

International Protection for Irregular Migrant Domestic Workers

الحماية الدولية للمهاجرين غير النظاميين العاملين في المنازل

Guernane Farouk

Algiers University 1. Faculty of Law
Laboratory of Human Rights and IHL

f.guernane@univ-alger.dz

Djemai Abderrazzaq

Algiers University 1. Faculty of Law
Laboratory of Human Rights And IHL

a.djemai@univ-alger.dz

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Abstract :

Our study, titled "International Protection for Irregular Migrant Domestic Workers," will address the various challenges faced by migrant workers in irregular situations, particularly women working in households. Adopting a rights-based approach grounded in international human rights law, the study highlights the importance of recognizing the rights of these workers and ensuring their protection from exploitation and discrimination. This is especially critical given their "invisible" status to authorities, as they often hide from view out of fear of arrest and deportation. This reality poses significant challenges to providing effective protection for this vulnerable group.

Keywords : Irregular Migration; Domestic Workers; Vulnerable Groups; Human Rights; Discrimination.

ملخص:

تتناول دراستنا، الموسومة بـ "الحماية الدولية للمهاجرين غير النظاميين العاملين في المنازل"، شتى التحديات التي تواجه العمال المهاجرين المتواجدين في وضعية غير نظامية، ولا سيما النساء العاملات في المنازل. وإذ تتبنى الدراسة مقاربة حقوقية تركز على القانون الدولي لحقوق الإنسان، فإنها تسلط الضوء على الأهمية الجوهرية للاعتراف بحقوق هؤلاء العاملات وكفالة حمايتهن من الاستغلال والتمييز. ويكتسب هذا الأمر أهمية بالغة بالنظر إلى وضعهن "غير المرئي" للسلطات، إذ إنهن غالباً ما يتوارين عن الأنظار خشية الاعتقال والترحيل. ويفرض هذا الواقع تحديات جسيمة أمام الجهود الرامية إلى توفير حماية فعالة لهذه الفئة المستضعفة.

الكلمات المفتاحية: الهجرة غير النظامية؛ العمال المنزليين؛ الفئات المستضعفة؛ حقوق الإنسان؛ التمييز.

Auteur correspondant : Guernane Farouk

Introduction:

Migrant labor constitutes a significant proportion of all domestic work, including migrants in irregular situations, due to the relative ease of accessing this type of work compared to employment in other sectors. According to estimates by the United Nations High Commissioner for Refugees (UNHCR), approximately 10-15% of the estimated 281 million international migrants worldwide—amounting to nearly 30 million individuals—are in an irregular status¹. These individuals engage in a variety of occupations, including domestic work. Although the proportion of irregular migrants is relatively balanced between men and women, domestic work remains a profession that predominantly employs women. A report by the United Nations Department of Economic and Social Affairs (UNDESA) indicates that 83% of domestic workers are women².

Estimates from some countries reveal that approximately 30% of domestic workers in Spain are irregular migrant women³, while in the United States, at least 21% of migrants working in the care sector lack proper documentation⁴. Additionally, it is estimated that there are at least one million undocumented migrant domestic workers in Europe and approximately 1.2 million in Asia⁵. These figures highlight that millions of migrant domestic workers worldwide are in irregular situations.

In this context, the International Labour Organization (ILO) has reported that there are at least 35 million people employed as domestic workers⁶. Although these women, men, and children perform a wide range of essential tasks such as cleaning, ironing, gardening, cooking, and caring for children and the elderly in private households, their work is not always recognized as "labor" in the strictest sense. Many of these workers live in conditions akin to modern-day slavery, deprived of a wide range of rights and subjected to various forms of exploitation and abuse due to their need to remain in the shadows, fearing deportation and expulsion.

This study will address the various violations faced by irregular migrant domestic workers, shedding light on the protections afforded to them under international law and proposing measures to improve their conditions in the future. The central research question guiding this study is: **How can the rights of irregular migrant domestic workers be protected and promoted?**

To address this question, the study is divided into three main sections. The first section will examine the vulnerability of irregular domestic workers. The second section will explore the various violations faced by this vulnerable group. Finally, the third section will highlight the gap between the theoretical legal protections enshrined in numerous general and specialized international conventions and the reality of their implementation across different countries.

Section 1: The Vulnerability of Irregular Migrant Domestic Workers

The term "vulnerability" (from the Latin *vulnerare*, meaning "to wound") generally refers to the heightened susceptibility of certain groups of individuals to various forms of harm, whether physical, psychological, material, or otherwise⁷. The Oxford English Dictionary aligns with this definition, describing vulnerability as "the likelihood of an individual being harmed physically or emotionally"⁸.

Scholars such as **Mikaela Heikkilä** and **Maija Mustaniemi** from the Institute for Human Rights at Åbo Akademi University in Finland argue that human vulnerability and susceptibility to harm—often at the hands of the state—are the foundational drivers of the entire human rights

movement⁹. This movement has given rise to numerous international instruments at both global and regional levels, aimed at providing necessary protections for humanity in general and for the most vulnerable groups in particular.

Dr. **Ingrid Sutton** from the American University in Washington, D.C, posits that vulnerable groups are those whose members are disproportionately affected by rights violations or subjected to severe forms of discrimination in the enjoyment of their rights. Such discrimination is often based on factors that fall within internationally prohibited grounds for discrimination. This imposes new and more progressive positive obligations on states to improve the conditions of vulnerable groups, including ensuring access to effective remedies in cases where their rights are violated¹⁰.

The aforementioned definition is broad, as it encompasses an unlimited number of individuals. All human beings are susceptible to harm to varying degrees, and it is impossible to find a single person in the world who would not fall under this definition¹¹. Nevertheless, terms such as "vulnerability," "vulnerable groups," and "marginalized groups" have become increasingly prevalent in certain international human rights instruments. For example, the **2011 Guidelines on the Realization of Economic, Social, and Cultural Rights** issued by the African Commission on Human and Peoples' Rights place significant emphasis on vulnerable and marginalized groups¹². Similarly, the **2013 Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance**¹³ recognizes several vulnerable groups, including refugees and migrants¹⁴.

The **Committee on the Rights of the Child**, in its **General Comment No. 13 (2011)** on the "Right of the Child to Freedom from All Forms of Violence", emphasized that children are among the most vulnerable groups requiring special protection. The Committee stated, "*All children under the age of 18 are at risk until they complete their development—neurologically, psychologically, socially, and physically. Infants and young children are particularly vulnerable due to their developing brains and total dependence on adults.*" The Committee identified numerous categories of children as being among the most vulnerable, including migrant children, who are at greater risk than their peers¹⁵.

Finally, the **International Organization for Migration (IOM)**, in its **Guidelines on the Protection of the Human Rights of Vulnerable Migrants**, defines this group as "*migrants who are unable to effectively enjoy their human rights and are more susceptible to rights violations and abuse. Consequently, they are entitled to an enhanced duty of care from responsible authorities*"¹⁶. This definition applies primarily to irregular migrants, particularly those working in domestic settings, who can be considered the most vulnerable among all irregular migrant groups.

Section 2: The Multifaceted Violations of Their Fundamental Rights as a Manifestation of Vulnerability

Irregular migrant domestic workers suffer from various forms of violations of a range of fundamental rights guaranteed under international human rights law. The most prominent of these violations include:

A. The Right to Human Dignity

International human rights law places significant emphasis on human dignity. The Universal Declaration of Human Rights (UDHR) states, "*All human beings are born free and equal in dignity*

and rights”¹⁷. Dr. **David Guretzki**, in his commentary on this provision, notes that the drafters of the UDHR did not arbitrarily link human rights to human dignity. Human dignity is the foundation upon which the international human rights system is built. He goes further to assert that it is impossible to speak of human rights without the existence of human dignity, as dignity constitutes the cornerstone of all other rights. Without it, other rights become meaningless¹⁸.

Subsequent international instruments have explicitly reaffirmed this principle. The preamble to the **International Covenant on Civil and Political Rights (ICCPR)** states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" and that "human rights derive from the inherent dignity of the human person"¹⁹. Similarly, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**²⁰ and the **1993 Vienna Declaration and Programme of Action** emphasize the central role of human dignity as the foundation of the international human rights system²¹.

This centrality is further evidenced by the way various international human rights instruments link the concept of human dignity to other rights, such as the right to education²², the right to respect for private and family life²³, the right to legal protection of the family²⁴, and the right to work²⁵. Additionally, human dignity is considered a fundamental pillar for the protection of vulnerable groups, including women²⁶, children²⁷, persons with disabilities²⁸, and migrant workers²⁹.

Irregular migrant domestic workers are subjected to numerous violations of their human dignity, enduring various forms of humiliation, psychological abuse, and physical mistreatment, such as being shouted at, beaten, deprived of food and water, and other forms of maltreatment. The **UN Special Rapporteur on the Rights of Migrants** has highlighted that migrant domestic workers are often subjected to violations of their right to privacy, including the opening of their correspondence, eavesdropping on their communications, and searching their rooms. These actions constitute a violation of their human dignity, reinforcing feelings of inferiority, disrespect, and subjugation to the dominance of their employers³⁰.

B. Suffering from Sexual Exploitation and Abuse

Sexual exploitation and abuse faced by irregular migrant domestic workers are among the most glaring manifestations of systemic exploitation under restrictive migration regimes, such as the **kafala system** prevalent in some Middle Eastern countries. These violations arise from the interplay of legal, social, and economic factors, exposing victims to heightened risks without effective protective mechanisms.

According to a study conducted by researcher **Patrick Rak** and published in the Harvard International Journal, the status of irregular domestic workers in the Middle East is governed by the kafala system, which ties their legal residency to their employer (the kafeel). This grants the employer near-absolute control over their lives. For example, domestic workers in Lebanon are excluded from labor law protections and are denied the right to change jobs or leave the country without the employer's permission³¹. Similar conditions exist in other countries that apply this system.

This environment fosters sexual exploitation. A study involving 913 domestic workers, led by **Yasmine Lillian Diab**, Director of the Institute for Migration Studies at the American

University of Beirut, found that approximately 68% of domestic workers in Lebanon had experienced some form of sexual harassment, including verbal harassment, unwanted touching, and rape³².

The former **UN Special Rapporteur on the Rights of Migrants** documented numerous complaints from countries hosting irregular domestic workers, such as Spain, Thailand, and Singapore, where workers reported experiencing sexual harassment or violence. In some cases, these violations occurred with the complicity of state institutions or even state officials³³.

Several factors contribute to the prevalence of this phenomenon. Extreme poverty forces irregular migrant domestic workers to continue working and living under the same roof as their abusers to earn the necessary income to support themselves and their families. Fear of deportation also looms large, preventing victims from filing complaints with official authorities. Additionally, social stigma often poses a significant barrier, as domestic workers fear being labeled as "dishonored" and blamed for the loss of their "virtue," even though they are the victims. This forces them into silence, perpetuating impunity for perpetrators and entrenching these violations³⁴.

C. The Right to Health Care

Irregular migrant domestic workers often face discrimination in accessing health services, finding themselves either fully or partially excluded from healthcare systems and medical services. This exclusion stems from various reasons, including the legal frameworks of host countries where they work, as well as subjective barriers that make accessing healthcare systems nearly impossible.

Although the right to health is enshrined in numerous international human rights instruments³⁵, many legal systems exclude individuals in irregular situations from free healthcare services. This forces this group to bear the full cost of medical treatment³⁶. For example, in the Dominican Republic, where the number of irregular migrants from Haiti alone exceeds half a million³⁷, authorities have decided that public hospitals will not provide healthcare to irregular migrants except in emergency cases. This policy deprives a significant portion of the population, particularly the most vulnerable such as domestic workers, of this fundamental right³⁸.

The nature of domestic work exposes these workers to various health risks. Under unsafe and oppressive working conditions, they are prone to severe exhaustion, anxiety, depression, and other health issues. These problems are exacerbated by malnutrition and exposure to unhealthy living conditions. Despite these challenges, they face discrimination in accessing healthcare in host countries due to restrictive immigration policies and rising xenophobic rhetoric, which perpetuates the misconception that irregular migrants are undeserving of healthcare because of their irregular status³⁹.

Moreover, the fear of deportation remains the most significant barrier to their enjoyment of the right to healthcare. Some countries require healthcare professionals, such as doctors and nurses, to report irregular migrants to immigration authorities under the threat of criminal penalties. This deters irregular workers from seeking medical care, even in legal systems that allow them free treatment, for fear of being arrested and deported. As a result, they resort to unsafe alternatives for healthcare instead of accessing specialized institutions, further worsening their health conditions⁴⁰.

D. Violation of the Right to Freedom of Movement and Family Life

In addition to the aforementioned violations, irregular migrant domestic workers suffer from infringements on a range of rights, most notably the right to freedom of movement. A common practice is the confiscation of their passports by employers. A field study conducted by researchers **Bina Fernandez** and **Marina De Regt** found that none of the domestic workers included in the study were allowed to leave their workplaces, whether to meet friends, shop, visit places of worship, or even get fresh air. They live as prisoners, deprived of any form of communication with the outside world⁴¹.

Legal restrictions and those imposed by employers on irregular domestic workers also affect their right to family life. The legal systems of host countries impose strict conditions on granting family reunification visas, particularly regarding proof of legal status and minimum income requirements⁴². These conditions are nearly impossible for this group to meet, as they receive meager wages and are in irregular situations. This ultimately weakens family ties and deepens the emotional gap between irregular domestic workers and their families, particularly spouses and children⁴³.

Section 3: The Gap Between International Protection and Practical Implementation

In addition to the general protective principles enshrined in international human rights instruments—such as equality, non-discrimination, and respect for human dignity—specialized international conventions on the protection of migrant workers and domestic workers have introduced numerous additional provisions specifically for this group. However, state practices reveal a significant gap between the protections outlined in international conventions and the actual protections afforded by national laws to irregular domestic workers. This issue will be discussed in detail below.

A. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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 Resolution 45/158 on December 18, 1990. It includes numerous provisions aimed at protecting migrant workers and their families, explicitly extending its protections to irregular migrant workers⁴⁴.

Article 5(a) of the Convention sets out the conditions necessary for a migrant worker to be considered in a regular situation, which include "having authorization to enter, stay, and engage in remunerated activity in the State of employment under the laws of that State and international agreements to which the State is a party." Conversely, Article 5(b) defines irregular migrant workers as those who do not meet the conditions outlined in Article 5(a).

The Convention prohibits a range of practices, including torture, inhuman or degrading treatment⁴⁵, slavery, forced labor⁴⁶, and collective expulsion⁴⁷. It also recognizes a wide array of rights, such as freedom of religion⁴⁸, freedom of opinion⁴⁹, and the right to privacy⁵⁰. Article 83 obligates States Parties to ensure effective remedies for any individual whose rights under the Convention are violated. Additionally, Article 82 prohibits any form of coercion aimed at forcing migrant workers or their families to relinquish or renounce any rights guaranteed by the Convention.

General Comment No. 2 of the Committee on Migrant Workers⁵¹, titled "The Rights of Migrant Workers in an Irregular Situation and Members of Their Families," explicitly includes domestic workers as a category of migrant workers protected under the Convention⁵². The Comment reaffirms the rights outlined in the Convention and obligates States to protect the rights of the most vulnerable groups, such as children. This includes prohibiting child labor and ensuring that migrant children, regardless of their legal status, have equal access to free education and scholarships without discrimination compared to their citizen peers. Notably, the Comment prohibits State authorities from requiring schools to report the irregular status of students or their parents⁵³.

B. ILO Convention No. 189

The **ILO Convention No. 189 concerning Decent Work for Domestic Workers** was adopted during the 100th Session of the International Labour Organization (ILO) on June 16, 2011, and entered into force on September 5, 2013. As of February 12, 2025, it has been ratified by 38 countries⁵⁴.

This Convention is comprehensive, providing an integrated system of protection for domestic workers. It obligates States Parties to apply general labor principles to this group, including the prohibition of forced labor, child labor, employment discrimination, and the guarantee of freedom of association and collective bargaining⁵⁵. The aim is to elevate the status of domestic workers and ensure they enjoy protections equivalent to those in other sectors.

To achieve this, the Convention includes provisions ensuring fair terms of employment and decent working conditions, such as regular working hours with adequate daily and weekly rest periods, paid annual leave, and sick leave⁵⁶. It also guarantees a wage not less than the minimum wage stipulated by national laws⁵⁷.

The Convention emphasizes the protection of human dignity and fundamental rights, such as the right to living conditions that respect their privacy⁵⁸ and protection from all forms of abuse, harassment, and violence—particularly physical, psychological, and sexual violence⁵⁹, which often occurs behind closed doors, unlike workers in other sectors.

The Convention also addresses child domestic workers, aligning with **ILO Convention No. 138**⁶⁰, which calls on States Parties to adopt policies aimed at eliminating child labor. It prohibits the employment of individuals under 18 in work that is likely to harm their health, safety, or morals, while allowing for the employment of children under 18 in work that does not jeopardize their health, development, or education⁶¹. Article 4(2) of ILO Convention No. 189 obligates States Parties to take all possible measures to ensure that child domestic workers under 18 are not deprived of compulsory education or opportunities for higher education or vocational training.

Despite these provisions, the measures outlined remain insufficient given the unique vulnerabilities of irregular domestic workers. They are migrant workers, often in irregular status, working behind closed doors, and lack access to effective remedies that would allow them to file complaints against violators without fear of deportation to their home countries, which they left in search of better opportunities.

Many national labor laws exclude domestic workers from their scope of protection, contradicting the provisions of the **International Convention on the Protection of the Rights of**

All Migrant Workers and Members of Their Families. For example, Egyptian labor law explicitly excludes domestic workers⁶², as do the labor laws of Saudi Arabia⁶³, Qatar⁶⁴, and others.

Professor **Darcy du Toit** notes that only 10% of domestic workers worldwide enjoy the same protections as workers in other sectors, while 30% have no legal protection whatsoever⁶⁵. These statistics reflect the dire situation of domestic workers in regular situations, let alone those in irregular status. Dr. **Siobhán Mullally** argues that the complete absence of legal protection for irregular domestic workers constitutes a violation of States' positive obligations to protect individuals from slavery, forced labor, and servitude⁶⁶.

Irregular migrant domestic workers face significant challenges in obtaining appropriate redress due to the difficulty of proving an employment relationship with their employers, let alone proving alleged violations that occur behind closed doors. This makes it difficult to find witnesses to support victims' claims. Furthermore, the exclusion of this group from labor law protections in many countries prevents labor inspectors from monitoring their working conditions and ensuring employer compliance with labor laws and regulations⁶⁷.

Conclusion:

Irregular migrant domestic workers are among the most vulnerable groups, highly susceptible to violations of their fundamental human rights and systematic exploitation by employers. This exploitation manifests in various forms, including long working hours under harsh conditions for meager wages, denial of leave and rest days, exposure to physical, psychological, and sexual violence, deprivation of healthcare, and violations of their human dignity and a wide range of other rights.

Despite extensive international efforts to protect human rights in general, and migrant and domestic workers in particular, a significant gap remains between the theoretical protections provided by international conventions and their practical implementation in host countries. Domestic workers are often denied the same legal protections afforded to workers in other sectors.

The irregular status of domestic workers exacerbates the challenges they face in accessing justice and obtaining fair redress, particularly due to their fear of deportation to their home countries and the difficulty of proving violations that occur behind closed doors.

Embassies and consulates of workers' countries of origin can play a significant role in protecting irregular domestic workers, particularly by providing safe shelters and legal support to ensure access to appropriate remedies. International governmental organizations, especially the International Labour Organization (ILO), can also play a crucial role through their offices or by coordinating with local non-governmental organizations to protect this vulnerable group.

It is essential to establish a comprehensive protective framework involving employers, recruitment agencies, civil society organizations, and domestic workers themselves. This framework should aim to adopt comprehensive legal reforms and effective measures to bridge the gap between legal texts and reality, ensuring a fair and sustainable working environment that upholds the human dignity of irregular domestic workers and safeguards their rights. To this end, we propose the following recommendations:

1. Modify national labor legislation to include domestic workers, ensuring the application of decent work standards as outlined in **ILO Convention No. 189** and the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**. This would provide comprehensive legal protection against exploitation and abuse.
2. Ensure access to free or subsidized healthcare and social services for migrant domestic workers, in line with international recommendations emphasizing the right to healthcare without discrimination.
3. Promote employer registration of workers in social insurance programs, adopting facilitative mechanisms to include this group even in irregular situations.
4. Prevent employers from confiscating passports and restricting domestic workers' freedom of movement, thereby preserving their dignity and enabling them to exercise their personal and social rights.
5. Implement stringent policies and deterrent penalties against all forms of exploitation and physical, psychological, or sexual violence against domestic workers.
6. Designate specialized bodies to monitor the application of labor laws in households and conduct regular inspections of migrant domestic workers' working conditions, ensuring the confidentiality of their identities to prevent retaliation or deportation.
7. Establish judicial and administrative mechanisms that allow migrant domestic workers to file complaints without fear of deportation.
8. Streamline legal procedures to grant migrant domestic workers regular status, enabling them to access legal and social rights.

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⁴⁵ Article 10 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁴⁶ Article 11 of the same convention.

⁴⁷ Article 22 of the same convention.

⁴⁸ Article 12 of the same convention.

⁴⁹ Article 13 of the same convention.

⁵⁰ Article 14 of the same convention.

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