Migrant Workers in Irregular Situations: The Problematic Nature of Legal Status and the Limits of International Protection

العمال المهاجرون في الأوضاع غير نظامية:

اشكالية الوضع القانوني وحدود الحماية الدولية

Bouchria fatima,
Faculty of law, Ahmed zabana university relizane,Algeria
fatima.bouchria@univ-relizane.dz

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Abstract :

Some studies focus on the legality of a migrant's entry into the host country, yet the reality of migration reveals deeper issues beyond the moment of crossing. This study aims to show how a migrant worker, despite entering legally, may become irregular due to circumstances beyond their control. Often, this situation arises from the actions of the sponsor or employer, exposing the worker to penalties or deportation as if they had violated the law. Therefore, establishing international agreements is crucial to protect this group and ensure a minimum level of their basic rights.

Key words:Migrant Workers; Irregular Situations; Worker Sponsorship;Legal Protection.

الملخص:

تركز بعض الدراسات على مدى مشروعية دخول المهاجر إلى الدولة المستقبلة، غير أن واقع الهجرة يكشف إشكالات أعمق تتجاوز لحظة العبور بغض النظر اذا ماكانت مشروعة أو غير مشروعة. تسعى هذه الدراسة إلى بيان الكيفية التي قد يتحول بها العامل المهاجر، رغم دخوله القانوني، إلى وضع غير نظامي نتيجة ظروف لاحقة لا يد له فيها قد تؤثر على حقوقه. وغالبا ما ترتبط هذه الوضعية بتصرفات الكفيل أو صاحب العمل، مما يجعله عرضة للعقوبة أو الإبعاد وكأنه مخالف للقانون. لذلك برزت أهمية إقرار اتفاقيات دولية تكفل حماية هذه الفئة وتضمن حدا أدنى من حقوقها الأساسية.

الكلمات المفتاحية:العمال المهاجرون؛الوضعيات غير النظامية؛كفالة العمال؛الحماية القانونية.

1. Introduction:

Labor migration is one of the most prominent complex phenomena characterizing contemporary international relations. It has become a major issue that has assumed political, security, and legal dimensions, posing significant challenges to the international community. The risks arising from migration, both regular and irregular, have attracted wide attention from international organizations, whether governmental or non-governmental, particularly those concerned with human rights. The most vulnerable aspect of migrant labor lies in the fact that migrant workers often find themselves in irregular situations unrelated to the manner of their entry into the host country.

The definitions of migration vary according to the diversity of its objectives, purposes, and criteria. If we adopt the geographical criterion, migration can be defined as "the departure of an individual or a group of people from their place of residence to live in another place, with the intention of remaining there for a long period, longer than a mere visit or temporary travel."(Ayad, 2008, p. 220). The term migration also refers to expatriation or leaving one land for another, or moving in pursuit of livelihood, education, medical treatment, or any other benefit. According to the criterion of purpose or objective, the reasons and motives for migration differ from one person to another. It may take the form of labor migration driven by economic motives, commonly referred to as workforce migration; it may be political migration driven by political and security reasons, commonly known as asylum; or it may be demographic migration resulting from population-related factors.(Nour & Yasser Awad, 2008, p. 15)

A migrant is defined as "a person residing in a country other than their country of origin and holding a nationality different from that of the state in which they reside."(Ayad, 2008, p. 220)Migration does not follow a single direction or target a specific country in itself. Rather, it is a global phenomenon characterized by multiple directions, governed by a common logic or unified pattern that reflects a shared feature of migration movements worldwide: the movement from areas marked by poverty, deprivation, conflicts, and wars toward regions distinguished

by higher standards of living and a political and security climate conducive to a dignified life.(Abdelmalek, 2007, p. 5)

The issue of irregular or unlawful migration, as it is sometimes called, has generated numerous crises at both the international and national levels-politically, security-wise, legally, economically, and socially-particularly for host states.

These states increasingly face challenges due to rising migration flows, which compel them to address this imposed reality. They often find themselves obliged to provide shelter and basic living necessities to migrants in compliance with the rules of international law that protect this category, as well as in application of the principles of the United Nations, the Universal Declaration of Human Rights, and various international conventions, especially humanitarian ones.

The reality of migrant labor has given rise to a central legal issue concerning the adequacy of the existing international protection framework in safeguarding the rights of irregular migrant workers, particularly in light of the growing assertion of state sovereignty and the tightening of migration policies, as opposed to the increasing obligations of states to respect the universal nature of human rights.(General Assembly, 2013, p. 7)The tension between the requirements of protecting public order and regulating migration on the one hand, and international human rights obligations on the other, has resulted in an ambiguous legal situation for this category. The effectiveness of protection tends to diminish as the legal status of the migrant worker becomes more precarious.(Migration, 2022, p. 115)

By “irregular migrant,” we do not mean an unlawful or illegal migrant; rather, we refer to a migrant who initially migrated through lawful means and entered the host country in search of employment, only to find themselves in an irregular situation that conflicts with the laws of the receiving state.

Hence, the importance of this study lies in its attempt to analyze the legal framework governing the status of irregular migrant workers, to identify the legal and factual factors that lead to the emergence of such situations, and to assess the effectiveness of the international protection afforded to them in light of modern international instruments and contemporary practices.

The core research problem of this study revolves around the following question:

To what extent has the international legal system provided effective protection for migrant workers in irregular situations amid the complexities of regulatory realities and contemporary migration policies?

2. The Conceptual and Empirical Framework of the Irregular Migrant Worker

In most cases, the reasons behind migration - whether regular or irregular- are rooted in economic factors and deteriorating living conditions in the country of origin. Such circumstances drive many individuals to migrate to other countries in the hope of securing employment and earning sufficient income to support their families back home. This type of migration is commonly referred to as labor migration, meaning migration undertaken for the purpose of employment.

However, the reality encountered by migrant workers seeking employment-particularly in certain Arab countries-is often challenging. Even after obtaining suitable employment, they may find themselves transitioning from a lawful status as regular migrant workers to an irregular situation. This shift exposes them to various forms of exploitation and even human trafficking.

Through this study, we will examine the concept of the irregular migrant worker, the causes underlying this status, and its consequences.

2.1 The Legal Determination of the Concept of the Irregular Migrant Worker

A migrant, in general terms, is defined as "an individual who has changed his or her usual place of residence, either by crossing an international border or by moving to another region, province, or municipality within the country of origin to which he or she belongs. A displaced migrant is regarded as a migrant from the perspective of the country of origin, whereas an incoming migrant is considered a migrant in the country of destination."(Ziouch, 2005, p. 16)

Migrants are commonly classified into regular (lawful) migrants and irregular (unlawful) migrants. However, in practice, additional situations and classifications often emerge. Some migrants enter the receiving country through legal channels in search of employment. Yet, after arriving in what they perceive as the "country of opportunity" and securing a job, they may encounter a complex legal reality and regulatory framework of which they had little or no prior knowledge-particularly in certain Arab countries.

These legal systems may impose specific arrangements on migrant workers, including sponsorship-based systems that tie the worker's legal status to a sponsor. Such frameworks can place migrant workers in a condition of instability

and insecurity, stemming from fear of the legal consequences of non-compliance, as well as concerns regarding potential abuse, negligence, or lack of responsibility on the part of the sponsor.

2.1.1 The Evolution of the Concept of the Migrant Worker in an Irregular Situation in Contemporary International Jurisprudence

The concept of the migrant worker in an irregular situation has not been subject to a single, comprehensive definition across various international instruments. Nevertheless, contemporary legal scholarship has sought to define this concept by distinguishing between the legality of entry and the legality of residence and employment. A migrant worker is considered to be in an irregular situation when he or she fails to meet the legal requirements imposed by the receiving State, such as the expiration of a residence permit, violation of employment conditions, or other regulatory breaches.(Tarlo, 2014, p. 87)

An irregular migrant is therefore a person who leaves his or her country of origin and moves to another country in pursuit of improved living conditions and a better life. However, such individuals often encounter legal obstacles of which they were previously unaware. Consequently, migrant workers in certain Arab countries may find themselves in irregular situations for reasons beyond their control or intention, including administrative errors, lack of responsibility on the part of their sponsors (employers), or as a result of fleeing abusive circumstances such as ill-treatment, coercion, or other forms of exploitation.

However, an irregular status is not necessarily a fixed or permanent condition, as a migrant worker may easily transition from a regular to an irregular situation over time. Many individuals migrate legally to Arab countries for various purposes, such as employment, tourism, or pilgrimage. Yet, they may later find themselves in an irregular migration status. In such circumstances, they are often exposed to harassment, detention, arrest, and deportation without trial, thereby becoming vulnerable to forced labor or human trafficking.(Conference, 2016)

A migrant worker is generally defined in accordance with international standards, particularly Article 11 of the International Labour Organization Migrant Workers Convention of 1975, which defines a migrant worker as “a person who migrates or has migrated from one country to another with a view to being employed otherwise than on his or her own account, and includes any person regularly admitted as a migrant worker.”(Organization, 4 June 1975)

It should also be noted that governments in Arab countries tend to prefer the use of the term “foreign workers under temporary contracts” or “temporary migrant workers” when referring to this category.

Upon closer examination of the aforementioned article, an irregular migrant worker is defined as a worker who initially migrates from their country of origin to the receiving country legally and lawfully in search of employment, but whose status later shifts from regular to irregular due to various factors. This transition renders the worker vulnerable to penalties, deportation, or exploitation.

From a statistical perspective, there are no precise or comprehensive figures indicating the exact number of migrant workers who have fallen into irregular situations. However, the large-scale deportations carried out by some Arab countries can provide a glimpse into these circumstances and the challenges faced by migrant workers. While every country has the right to protect its borders and enforce its laws within its territory as it deems appropriate, it is equally obligated to uphold human rights, including the protection of the rights of migrant workers residing within its jurisdiction.(Conference, 2016)

2.1.2 Distinguishing the Concept of the Migrant Worker in an Irregular Situation from Similar Legal Categories

There is a significant distinction between the terms “irregular migrant worker” and “illegal migrant worker.” An illegal status is chosen voluntarily and deliberately by the individual, such as migrating with forged documents or without any documentation, overstaying the permitted period in the destination country, or committing violations of the host country’s laws.

Currently, public discourse often associates irregular migration with criminality, framing it as a security issue. Global media frequently labels migrant workers as “illegal,” “foreign,” or “undocumented.” While certain acts may indeed be unlawful-particularly if they violate residency or work permits-no human being can inherently be considered illegal. In practice, migrant workers in an irregular situation are often exposed to arbitrary treatment and labor exploitation.

Additionally, the United Nations General Assembly resolution of 1975 urges UN agencies to use terms such as “non-compliant with regulations” or “undocumented” rather than labeling individuals as illegal.(Assembly, 1975)

Therefore, illegal migrant workers are not equivalent to migrant workers in irregular situations; rather, the latter have been placed into such circumstances by factors that remove them from their lawful status.

Furthermore, a migrant worker in an irregular situation is distinct from other related categories, such as refugees, asylum seekers, and regular migrants. A refugee benefits from specific international protection under the 1951 Convention and its 1967 Protocol, based on the principle of non-refoulement. In contrast, a migrant worker-whether regular or irregular-is subject to a dual legal framework that combines human rights standards with the sovereign laws of the host state. (Guy S. Goodwin-Gill, 2011, p. 23)

Similarly, an irregular migrant worker differs from an asylum seeker, whose legal status remains temporary and under determination, and from a regular migrant, who enjoys full rights associated with lawful residence and employment.(Cholewinsk, 2014, p. 41)

2.2Legal and Factual Foundations of the Irregular Status of the Migrant Worker

The causes of irregular situations for migrant workers vary from one country to another, but they tend to be more pronounced in Arab countries, especially those that employ more complex systems such as the sponsorship (kafala) system. This system has become a significant barrier for migrant workers in countries like the United Arab Emirates, Kuwait, and Bahrain, among others. Additionally, a range of other factors can contribute to pushing migrant workers into irregular situations.

2.2.1 Legal and Regulatory Framework Establishing the Irregular Status of the Migrant Worker

This part will be divided into five points as follows :

a. The Sponsorship (Kafala) System and Its Legal Implications for Migrant Workers

The sponsorship system is one of the most important legal determinants that can transform a migrant worker from a regular to an irregular status. Under this system, the worker is directly tied to a sponsor, who controls matters such as residence permit renewal and job transfer. Any negligence or administrative delay

on the part of the sponsor may result in the loss of the migrant worker's legal status.(Abdullah, 2018, p. 143)

Contemporary legal scholarship emphasizes that this situation does not necessarily reflect bad faith on the part of the migrant worker, but rather indicates an organizational and legal imbalance that disrupts the equilibrium of the relationship between the parties.(Shawqi, 2016, p. 82) The kafala system makes the employer fully responsible for the migrant worker during employment and even afterwards, which often leads to the sponsor exerting extreme control over the worker. Consequently, the migrant worker may feel compelled to comply with all of the sponsor's demands in order to maintain their legal residence and employment in the host country.

The kafala system can place foreign workers-particularly domestic workers-under harsh working conditions or even prevent them from returning to their home countries. Sponsors may abuse their authority over the workers under their care, for instance by confiscating passports, effectively keeping the worker under their control indefinitely. Many workers have reported that their employers withheld wages, forced them to work long hours, denied them food, confined them to the workplace, and confiscated their passports. In some cases, workers were subjected to physical and sexual abuse, as well as psychological mistreatment.

b. Issues Related to the Renewal of Work and Residence Permits

Migrant workers operate under the legal framework of the host country. In most Arab countries, the kafala system is in place, which links employment to a work permit (commonly referred to as a work visa) and subsequently to a residence permit. These permits must be renewed when their validity expires.

However, many sponsors delay the renewal process for various reasons-either to exploit migrant workers for as long as possible without paying full wages, or to avoid providing legal coverage during the permit period. Many administrative systems face organizational challenges in renewing work and residence permits due to bureaucratic procedures and complex formal requirements. This situation can place the migrant worker in an irregular status until the renewal process is completed, leading to the accumulation of administrative violations and the transition of the worker from a regular to an irregular status.(Kamal, 2020, p. 121)

c. Employer or Sponsor Negligence and Abuse toward the Migrant Worker

Even when a migrant worker complies with legal requirements, the employer's failure to complete legal procedures-such as obtaining official permits, renewing sponsorship, or transferring it to a new sponsor-can result in the worker losing their regular status. This constitutes a violation of the principle of contractual fairness in international labor relations.(Badri, 2017, p. 97)Such administrative failures may expose the worker to penalties, including fines, detention, deportation, or a ban on re-entry. Consequently, the employer is not obligated to cover the cost of the worker's return journey or end-of-service entitlements.(NGO, 2014, p. 18)

d. Administrative Violations by the Migrant Worker

In some cases, administrative violations may be committed by the migrant worker, such as delaying the renewal of a residence permit or work permit. These actions can place the worker in an irregular status, resulting in registration of violations and changes to their legal standing.(Ayoub, 2021, pp. 201-224)

e. Termination or End of the Migrant Worker's Employment

When sponsors or employers find other migrant workers willing to work for lower wages, they may arbitrarily dismiss the existing migrant worker, placing them in an irregular situation. Additionally, many employers seek to avoid the costs associated with renewing sponsorships and residence permits for their migrant workers, leading them to dismiss workers unlawfully and further contributing to their irregular status.

2.2.2 Objective and Factual Factors Contributing to the Legal Vulnerability of Migrant Workers

Legal reasons are not always the cause for a migrant worker's transition from a regular status to an irregular one; there are also other objective and factual reasons, which may be directly related to the worker.

a- Economic Vulnerability of the Migrant Worker

Economic vulnerability is considered one of the most prominent objective factors that reinforce the irregular status of a migrant worker. Many workers rely on limited income from temporary or seasonal jobs, which makes them unable to face legal risks or claim their rights in case of law violations or expiration of their residence permit. This situation often places them in direct dependence on their employer or sponsor.[1](Shawqi, 2016, pp. 85-86)

b- Weak Legal Awareness of Rights and Duties and the Imbalance of Contractual Power

A migrant worker's weak legal awareness of their rights and duties may increase their exposure to irregular status(Badri, 2017, pp. 100-101)As previously mentioned, lack of knowledge about residence permit renewal procedures, deportation conditions, or inability to understand the language of the employment contract may leave the worker unaware of their rights and obligations.

c- Fear of Deportation and Administrative Sanctions

A migrant worker's fear of deportation or administrative penalties often leads them to avoid claiming their rights, which may keep them in an irregular status.

They are frequently penalized for administrative errors with fines they cannot afford to pay, which may result in resignation or absenteeism from work without regularizing their contract and legal status. (Ayoub, 2021, pp. 210–211)

3.Legal Protection Frameworks for Migrant Workers in Irregular Situations between International Obligations and National Specificities

Migrant workers in irregular situations constitute a vulnerable group that raises legal challenges where considerations of human rights protection intersect with national sovereignty requirements. The international community has established a series of obligations aimed at ensuring a minimum level of protection for this group through the United Nations Charter and the 1948 Universal Declaration of Human Rights, especially following the emergence and widespread expansion of migration. The United Nations hastened to conclude numerous international conventions to protect migrant workers and monitor their conditions, which revealed their exposure to slavery and exploitation due to their dire circumstances.

This prompted the adoption of specific international agreements for migrant workers, including those in irregular situations. Despite all this, national legislations remain varied in the extent to which they comply with these standards. Accordingly, this chapter aims to analyze the legal protection frameworks established for migrant workers in irregular situations by examining international obligations on one hand, and national specificities and the challenge of harmonization on the other.

3.1International Obligations for the Protection of Migrant Workers in Irregular Situations

There are numerous international conventions with broad scopes that address the rights of workers, including migrant workers. Among the most significant of these are the 1948 Universal Declaration of Human Rights, the 1966 International Covenants, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, and the 1984 International Convention Against Torture.

3.1.1The Normative Basis for the Protection of Migrant Workers in Irregular Situations within the Framework of International Humanitarian Law

The principle of human dignity is a cornerstone of the international human rights legal system, and it establishes the obligation to protect all individuals, including migrant workers in general and those in irregular situations in particular, from any degrading or discriminatory treatment. This principle is based on the recognition that every human being possesses inherent rights, which are not merely granted by national law but are acknowledged as natural rights that must be respected globally. This ensures that migrant workers in irregular situations are not discriminated against because of their legal status in the host country.(Hassanein) This is evident in Article 1 of the 1948 Universal Declaration of Human Rights, which states: “All human beings are born free and equal in dignity and rights”. (Rights, 1948)Migrant workers must therefore be treated on an equal basis with local workers.

Furthermore, Article 23 of the Declaration emphasizes that everyone has the right to equal pay for equal work without any form of discrimination, and that working conditions must be fair and satisfactory. Article 5 prohibits subjecting any individual to torture or to cruel, inhuman, or degrading treatment. (Rights, 1948)Additionally, Article 13 affirms that every person has the right to freedom of movement and residence, the liberty to leave any country, including their own, and the right to return to it. Accordingly, migrant workers in irregular situations must not be detained, nor should their passports be confiscated or undue pressure exerted upon them.

Article 2 of the 1966 International Covenants on Civil and Political Rights as well as on Economic, Social, and Cultural Rights reinforces the right to work and emphasizes the necessity of respecting the principle of non-discrimination. It also

ensures appropriate working conditions, fair remuneration, the preservation of human dignity, the protection of personal honor, and the provision of a timeframe that guarantees a decent standard of living.(International Covenant on Economic, 1966)

Similarly, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination stresses through its provisions the importance of non-discrimination in employment and the rejection of hatred and racism against foreigners. It affirms the necessity of protecting irregular migrant workers from all forms of discriminatory or racially motivated practices and violations. In this context, the Convention prohibits any legislative measures aimed at depriving specific groups of their right to life or personal liberty, subjecting them to torture, cruel, inhuman, or degrading treatment, or forcing them into living conditions that could lead to their destruction. It also forbids depriving any group of their right to work. (Batah, 2015, p. 50)

Although international human rights instruments oblige states to uphold a set of fundamental rights globally, migrant workers in irregular situations remain among the most vulnerable groups. This vulnerability is due to the absence of a binding international treaty, the reliance of many states on domestic legislation to restrict or suspend certain rights, and, most importantly, the low rate of ratification by states, which results in violations in areas such as employment, living conditions, deportation, and access to justice.(El-Zaw, pp. 112–118)

The sponsorship (kafala) system practiced in many Arab countries is considered a prime example of racial discrimination against migrant workers, with severe consequences that can shift a worker from a legal to an irregular status simply due to the withdrawal of the sponsor’s responsibility.

3.1.2 Specialized International Protection of Migrant Workers in Irregular Situations within the Framework of Labor Conventions and Specialized International Agreements

The International Labour Organization (ILO) plays a central role in developing specialized frameworks for the protection of migrant workers, including those working regardless of their residency status. The ILO has adopted several foundational conventions linking fundamental labor rights to the rights of migrant workers, such as the Migration for Employment Convention of 1949, including

the Migrant Workers Convention of 1975, which serves as a supplementary instrument to the former. These conventions address working and living conditions, the principles of equality and non-discrimination at work, the right to equal opportunities, the prohibition of forced labor, and the elimination of discrimination in employment. These principles are applicable to all workers, including migrant workers in irregular situations.(Taher, p. 26)

Moreover, the international community has paid special attention to migrant workers due to the violations they face in practice, leading to the adoption of several international conventions, treaties, and declarations in their favor. These include the 1984 Convention Against Torture, the 1998 Protocol against the Smuggling of Migrants, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the 1985 UN General Assembly Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, the 2001 Durban Declaration in South Africa, and other international agreements and declarations focused on combating racial discrimination and protecting human and labor rights.

Among these international agreements, the most significant is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly on 18 December 1990, and opened for signature by all UN member states.(Batah, 2015, p. 64). It entered into force in 2003 and is considered the most important specialized international instrument for protecting the rights of migrant workers, including those in irregular situations.

The Convention provides comprehensive coverage across all stages of migration and obliges states parties to respect and guarantee the rights of migrant workers without discrimination. This includes the right to freedom of movement, the freedom to form associations and join trade unions, access to justice, and economic and social rights. It also emphasizes the necessity for states to take appropriate measures to protect migrant workers in irregular situations and to ensure that their irregular status does not persist. Although the number of states parties remains limited, the Convention represents a strong international legal reference for upholding obligations and protecting the rights of migrant workers in irregular situations, establishing global standards that legislators can rely on when developing their national laws.(Abdelsalam, 2019, pp. 167–175)

3.2 National Specificities in Protecting Migrant Workers in Irregular Situations and the Challenge of Reconciling with International Obligations

This section is divided into two points, as follows:

3.2.1 Limits of National Protection for Migrant Workers in Irregular Situations under the Principle of National Legislative Sovereignty

National legislation governing the status of migrant workers, particularly those in irregular situations, is based on the principle of legislative sovereignty, which grants the state broad discretionary authority to regulate entry, residence, and employment within its territory. This approach often manifests in the adoption of immigration and labor laws where security and administrative considerations tend to prevail over human rights concerns, resulting in a restricted scope of legal protection for migrant workers in irregular situations. Studies indicate that several national legislations link the enjoyment of economic and social rights to the condition of lawful residence, creating a clear gap between international standards, which emphasize the universality of rights, and domestic legislative practices that differentiate between regular and irregular workers, especially in the areas of labor, social security, and access to justice.(El-Zawi, pp. 202–209)

3.2.2 The Challenge of Aligning National Legislation with International Obligations in Protecting Migrant Workers in Irregular Situations and Prospects for Strengthening It

The issue of aligning national legislation with international obligations is among the most complex challenges in the field of protecting migrant workers in irregular situations. A comparison between international instruments and domestic laws reveals a significant disparity in the level of commitment and implementation. Although some countries have ratified relevant international conventions, the incorporation of these standards into national legislation is often partial or selective, which undermines the practical effectiveness of protection. Legal analyses attribute this shortfall to various factors, including concerns about encouraging irregular migration, pressure on the national labor market, as well as weak political will to separate the enforcement of labor law from immigration law.

Some studies also point out that the absence of effective national mechanisms to monitor the implementation of international obligations leaves migrant workers in irregular situations in a vulnerable position, despite the theoretical recognition of their rights in international instruments.(Abdelsalam, 2019, pp. 223–231)

In light of the above, there is a clear need to reconsider the national approaches adopted in dealing with migrant workers in irregular situations by implementing legislative policies that achieve a practical harmonization between the requirements of national sovereignty and international obligations in the field of human rights protection. It is also necessary to adopt alternative mechanisms, such as separating the rights of the migrant worker from their residency status, ensuring a minimum level of social rights, and guaranteeing access to justice.(Taher, pp. 87–95)

4-Conclusion:

Migration is one of the most widespread phenomena today, especially following the spread of conflicts, civil wars, poverty, unemployment, and poor living conditions. These factors have driven many people to leave their countries in search of work and better living conditions. As a result, migration has become a concern for the international community, and labor migration has emerged as a complex issue that sits at the intersection of international law, international human rights law, and the national specificities of countries in regulating migration and labor.

Various systems have been established to govern labor, particularly in Arab countries, such as the sponsorship system (kafala), where the migrant worker is sponsored by the employing institution. However, despite entering the host country legally, the worker may face irregular situations, such as the sponsor failing to follow administrative procedures for transferring sponsorship, refusing to return the worker’s passport for exploitation purposes, or even resorting to physical abuse and torture. Migrant workers may also be subjected to deplorable and inhumane working conditions.

Most international conventions, both general and specific, have condemned such practices and emphasized the necessity of providing decent and non-degrading working conditions without violating the dignity of migrant workers. Due to the severe human rights violations associated with the sponsorship (kafala) system in Arab countries, some states, such as Saudi Arabia, Jordan, and Kuwait, havebegun

gradually phasing out this system, considering it a threat to the dignity, freedom, and independence of migrant workers. Such conditions can lead migrants into irregular situations, ultimately resulting in deportation or punishment, which may include imprisonment.

This study reaches several key conclusions, summarized as follows:

There is full theoretical alignment between international law and the principle of human dignity, which guarantees the rights of migrant workers regardless of their legal status or residency.

Effective protection ultimately depends on the willingness of states to amend their domestic laws and create robust mechanisms to align with international obligations.

The weak ratification of specialized international conventions on migrant workers in irregular situations, combined with the absence of effective enforcement mechanisms, leads to the non-implementation of rights in practice.

There is a methodological gap between international labor standards and the reality of national legislation, particularly in areas such as labor, social security, and the right to legal recourse.

Based on the above, the study summarizes a set of recommendations and proposals as follows:

Strengthen the role of labor unions, especially concerning migrant workers.

Raise legal and economic awareness among migrant workers regarding the sponsorship (kafala) system, and inform them of their rights and responsibilities.

Separate the fundamental rights of migrant workers from their legal residency status in national legislation, ensuring that social and economic rights are protected for all workers, including those in irregular situations, without requiring any international amendments.

Work toward completely abolishing the sponsorship system in Arab countries and replace it with alternative systems that consider the special circumstances of migrant workers, preventing them from becoming victims of employers in the host country.

Develop technological human-rights indicators based on artificial intelligence to monitor the enforcement of migrant workers' rights in irregular situations without waiting for traditional bureaucratic procedures.

Develop national pilot legislative programs for flexible legal regularization, allowing irregular status to be converted into temporary legal protection while

preserving the state's sovereignty over migration, thus creating an innovative model that balances international obligations with national sovereignty.

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