

The role of bilateral agreements in ensuring the protection of migrant workers

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Abstract

The phenomenon of migrant workers has become a strategic issue in the dynamics of international relations and the global economy. Bilateral agreements between sending and receiving countries serve as one of the key instruments to ensure the protection of migrant workers' rights. This paper examines the role of bilateral agreements from the perspective of international law, particularly the instruments of the International Labour Organization (ILO), and analyzes the effectiveness of their implementation. The method used is a normative study referring to legislation, ILO conventions, and relevant literature. The findings show that bilateral agreements designed with the principles of equality, transparency, and human rights protection are able to provide better safeguards for migrant workers.

Keywords

Migrant Workers, Bilateral Agreements, Legal Protection

Introduction

Migrant workers today have become a strategic issue in the dynamics of international relations and the global economy. Labour mobility across countries has experienced a significant increase in line with the development of globalization, advances in transportation technology, and the openness of labour markets. Labour migration is not only driven by economic factors, such as wage differences and the availability of job opportunities, but also by social, political, and even environmental conditions in the country of origin. In the context of economic development, the presence of migrant workers has multidimensional implications, both for receiving countries that gain labour for specific sectors, and for sending countries that benefit from contributions in the form of remittances. In general, labour migration originates from locations that lack an adequate workforce or are able to offer higher wages.

Based on the definition formulated by the International Labour Organization (ILO), migrant workers are individuals who migrate from their country of origin to work in another country, either permanently or temporarily. This definition emphasizes that Labour migration encompasses various forms, ranging from short-term contract

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workers and seasonal labourers to professional workers who settle in the destination country. The ILO highlights the principles of non-discrimination and equal treatment between migrant workers and local labour, covering aspects such as wages, working conditions, social security, and legal protection.

Migrant workers often face a wide range of complex challenges and risks throughout the migration process during departure, while working in the host country, and upon returning to their home country. These challenges include complicated legal issues, unfair treatment from employers or local communities, discrimination based on race, gender, or citizenship status, as well as threats of physical or psychological violence. They also frequently experience economic exploitation, such as unpaid wages, excessive working hours, or unsafe working conditions. All these forms of treatment have the potential to constitute violations of human rights, which should be guaranteed to every individual regardless of their migration status.

Therefore, the protection of migrant workers' rights has become a central issue in the discourse on international migration. This protection does not only cover economic aspects but also includes security guarantees, protection from violence, prevention of inhumane treatment, and the enforcement of justice when their rights are violated. Such efforts require a shared commitment from countries of origin, host countries, and international organizations to ensure that migrant workers can work in safe and dignified conditions.

In this context, the principles enshrined in the fundamental instruments of the United Nations (UN) on human rights play an essential role as a normative foundation. One of the key references is the Universal Declaration of Human Rights (UDHR), which affirms that every individual has the right to fair treatment, freedom from discrimination, and protection from all forms of violence and degrading treatment. The application of UDHR principles in policies and international agreements concerning migrant workers constitutes a strategic step toward realizing a fair and sustainable migration system.

Thus, migrant workers are no longer viewed merely as a labour commodity but as legal subjects who possess rights, dignity, and protections equal to those of other citizens. (Resolution 217 A, 1965).

Observing the current global employment conditions (Abduh, R. 2010), the contribution of migrant workers to the global economy cannot be overlooked. In destination countries, they play an important role in filling labour shortages in sectors less favored by domestic workers, such as construction, agriculture, healthcare, and domestic work. Meanwhile, for countries of origin, the remittances sent by migrant workers constitute a significant source of foreign exchange and contribute to improving family welfare as well as local economic development. However, migrant workers often face vulnerabilities such as exploitation, discrimination, limited access to justice, and violations of human rights.

In addressing these challenges, the ILO has developed several international legal instruments specifically regulating the protection of migrant workers, including ILO Convention No. 97 of 1949 on Migration for Employment and ILO Convention No. 143 of 1975 on Migrant Workers. These instruments contain provisions governing labour migration in a safe, orderly manner while guaranteeing workers' rights. With effective implementation, such agreements and conventions are expected to create a fair, sustainable labour migration system that provides mutual benefits for sending countries, receiving countries, and the migrant workers themselves.

Fundamentally, the use of foreign labour (Ida Hanifah) creates not only external challenges but also internal problems rooted in the migrant workers themselves. Many of them, whether consciously or unconsciously, lack sufficient awareness and understanding of legal issues and human rights principles relevant to their situation. This condition leaves migrant workers without adequate knowledge to identify and respond to potential violations, thereby increasing their vulnerability to exploitation, discrimination, and inhumane treatment. Yet, sufficient legal literacy is one of the key instruments to strengthen bargaining positions and protect migrant workers' rights in destination countries (Sahetapy, 2020).

The issue of low legal literacy among migrant workers can be analyzed through Everett Lee's Push and Pull Theory (1966). Push factors such as low levels of legal education, limited access to information, and minimal socialization about migrant workers' rights in the country of origin contribute to their weak preparedness in facing challenges abroad. Meanwhile, pull factors such as higher wages and promising job opportunities overseas often make prospective migrants focus primarily on economic aspects, leaving legal protection concerns neglected. The combination of these factors creates a situation where migrant workers depart without sufficient understanding of legal instruments and human rights protections, ultimately increasing their vulnerability to violations in the destination country.

Method

The type of research used is adjusted to the characteristics of the issues being analyzed; therefore, this study falls into the category of legal research (Istanto, 2007). In line with Istanto's view, Marzuki emphasizes that legal research is a systematic process aimed at discovering and identifying legal rules, legal principles, and relevant legal doctrines. This process not only involves tracing applicable provisions but also conducting in-depth analysis to interpret and examine the substance of the law in order to provide precise answers to the legal issues at hand. Thus, legal research serves as a scientific tool to bridge the gap between concrete problems arising in society and the prevailing legal norms, thereby producing recommendations or solutions with a strong juridical foundation (Marzuki, 2005).

Results and Discussion

The effectiveness of implementing bilateral agreements in protecting the rights of migrant workers

An international agreement is an accord made by subjects of international law to create certain legal consequences for the parties involved. In other words, an international agreement is a treaty between members of the international community of nations intended to generate specific legal effects (Kusumaatmaja & Agoes, 2003). According to Article 1, paragraph 1 of Law No. 24 of 2000, an international agreement is an agreement in a particular form and name governed by international law and made in writing, which gives rise to rights and obligations in the field of public law.

The scope of international agreements includes those made between states, between a state and an international organization, between international organizations, and between the Holy See and states. These forms differ in their implementation, but all are subject to the principles of international law, including the principle of *pacta sunt servanda*, which obliges parties to comply with the contents of the agreement.

Based on the number of parties involved, international agreements are divided into two main categories: bilateral agreements and multilateral agreements. A bilateral agreement involves two parties, for example, the labour cooperation agreement between Indonesia and Malaysia, while a multilateral agreement involves more than two parties and usually encompasses broader cooperation at the regional or global level.

In the context of migrant worker protection, bilateral agreements hold a strategic role as they can specifically regulate the rights, obligations, and protection mechanisms for workers from the sending country, making their implementation more focused and tailored to the needs of both countries.

International agreements are understood as written accords between subjects of international law that give rise to rights and obligations under public law. In doctrine, the key references include: (a) the principle of *pacta sunt servanda* (the obligation to comply with agreements), (b) the principle of good faith, and (c) the principle of sovereign equality. The general classification distinguishes between bilateral agreements (two parties) and multilateral agreements (more than two parties). Functionally, bilateral agreements are preferable for highly specific and operational issues such as the placement and protection of migrant workers because they facilitate the formulation of standards, monitoring mechanisms, and dispute settlement procedures tailored to the two jurisdictions involved.

From the perspective of domestic implementation, the enforceability of an agreement is influenced by: (a) its incorporation status (whether it requires ratification through legislation or applies directly), (b) the harmonization of derivative regulations (ministerial decrees, standard operating procedures, technical MoUs), and (c) the

capacity of implementing institutions (diplomatic representatives, data aggregators, labour inspectors). The literature emphasizes that the effectiveness of an agreement does not end with ratification; rather, it is determined by the institutional design and the accountability of its enforcement.

According to Mauna (2008), international agreements are juridical instruments that embody the will and consent of states or other subjects of international law to achieve common objectives, the making of which is governed by international law and which produce binding legal consequences for the parties that conclude them.

The effectiveness of bilateral agreements in protecting the rights of migrant workers can be explained through three major dimensions: the substance of the agreement, the implementation mechanisms, and the socio-political context in both countries.

1. Substance of the Agreement

An effective bilateral agreement generally contains clear, detailed, and binding clauses regarding the rights of migrant workers. This includes standards for employment contracts, minimum wages, working hours, leave entitlements, health insurance, protection from violence and harassment, complaint mechanisms, and repatriation procedures. Its effectiveness is strongly influenced by how specifically the agreement regulates operational procedures not merely general norms so that it can be easily implemented and monitored.

2. Implementation and Monitoring Mechanisms

Good implementation involves cross-institutional coordination in both sending and receiving countries, including diplomatic representatives, labour agencies, and immigration authorities. Effective bilateral agreements usually establish a joint monitoring committee, joint inspection mechanisms, and regular reporting. Effectiveness also depends on the presence of firm sanctions or corrective measures in cases of violation, as well as the availability of accessible and worker-friendly complaint channels.

3. Contextual Factors and Challenges

External factors, such as labour market conditions, differences in legal systems, the strength of labour unions, and work culture, influence the extent to which an agreement can be optimally enforced. In the informal sector for example, domestic work protection is often difficult to uphold even when a bilateral agreement exists, due to the hidden nature of the work and weak supervision. In this context, diplomacy and partnerships with civil society organizations play an important role in strengthening effectiveness.

4. Indicators of Effectiveness

Effectiveness can be measured by a decrease in the number of violations, improved access of workers to legal aid and health services, and greater worker satisfaction with

their working conditions. If these indicators show significant improvement following the implementation of the agreement, the agreement can be considered effective.

In general, bilateral agreements are an important instrument for bridging international standards with national practices in the protection of migrant workers. However, their effectiveness is determined not only by the existence of the agreements but also by the quality of their substance, the consistency of their implementation, and the ability of both countries to address existing structural and cultural barriers.

Strategies to enhance the role of bilateral agreements in ensuring the protection of migrant workers

Bilateral agreements play a vital role in guaranteeing the protection of migrant workers; therefore, appropriate strategies are needed so that these agreements do not remain merely formal documents but are genuinely effective in practice. One strategy is to strengthen the substance of the agreements by including clear and comprehensive clauses concerning the rights of migrant workers. Such clauses should cover decent working standards, wage security, social protection, legal safeguards, and prohibitions against discrimination and exploitation. In this way, migrant workers are provided with firm and measurable guarantees of protection under agreements concluded between sending and receiving countries.

In addition to strengthening the content of the agreements, another equally important strategy is to enhance implementation and monitoring mechanisms. This can be achieved through the establishment of joint committees between countries tasked with overseeing the execution of the agreements, addressing workers' complaints, and periodically evaluating policy effectiveness. The role of labour attachés in destination countries should also be reinforced to provide direct assistance to migrant workers facing difficulties. Furthermore, transparency of information regarding workers' rights, employment contracts, and procedures must be ensured. Complaint mechanisms must be strengthened so that migrant workers have a clear understanding both before and after working abroad.

The next strategy is to expand multisectoral cooperation by involving civil society organizations, trade unions, and non-governmental organizations in providing advocacy, outreach, and legal protection. Such cross-sector collaboration will enhance the effectiveness of bilateral agreements, as migrant workers will not only rely on formal government mechanisms but will also receive support from various stakeholders. Regular evaluations must also be conducted to adjust the agreements in line with global labour dynamics and international legal standards, such as ILO conventions and the UN Convention on the Protection of the Rights of Migrant Workers. With these strategies, bilateral agreements can optimally function as instruments of protection for migrant workers in destination countries.

Strategies to enhance the role of bilateral agreements in ensuring the protection of migrant workers can be carried out by strengthening both the substance and

implementation mechanisms of the agreements. The substance should include comprehensive clauses on workers' rights, including fair wage standards, social security, legal protection, as well as prohibitions against discrimination and exploitation. Furthermore, the agreements must also set out clear and fair dispute resolution mechanisms between workers, recruitment agencies, and employers.

From the implementation perspective, it is important to establish joint monitoring mechanisms, such as bilateral commissions, tasked with overseeing the execution of agreements and following up on migrant workers' complaints. The role of labour attachés in destination countries must also be strengthened to provide direct protection and to ensure employers' compliance with the provisions of the agreements. Transparency and access to information are key factors, enabling migrant workers to understand their rights and to obtain effective and accessible complaint channels.

Furthermore, another strategy is to increase the involvement of civil society, labour unions, and non-governmental organizations in advocacy and in monitoring the implementation of agreements. Regular evaluations of agreements must also be carried out in order to adjust them to global labour dynamics and international legal standards, such as ILO Conventions and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. With these strategies, bilateral agreements will not merely remain formal documents but will truly function as effective instruments in ensuring the protection of migrant workers.

The strengthening of bilateral agreements in protecting migrant workers can be pursued through several key strategies. First, strengthening the substance of agreements by including comprehensive clauses concerning workers' rights, ranging from legal protection, decent working standards, and health insurance to fair dispute settlement mechanisms and minimum wage standards in line with international provisions. Second, enhancing implementation and monitoring mechanisms through the establishment of joint intergovernmental commissions, the use of digital systems for monitoring, and reinforcing the role of labour attachés in destination countries. Third, promoting multisectoral cooperation by involving civil society organizations, labour unions, and NGOs, along with improving coordination among government institutions so that agreements can be implemented more effectively, including integration with pre-departure training programs. Fourth, ensuring transparency and access to information for migrant workers by providing easily accessible information services, free legal assistance, and guaranteeing that employment contracts comply with the provisions of the agreements. Lastly, maintaining the effectiveness of agreements through regular evaluation and refinement so they can adapt to global labour dynamics, technological change, and economic conditions, while strengthening harmonization with international standards such as those of the ILO and the UN. With these strategies, bilateral agreements can become stronger, more operational, and more effective instruments in providing real protection for migrant workers.

The protection of migrant workers' rights from the perspective of international law rests on international agreements, both in the form of hard law and soft law. When an international agreement is signed and ratified, a state is legally bound to implement and ensure the fulfilment of migrant workers' rights within its jurisdiction. International legal principles also affirm that every state has an obligation to protect its nationals abroad (Anthony Aust, 2010). Diplomatic protection is a concept whereby a state takes action against another state in response to harm suffered by its nationals whether to their person or property resulting from acts or omissions that violate international law and are attributable to the state in question (Craig Forcece, 2006).

Conclusion

International agreements are essentially legal instruments arising from the consent of subjects of international law and creating binding legal consequences for the parties involved. In the context of inter-state relations, international agreements are not only a means of cooperation but also a mechanism that ensures legal certainty based on fundamental principles such as *pacta sunt servanda*, good faith, and sovereign equality. International agreements are classified into bilateral and multilateral agreements, where bilateral agreements possess more specific and operational characteristics, making them particularly relevant for practical issues such as the placement and protection of migrant workers.

Bilateral agreements play a strategic role in ensuring the protection of migrant workers as they are able to formulate more detailed labour standards, establish more measurable monitoring mechanisms, and design dispute resolution procedures tailored to the needs of both countries. However, their effectiveness is highly dependent on the quality of the agreement's substance, the consistency of its implementation, and the capacity of implementing institutions to overcome existing structural and cultural barriers. In other words, the mere existence of bilateral agreements does not automatically guarantee the protection of migrant workers; it must be supported by strong institutional design and accountable oversight mechanisms.

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