding their formation, operation, or management. Furthermore, the convention allows member states to take appropriate measures according to national conditions to encourage and fully develop administrative bargaining procedures between employers or their organizations and workers' organizations, in order to organize terms and conditions of employment through collective agreements. It is worth noting that Qatari labor law regulates collective bargaining and agreements within joint committees, while Iraqi labor law details the establishment of trade unions, labor federations, and membership in trade unions, permitting migrant workers to join trade unions.

## 2.1. CONVENTION NO. 111 ON DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

Adopted on June 25, 1985, this convention defines discrimination as any distinction, exclusion, or preference based on race, color, sex, religion, political opinion, national origin, or social origin that nullifies or impairs equality of opportunity or treatment in employment or

occupation. Additionally, the convention includes any other discrimination, exclusion, or preference that the member state, after consulting with representatives of employers' and workers' organizations, determines as affecting equality of opportunity or treatment. Therefore, any discrimination not based on qualifications required for a specific job is considered prohibited under this definition. In other words, any provision that gives preference to one group over another and creates an imbalance in fair working conditions for all workers is a violation of this convention, and legal penalties will follow for the violators.

## 2.2. INTERNATIONAL CONVENTION NO. 138 ON THE MINIMUM AGE FOR ADMISSION TO EMPLOYMENT OF 1973

Adopted at the International Labour Conference on June 26, 1973, and entered into force on June 29, 1976, this convention refers to previous conventions on the minimum age for work in various sectors, such as the 1919 Convention on Minimum Age for Industry, the 1920 Convention on Minimum Age for Forced Labour, and others. It aims to create a unified international standard for minimum age, gradually replacing existing instruments applicable to specific economic sectors, with the goal of completely eradicating child labor. Article 1 of the convention mandates that each member state implement a national policy to progressively raise the minimum age for employment to a level consistent with the physical and mental development of young people.

## 2.3. INTERNATIONAL CONVENTION NO. 189 ON DECENT WORK FOR DOMESTIC WORKERS OF 2011

This convention addresses the importance of international agreements related to migrant workers for domestic workers. It is the first convention focusing on this category of workers, recognizing the unique nature of their work within families, including caring for the elderly, children, and disabled persons. Domestic workers contribute significantly to the global economy by expanding paid employment opportunities for men and women with family responsibilities and increasing the scope of care services.

The convention requires member states to take measures to effectively promote the protection of human rights for all domestic workers, including respecting and promoting fundamental labor rights such as freedom of association, collective bargaining, the elimination of forced or compulsory labor, child labor, and discrimination. It also mandates that member states ensure that domestic workers are protected from all forms of abuse, harassment, and violence, and that they enjoy fair working conditions and decent work environments. The convention specifies that domestic workers should be informed about their employment conditions through written contracts that comply with national laws or collective agreements, detailing worker and employer information, contract dates, job type, wages, working hours, annual leave, probation periods, and repatriation conditions. Bahraini labor law, while excluding domestic workers from its provisions, still subjects them to similar contract conditions as other workers. Omani labor legislation provides detailed provisions for domestic worker contracts that align with this convention. Migrant domestic workers are particularly vulnerable to exploitation and abuse due to the nature of their work and lack of protection. Jordanian labor law is noted as the only regional law that includes domestic workers fully. The convention requires member states to ensure that domestic workers are free to negotiate with their actual or potential employers regarding accommodation and are not obliged to stay with the family or with family members during rest periods or annual leave. It mandates equal treatment regarding working hours and overtime compensation, minimum wage, and a safe and healthy working environment. It also includes provisions for regulating private recruitment agencies to prevent abusive practices. The convention ensures that all domestic workers have access to judicial or dispute resolution mechanisms.

#### 2.4. INTERNATIONAL CONVENTION NO. 29 ON FORCED LABOR OF 1930

This section will focus on the definition of forced or compulsory labor as provided by the convention. It defines forced or compulsory labor as "all work or service exacted from any person under the threat of any penalty and for which the said person has not volunteered." Any form of threat by an employer to coerce an employee into performing work beyond the terms agreed upon in the contract, or work without their consent, is considered forced or compulsory labor

according to the convention's definition, leading to legal penalties if the state violating workers' rights is a party to this convention.

## CONCLUSION

At the end of this modest research, we have arrived at several conclusions summarized in key and objective points. We have also developed a number of recommendations that may benefit stakeholders, including legislators and esteemed researchers. We have summarized these recommendations into several points that we believe are significant and could, even if slightly, alter the current legal and legislative reality.

### Conclusions:

#### 1. Definition of Foreign Workers:

- o A foreign worker is defined as any person who does not hold Iraqi nationality or the nationality of any Arab or foreign country and wishes to work in a foreign country as a worker in the private, mixed, and cooperative sectors.

#### 2. Treatment of Foreign Nationals:

- o With the emergence of the state system and the evolution of human thought, every country has sought to ensure that its citizens receive decent treatment in other countries, necessitating that these countries extend the same treatment to the nationals of other countries. Therefore, countries find themselves obliged to treat foreigners residing on their territory with dignity, preserving their human dignity and enabling them to achieve the purpose for which they entered their territories.

#### 3. International Human Rights Principles:

- o As the world entered the era of international organization and human rights principles strengthened, and international relations became more complex, it led to the conviction that there is an international common interest in recognizing a set of rights for foreigners, which

all countries are obligated to respect. This is known as the "minimum international rights for foreigners."

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4. See: Preamble of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

5. See: Preamble of the International Labour Organization Convention concerning Migrant Workers (Revised) No. 97 of 1949.

6. See: Preamble of the International Labour Organization Convention concerning Migrant Workers (Supplementary Provisions) No. 143 of 1975.

7. See: Preamble of the Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively No. 98.

8. See: Preamble of the International Labour Organization Convention concerning Discrimination (Employment and Occupation) No. 111 of 1958.

9. Article (1/1/b) of the International Labour Organization Convention concerning Migrant Workers (Supplementary Provisions) No. 143 of 1975.

10. See: Paragraph (2) of Article (1) of the International Labour Organization Convention concerning Migrant Workers (Supplementary Provisions) No. 143 of 1975.

11. See: Preamble of the Minimum Age Convention (No. 138) of 1973.

12. See: Article 1 of the Minimum Age Convention (No. 138) of 1973.

13. See: Preamble of the International Labour Convention on Decent Work for Domestic Workers No. 189 of 2011.

14. See: Article (2) of the Forced Labour Convention No. 29 of 1930.

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