

## Applications of International Rights Laws and Migrants: Understanding Challenges and Problems

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### ABSTRACT

*Migration is a concept crucial to our understanding in the dawn of deepening globalization and the advance of science and technology. However, this is not a new phenomenon. It is as old as human history. Though migration has both negative and positive implications on human beings, it has emerged in the last few years as a critical political and policy challenge in matters such as integration, displacement, safe migration, and border management. This concept is one of the most debatable facets in international forums, however, the phenomenon of migration encompasses a wide variety of movements and situations involving people of all walks of life and backgrounds and touches all states and people in an era of deepening globalization. In this article, migration is referred as to a movement from one place to another which has both internal and external dimensions. Therefore, though migration in the olden days and nowadays has similarities, economic, social issues, political and governance-related factors, and ecological issues are regarded as its major cause in the contemporary world. This study is, therefore, aimed to examine the most challenges that face migrants in the receiving countries and how international human rights laws have never addressed the concerns and challenges that face migrants inside the boundaries of the receiving state.*

### INTRODUCTION

Humanitarian crises and human rights difficulties cause people to move around the world. Scholars report that people migrate as groups, families, and individuals in their attempt to flee from human rights abuses. However, the larger the groups, the more difficult it is to provide universal human rights protection. On the other hand, the smaller the circle of people migrating, the more favourable and better enforceable human rights provisions can be made.<sup>1</sup> There are different types of migration. An international migration takes place between two (or more) countries while internal migration takes place within the same country.<sup>2</sup> Both types of migration have raised apprehensions for national and international policymakers. Nevertheless, there has been significant progress made towards the realisation of migrant's rights, such as international considerations and the adaptation of the International Convention on the Rights of all Migrants Workers and Members of their Families (ICRMW); although its impact is restricted due to the number of ratified countries<sup>3</sup>.

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<sup>1</sup> Battistella, Graziano (2009). "Migration and human rights: the uneasy but essential relationship". In: Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights (eds). New York: Cambridge University Press.

<sup>2</sup> Lomax, Nik & Rees, Philip (2019). Ravenstein Revisited: The Analysis of Migration, Then and Now, *Comparative Population Studies*, Vol. 44, pp. 351–412.

<sup>3</sup> *Ibid.*

A Migrant is referred to as someone who moves temporarily, whereas an immigrant is defined as someone with the intention of permanent settlement. However, the terms are often used interchangeably. There are no formal international definitions. This article discusses how the existing human rights treaties are not addressing migrants' human rights challenges. The first section will discuss the internal and external causes of migration. The second section will present the leading human rights challenges of immigrants, addressing both direct and indirect challenges. The third section will discuss the international human rights treaty that addresses migrant matters. In conclusion, the paper will provide a comprehensive examination of the issue of migration and human rights.

## THE GENESIS OF MIGRATIONS

It is generally agreed that people migrate for various reasons.<sup>4</sup> Different classifications are made to categorise the causes of migration. Commonly, authors such as Ernst Ravenstein and Peter Doerschler emphasised the push and pull factors. In this article, the causes of migration are classified as internal and external factors. Internal factors exist within the country of origin, whereas external factors are concerned with circumstances generated outside of the country of origin. The classifications may overlap, but their differentiation is based on the root cause of the specific factor.

### *Internal factors*

The internal factors include environmental, economic, social, and political factors.<sup>5</sup> Wars and persecutions force people to flee for safer environments. Natural disasters and climate change are also other apparent drivers of migration due to the collapse of a way of life for many people due to the changing environment.<sup>6</sup> Moreover, searching for work and/or a better life causes migration.<sup>7</sup> However, one or more factors may concurrently force people to flee their countries. For example, an outbreak of violence which leads to the collapse of the economy and social life. They are vulnerable to natural disasters and the impact of climate change. Moreover, dictatorship, bad governance, and corruption weaken the State's capacity and willingness to provide jobs and social security to its citizens.<sup>8</sup> According to many scholars, similarly, the citizens who are under oppressive regimes often suffer despair and choose to seek a better life or safer areas. The inter-connectedness of internal factors is always overlooked. Therefore, interventions and scholarships deal separately, which reduce its impact.

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<sup>4</sup> Martin, Susan F., Taylor, Abbie & Weerasinghe, Sanjula (2014). *Humanitarian Crises and Migration: Causes, Consequences and Responses*. London: Routledge.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

### *External factors*

The external factors that contribute to the migration of citizens from the Global South to the Global North include the policies of neo-colonialism and the imbalance and inequality in the global system; thus, this factor is not discussed in the literature of migrant issues. For example, the African countries are still under the influence of ‘global’ institutions formed during the colonial era that was established without Africa’s involvement and participation.<sup>9</sup> These institutions direct the world’s economy and financial systems and the critical decisions in the U.N. Security Council, an institution dominated by the Global North.<sup>10</sup> The World Bank and the International Monetary Fund (IMF) are primary examples of neo-colonial institutions run by the West which make decisions for the entire world.<sup>11</sup> Also, the Western media and movie industries take part in the glorification of the West and the dehumanisation of the so-called developing countries, particularly the African countries. Some authors call these pull factors by listing better life and wealth in the West.<sup>12</sup> However, the external and internal factors are also interrelated.

## THE HUMAN RIGHTS CHALLENGES OF MIGRANTS

The shared beliefs of many migrants advocate is that migrant rights are human rights.<sup>13</sup> However, most migrant-receiving countries do not consider migrant rights as human rights that could be codified and ratified in their domestic law.<sup>14</sup> This has been evident by the minimum efforts and the behaviours of migrant-receiving countries. There are many underlining causes for the ineffectuality of conventions that protects migrants; however, this article will discuss the challenges that migrants face. Generally, it divides into two broad categories: (a) direct challenge and (b) indirect challenges.

### *Direct challenges*

The human rights issues that migrants face depend on the method they take to reach their last destination. Their movements are diverse and complex as people move within their countries or across international borders, through legal or illegal systems, on a temporary or permanent basis.<sup>15</sup> Some people move on their own or with assistance from others, and some enter through a visa. Some benefit from evacuation mechanisms or migration programs; other resort through

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<sup>9</sup> Ocampo, José A. & Buira, Ariel (2005). *Reforming the Governance of the IMF and the World Bank: Anthem Frontiers of Global Political Economy and Development* (eds). London: Anthem Press.

<sup>10</sup> Hibben, Mark R. & Momani, Bessma (2017). *What’s Wrong With the IMF and How to Fix It*. London: Polity Press.

<sup>11</sup> International Monetary Fund (2016). *IMF Annual Report 2016*. Available at [https://www.imf.org/external/pubs/ft/ar/2016/eng/pdf/ar16\\_eng.pdf](https://www.imf.org/external/pubs/ft/ar/2016/eng/pdf/ar16_eng.pdf). Accessed May 2021.

<sup>12</sup> Campbell Benjamin C. & Crawford Michael H. (2012). “*Perspectives on Human Migration: Introduction*”. In: *Causes and Consequences of Human Migration: An Evolutionary Perspective*. New York: Cambridge University Press.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 3.

clandestine networks through the land, sea, or even take an enormous life-risking route,<sup>16</sup> such as traveling by small boat. As discussed above, the causes can be different, but they are similar human correct issues that they face, such as non-refoulement. Non-refoulement is a principle which is specific to the asylum seekers; the right not to be repelled or returned falls in line with the 1951 Refugee Convention and Customary Law.<sup>17</sup> As stated in Article 33, ‘No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened based on his race, religion, nationality, membership of a particular social group or political opinion’. When a large group of migrants are rejected or deported back altogether, the application of this right could be violated. Many migrant-receiving countries do not assess the migrant groups individually but rather as a whole, putting in danger the individuals under threat.

The very important point to note is harassment and discriminatory treatment. In general, there is a hostile stance towards the immigrants in receiving countries; many consider them a pollutant in their media coverage as the politician and the press have misrepresented them as an illegitimate or financial and social burden.<sup>18</sup> Thus, according to Amnesty International reports, it has caused many degrading treatments such as social pressure, xenophobia, racial discrimination, and other violence towards migrants.

Also, arbitrary detention remains another critical challenge. Countries have a right to protect their territory; contrariwise, everyone has the freedom of movement, which created a collapse between two requests. Migrant receiving countries places immigration policies that restrict the freedom of movement of migrants and asylum seekers; hence, as reported by Amnesty International, irregular migrants and sometimes migrant workers are detained or deported back. Especially in East Africa, such as Tanzania and Kenya.<sup>19</sup> Also, in the Middle Eastern countries such as Saudi Arabia and Libya. Recently, the United States immigration also detained individuals that were seeking asylum and protection and deported them back to their country of origin, such as Somalia, where the Trump administration of the United States deported hundreds of Somalis to Somalia in 2018.<sup>20</sup>

The absence of civil and political rights is another challenge. Migrants are not citizens, and therefore, they are not allowed to participate the political life, protest, and the right to vote in many countries. Recently, Russia deported 17 migrants who are Tajik for participating peaceful

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<sup>16</sup> *Ibid.*

<sup>17</sup> Nils, Coleman (2003). Non-Refoulement Revised Renewed Review of the Status of the Principle of Non-Refoulement as Customary International Law, *European Journal of Migration and Law*, 5 (1), pp. 23–68.

<sup>18</sup> Ribeiro, Filipa P. & Torkington, Kate (2019). ‘What are these people: Migrants, Immigrants, Refugees?’: Migration-related terminology and representations in Portuguese digital press headlines, *Discourse, Context & Media*, Vol. 27, pp. 22–31.

<sup>19</sup> Amnesty International (2021). *East Africa: pushback practices and their impact on the human rights of migrants and refugees*. Available at <https://www.amnesty.org/en/documents/afr01/3673/2021/en/>. Accessed 2021.

<sup>20</sup> Amnesty International (2018). *USA: Facts and figures on illegal pushbacks, arbitrary detention and ill-treatment of asylum-seekers in the United States*. Available at <https://www.amnesty.org/en/latest/news/2018/10/usa-facts-and-figures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment/>. Accessed May 2021.

protest in Moscow on 2 April 2021. Some of those were migrant workers.<sup>21</sup> Also, the limitation of equal access to employment and social benefits remains another obstacle. As migrant workers are outside of the legal protection of their home countries, they are vulnerable to mistreatments and abuse.<sup>22</sup> In addition, the migrant-receiving countries restrict the employment of the migrant to specific sectors and occupations that are suffering from labour shortages.<sup>23</sup> Likewise, their equal treatment of social benefits is restricted. Some scholars argue the rightness of such manner,<sup>24</sup> however, this jeopardised the universal equality and non-discrimination principles, where the person is discriminated against based on his/her origin. This is the reason why many countries did not ratify the ICRMW. For instance, in 2004, the UK government exemplified a statement to the House of Commons Select Committee in International Development (2003-2004, paragraph 68):<sup>25</sup>

The rights of migrant workers are already protected in UK legislation and the UK existing commitments under international law, including the Human Rights Act 1998... If the UK were to ratify the Convention, we would not be able to restrict the employment that works permit holders can do to that specified on their permit, and they would have access to public funds from the date they entered the UK... Giving all migrant workers access to public funds from the date of entry would, therefore, be not only costly but also create unnecessary pull factors. This would be the case if all migrant-receiving countries were to ratify the Convention, even if the available public funds were equivalent in all migrant producing and migrant-receiving countries.<sup>26</sup>

The right to acquire, maintain and transmit nationality is another principle which upholds the rights of the migrants. Many migrants do not have the right to citizenship status and, as a result, their access to full citizen rights are marginalised. Practically, migrant-receiving states use their immigration and integration policies to limit migrants' access to citizenship status and liberties specific to citizens. Thus, the legal rights that migrants enjoy are not determined by the universal treaties but rather the immigration and residence status in the host country.<sup>27</sup>

However, migrants who enter a country across international borders on an illegal system and resort through clandestine networks or unsafe pathways through land or sea are the most vulnerable. They face many human rights waves of abuse, including but not limited to the lack of

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<sup>21</sup> Amnesty International (2021). *Russia/Tajikistan: stop the deportation of Tajikistani migrants expelled solely for taking part in peaceful protest*. Available at <https://www.amnesty.org/en/latest/news/2021/04/russiatajikistan-stop-deportation-of-tajikistani-migrants-expelled-solely-for-taking-part-in-peaceful-protest/>. Accessed May 2021.

<sup>22</sup> Amnesty International (2010). *Respect migrants' rights: ratify the migrant workers Convention*. Available at <https://www.amnesty.org/en/documents/ior51/001/2010/en/>. Accessed May 2021.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Ryan, Bernard (2009). "*Policy on the ICRMW in the United Kingdom*". In: *Migration and Human Rights: the United Nations Convention on Migrant Workers' Rights*. Cambridge: Cambridge University Press.

<sup>26</sup> *Ibid.*

<sup>27</sup> Ruhs, Martin (2012). *The Human Rights of Migrant Workers: Why do so Few Countries Care?* *American Behavioural Scientist*, 56 (9), pp. 1277–1293.

most basic rights. According to Amnesty International reports, many migrants across the world are living in dangerous and desperate situations. Their fundamental rights such as the right to shelter, protection, freedoms, food, health, and sanitation are ignored. For instance, in Sweden, thousands of homeless and needy E.U. migrants face insurmountable obstacles for their fundamental rights.<sup>28</sup> This is common in many countries where the migrants are either irregular or moving to other countries.

Trafficking and smuggling are one of critical and the most challenging aspect of international migrants. Even though trafficking and smuggling are crimes under international law, migrants are vulnerable individuals subjected to exploitation and are desperate to resettle. They get trapped in trafficking and smuggling activities where they get victimized and are subjected to abuses. Not only the trafficking and the smuggling but also slavery is another aspect of challenge which face the migrants outside their home countries. Slavery is a crime that has been yet to discover more in the literature. According to Amnesty International and Human Rights Watch reports, modern slavery for migrant workers in countries such as United Arab Emirates (UAE), Saudi Arabia, and Libya, to name but a few. These countries have a system called (Kafala); it's a permit system where a native would be responsible for the migrant workers to work in the country. As a result, employers confiscate their passports to keep them from leaving and force them to work excessive hours with cheap labour.<sup>29</sup> For instance, in UAE, migrant workers are admitted to the country through a government-directed migration policy called 'Kafala System' and a fund up to 10,000 to pay to the recruitment agencies.<sup>30</sup> Their duties are concentrated in low-skilled industries such as domestic services and construction sectors. Due to insufficient laws that protect them, the migrants become legally powerless and financially desperate, which subjects them to abuse at employers' hands.<sup>31</sup>

Sexual violence is another aspect of abuse which faces migrants. It is necessarily important to note that everyone can be subjected to violence en route to their host countries; however, women migrants and asylum seekers are highly exposed to sexual and gender-based violence. According to the United Nations Population Fund, women comprised 47.9% of all international migrants in 2019.<sup>32</sup> These women are subject to violence during their journey or on arrival to the host country since the closure of borders increased the need for smugglers. The lack of

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<sup>28</sup> Amnesty International (2018). *Sweden: Homeless Roma and other E.U. migrants face widespread discrimination and dangerous conditions*. Available at <https://www.amnesty.org/en/latest/news/2018/11/homeless-roma-and-other-eu-migrants-face-widespread-discrimination-and-dangerous-conditions-in-sweden/>. Accessed May 2021.

<sup>29</sup> Human Rights Watch (2016). *Somali domestic workers at risk as Ramadan departures dawn*. Available at <https://www.hrw.org/news/2016/06/11/somali-domestic-workers-risk-ramadan-departures-dawn>. Accessed May 2021.

<sup>30</sup> Kini, Narayan (2020). Rising Scholar: A Cycle of Slavery: Migrant Labor and Human Rights Violations in the United Arab Emirates, *International Social Science Review*, Vol. 96, Iss. 4, 1–20.

<sup>31</sup> *Ibid.*

<sup>32</sup> United Nations (2019). *International Migration 2019 Report*. Available at [https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/InternationalMigration2019\\_Report.pdf](https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/InternationalMigration2019_Report.pdf). Accessed April 2021.

accommodation or reception facilities for migrants aggravated the violence and insecurities for women.<sup>33</sup>

Another critical challenge which faces the migrants is the cruel treatment outside their home countries' boundaries. As mentioned above, the migrants are subjected to maltreatment such as slavery, sexual violence, and trafficking, however in many undemocratic countries such as Libya, migrants, and asylum seekers have been kept in detention centres where they are subjected to inhuman treatments or sometimes even torture and death. Consistent with Amnesty International reports, the migrant detentions in Libya must be considered as War crimes under International Criminal Court.<sup>34</sup> Also, lack of access to justice is another aspect of the challenge. The justice of individuals or families at the borders, either migrant or asylum seekers, was regularly transformed into injustice by the economic imperatives or political exclusion.<sup>35</sup> Migrant's cases were mishandled by enforced destitution of asylum seekers, separation of families, or detentions.<sup>36</sup> In addition to that, abuse of labour rights remains one of the challenges against migrants. The fact, however, remains that the migrants are exposed to minimum labour rights such as maltreatment, restrictions of movements, underpayments of wages, workplace harassment, and excessive working hours.<sup>37</sup>

### *Indirect challenges*

Migrants similarly face indirect challenges on the enjoyment of their human rights by the absence of applicability on the universal human rights laws and insufficient international support for migrants and asylum seekers. The aim of founding international human rights law lay the urgent need for human protection; therefore, various legal frameworks protect and promote human rights; in contrast, the practicality of these rights is in query. There is a lack of universality, indivisibility, and inalienability for correct human principles, which fell short in domestic systems of states.<sup>38</sup> For instance, many countries that ratified the ICMW have abysmal human rights records.<sup>39</sup> Many migrant-receiving countries did not ratify the Convention, while many more already have a poor record of protecting human rights in the host countries. In addition, due to economic and political factors, the migrant-receiving countries (which are mainly prominent by high-income countries and western countries) do not support legal frameworks that promote the migrant's rights.

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<sup>33</sup> Freedman, Jane (2016). Sexual and gender-based violence against refugee women: a hidden aspect of the refugee "crisis", *Reproductive Health Matters*, Volume 24, Issue 47, pp. 18–26.

<sup>34</sup> Amnesty International (2019). *Libya: Abhorrent attack on migrant detention Centre must be investigated as a war crime*. Available at <https://www.amnesty.org/en/latest/news/2019/07/libya-investigate-abhorrent-attack-on-migrant-detention-centre/>. Accessed May 2021.

<sup>35</sup> Webber, Frances (2012). *Borderline justice, Race & Class*, Vol.54 (No.2).Pp. 39–54.

<sup>36</sup> *Ibid.*

<sup>37</sup> Neef, Andreas (2020). Legal and social protection for migrant farm workers: lessons from COVID-19, *Agriculture and Human Values*, Volume 37 (3), pp. 641–642.

<sup>38</sup> Donnelly, Jack (2014). State Sovereignty and International Human Rights, *Ethics & International Affairs*, Vol. 28, Iss. 2, pp. 225–238.

<sup>39</sup> Desmond, Alan (2020). A New Dawn for the Human Rights of the International Migrants? Protection of Migrants Rights on Light of the U.N's SDGs and Global Compact for Migration, *International Journal of Law in Context*, Volume 16, Special Issue 3, pp. 222–238.

Indeed, there are two difficult situations migrants are facing. One of these difficulties is the journey itself, during which migrants penetrate in a deep-rooted danger. A case in point is crossing the oceans in a small overcrowded boat. The second point to note is the challenges migrants face when they reach their destinations. Indeed, with all these risks, their destinations have their problems, and migrants face both social and economic challenges.<sup>40</sup> However, the changing character of migration and the increasing number of illegal migrants influenced the immigration policies of the destinations.

## THE HUMAN RIGHTS TREATIES FOR MIGRANTS

The legal frameworks that regulate migrants' rights consist of a wide range of multilateral treaties that belong to various branches of international law, including human rights law, labour law, refugee law, trade law, criminal law, and nationality law.<sup>41</sup> Generally, the international human rights laws apply to everyone in the non-discriminatory and equal practice. The Universal Declaration of Human Rights (UDHR) guaranteed the equality and freedom of all human beings in preserving rights and dignity; it further necessitates in Article 55 and 56 that all the members of the Charter must take joint and separate action in cooperation with the United Nations for the achievement of universal respect for human rights and fundamental freedoms for all without distinction as to race, political opinion, nationality, country of origin, sex, birth, language, or religion.<sup>42</sup>

The major nine treaties such as the International Covenant on Civil and Political Rights (ICCPR),<sup>43</sup> the International Covenant on Economic, Social and Cultural Rights (ICESC),<sup>44</sup> the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED),<sup>45</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>46</sup> and the Convention on the Rights of the Child (CRC),<sup>47</sup> the

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<sup>40</sup> Ali, Nimo-Ilhan (2016). *Going on Tahriib: The Causes and Consequences of Somali Youth Migration to Europe*. London: Rift Valley Institute.

<sup>41</sup> Chetail, Vincent (2012). "Sources of International Migration Law". In: Foundations of International Migration Law (eds). Cambridge: Cambridge University Press.

<sup>42</sup> United Nations Universal Declaration of Human Rights (adopted 10th December 1948) UNGA Res 217 (UDHR). Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed May 2021.

<sup>43</sup> International Covenant on Civil and Political Rights (adopted 16th December 1966, entered into force 23<sup>rd</sup> March 1976) 999 UNTS 171 (ICCPR). Available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed May 2021.

<sup>44</sup> International Covenant Economic, Social and Cultural Rights' (adopted 16th December 1966, entered into force 3<sup>rd</sup> January 1976) 993 UNTS 3 (ICESCR). Available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. Accessed May 2021.

<sup>45</sup> International Convention for the Protection of All Persons from Enforced Disappearance' (adopted 20th December 2006, entered into force 23<sup>rd</sup> December 2010). U.N. Doc A/RES/61/177 (ICPPED). Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4). Accessed May 2021.

<sup>46</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21st December 1965, entered into force 4<sup>th</sup> January 1969) 660 UNTS 195 (ICERD). Available at <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>. Accessed May 2021.

<sup>47</sup> Convention on the Rights of the Child (adopted 20th November 1989, entered into force 2<sup>nd</sup> September 1990) 1577 UNTS 3 (CRC). Available at [https://www.hr-dp.org/files/2013/11/08/UN\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child.pdf](https://www.hr-dp.org/files/2013/11/08/UN_Convention_on_the_Rights_of_the_Child.pdf). Accessed May 2021.

International Convention on the Elimination of All Forms of Discrimination Against Women,<sup>48</sup> the International Convention on the Rights of Persons with Disability,<sup>49</sup> entail various rights and duties for state members to safeguard the fundamental rights, protections, and freedoms. Some of these instruments underline provisions that are necessary for migrants.<sup>50</sup> For instance, Article 12 of ICCPR guarantees the right to leave any country, including one's own, and return to one's country, Article 10 and Article 22 of CRC provides facilitation for the reunification of families and protection of Refugee child respectively, Article 5 of ICERD states the right for everyone to equal treatments, right to security and right to nationality, Article 16 of ICPED obliges a non-refoulement of persons to another state where there are substantial grounds for believing that he or she would be subjected to enforced disappearance.

The International Labour Organisation (ILO) has similarly adopted conventions on the rights of migrant workers.<sup>51</sup> It provides several instruments such as; Migration for Employment Convention (No.97), Migration for Employment Recommendation (No. 86), Migrants Workers (Supplementary Provisions) Convention (No.143), and Migrants Workers Recommendation (No.151).<sup>52</sup> Also, the Convention against Torture set several articles that prohibit cruel, inhuman, or degrading treatments.<sup>53</sup> Furthermore, the major regional human right convention such as the European Convention on Human Rights, African Convention on Human and Peoples' Rights, and American Convention on Human Rights are aligned with the international principles of equality and non-discriminations. These Articles and more have been commonly used to address some of migrants' human rights matters.

Nevertheless, the international treaties are distinct between national and non-nationals where the interest of the State is threatened. For instance, Article 12(3) ICCPR stresses 'the restriction over the right to movement is necessary to protect national security, public order, public health or morals or the rights and freedoms of others' (emphasised added).<sup>54</sup> Article 1(2) ICERD indicates that states may make a distinction between national and non-nationals. In addition to the regional mechanism, the European Court of Human Rights and the Inter-America Court of Human Rights premised certain circumstances to distinguish between national and non-national.<sup>55</sup> There is a

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<sup>48</sup> Convention on the Elimination of all Forms of Discrimination against Women (adopted 18<sup>th</sup> December 1979 entered into force 1981) 1249 UNTS (CEDAW). Available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>. Accessed May 2021.

<sup>49</sup> International Convention on the right of Persons with Disability (adopted 2006, entered into force 2008) 2515 UNTS 3 (CRPD). Available at [https://treaties.un.org/doc/Publication/CTC/Ch\\_IV\\_15.pdf](https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf). Accessed May 2021.

<sup>50</sup> *Ibid.*

<sup>51</sup> Den Bosch, Marianne Van & Genugten, Willem Van (2002). International Legal Protection of Migrant Workers, National Minorities and Indigenous Peoples: Comparing Underlying Concepts, *International Journal on Minority and Group Rights*, 9: 195–233.

<sup>52</sup> International labour standards on labour migration. Available at <https://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm>. Accessed April 2021.

<sup>53</sup> International Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (adopted 10<sup>th</sup> December 1984, entered into force on 26<sup>th</sup> June 1987) 1465 UNTS 85. Available at <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>. Accessed May 2021.

<sup>54</sup> *Ibid.*

<sup>55</sup> Divine, Michael & Weissbrodt, David (2012). "International Human Rights of Migrants". In: Foundations of International Migration Law (eds). Cambridge: Cambridge University Press.

limited number of treaties specific to migration, regardless of the absence of a universal treaty that administrates all aspects of international migrations.<sup>56</sup> Four multilateral treaties are precisely dedicated to international migration,<sup>57</sup> these are: The International Convention on the Rights of All Migrants Workers and Members of their Families (ICRMW) and the Refugee Convention of 1951<sup>58</sup>

The ICRMW is the most comprehensive international treaty for the human rights of migrant workers as it applies the entire period of migrant's sphere from the preparation, recruitment up to when they are admitted.<sup>59</sup> It includes 93 Articles and extends the rights for migrants workers, both regular and irregular. The Convention was adopted in December 1990; it states in Article 1(2) it "shall apply during the entire migration process of migrants workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of the origin of the State of habitual residence."<sup>60</sup> The ICRMW also recognises broader grounds of discrimination than those listed in UDHR 1948; among others, it includes marital status, nationality, and economic status.<sup>61</sup> Similarly, it includes categories of migrant workers not included in other treaties, such as self-employed migrants and frontier migrants.<sup>62</sup> The conventions set many rights for migrants workers, both regular and irregular, including but not limited to: a) equal treatment with national with remuneration and before the court or tribunals, b) right to not be subjected to arbitrary arrest, collective expulsion, slavery and forced labour, c) right to non-interference and privacy, d) right to liberty and security of person, and; e) right to urgent medical health.

Additional to regular migrants are also included: a) due to recognition (if the State allows), b) right to educations for children, c) rights to employment benefits, d) freedom of association, e) right to seek alternative employment in case of termination of work, f) right to redress in case of violation of the terms of the employment contract, and, g) right to freely choose their remunerated activity after five years of residency in the host country.<sup>63</sup>

In practice, the Convention has been largely unsuccessful in achieving the objective of providing a practical framework that safeguards the migrant worker's rights in the global economy.<sup>64</sup> It is the least ratified treaty among the other human rights treaties with fewer than 50 countries

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<sup>56</sup> *Ibid.*, 49.

<sup>57</sup> *Ibid.*

<sup>58</sup> Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18<sup>th</sup> December 1990, entered into force 01<sup>st</sup> July 2003) 2220 UNTS 3 (ICRMW). Available at <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>. Accessed May 2021.

<sup>59</sup> D'Orsi, Cristiano (2011). Which Legal Protection for Migrants in Sub-Saharan Africa? *New Zealand Journal of Public and International Law*, Vol. 9, No. 1, pp. 83–118.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*, 27.

<sup>64</sup> *Ibid.*

ratification in 2010.<sup>65</sup> There is a disparity of ratification existing between the migrant-receiving states and migrant-sending states; thus, it has been clear that the low level of ratification and non-ratification by the major immigration countries strictly impacted the Conventions effectiveness and enforcement,<sup>66</sup> as the Convention provides rights of migrant workers, it also promotes measures to combat undocumented migrants as specified in Article 68.<sup>67</sup>

The causes of limited ratification of the Convention are predominantly three: (a) ratifying the Convention would in countries such as the US force significant changes in their national legislation,<sup>68</sup> (b) the economic and social factors of the Convention can create pressure such as high unemployment and welfare dependency, and (c) the lack of awareness and understanding of the Convention. However, non-governmental organisations raised the awareness; thus, the mindfulness of its existence remains low.<sup>69</sup> For the most part, economic factors play a crucial role in this regard. Many migrant-receiving countries reflect the comprehensive set of rights stipulated in the Convention as conflicting with their national policies of regulating immigration, especially of low and medium-skilled migrants; hence the enjoyment of legal ownership of migrant workers are significantly influenced by their impact on national interest.<sup>70</sup>

Migrant workers cannot be comprehensively analysed without discussing the State's role and interest in granting and restricting their rights.<sup>71</sup> Furthermore, the conventions only allow a minimum standard for right to health for migrants' workers, as stated in Article 28, "Migrants workers and members of their families shall have the rights to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health". This is contrary to the Article 25 of UDHR that stated, "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including... medical care."<sup>72</sup> The ICRMW situates more pressure on equal protection under the labour laws, family laws, and non-discrimination procedures, but migrant rights are more comprehensive than that.

The 1951 Refugee Convention is also known as the Convention relating to the refugee status is also another very important convention to mention.<sup>73</sup> This Convention aims to protect the refugees. The international and national migration policies distinguish the difference between

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<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, 59.

<sup>68</sup> Cholewinski, Ryszard (2005). The Need for Effective Individual Legal Protection in Immigration Matters, *European Journal of Migration and Law*, 7 (3), pp. 237–262.

<sup>69</sup> Hune, Shirley & Niessen, Jan (1994). Ratifying the UN Migrant Workers Convention: Current Difficulties and Prospects, *Netherlands Quarterly of Human Rights*, Vol. 12, Issue 4, pp. 393–404.

<sup>70</sup> *Ibid.*, 27.

<sup>71</sup> *Ibid.*, 27.

<sup>72</sup> *Ibid.*

<sup>73</sup> Convention relating to the Status of Refugee (adopted 28<sup>th</sup> July 1951 entered into force 22<sup>nd</sup> April 1954) 189 UNTS 137. Available at [https://treaties.un.org/doc/Treaties/1954/04/19540422%2000-23%20AM/Ch\\_V\\_2p.pdf](https://treaties.un.org/doc/Treaties/1954/04/19540422%2000-23%20AM/Ch_V_2p.pdf). Accessed June 2021.

migrants and refugees.<sup>74</sup> The protection under this Convention is limited to those who meet the criteria of refugee status that is underlined in Article 1. Whereas the protection of refugees is broadly recognised, its implementation remains highly challenged. However, the conventions set various rights for refugees, including but not limited to access to justice, right to work, right to housing, right to education, freedom of movement, right to identity documents, and, finally, the right to non-refoulement.

The Convention is not primarily concerned with broader context relations. Still, it emphasises the need for protection on the duration of time refugees spend in the asylum seeker country. In practice, refugees are kept in a “state of exception” in long durations. Instead of waiting in the camps, if they want to return to normal life as soon as possible, the public in receiving countries will see it as indicative of an abuse of refugee status.<sup>75</sup> Until recently, some European countries did not accept refugees from the non-European origin, and registered refugees were not legally allowed to work, e.g. Turkey.<sup>76</sup> Many refugees do not claim asylum because of the corralling of asylum seekers in fast-track detention camps and the low recognition rate for certain nationalities.<sup>77</sup> Refugees differ from migrants not only because they immigrated in violent circumstances but also because they lost the territorial access and political protection of their country of origin.<sup>78</sup> However, both migrants and refugees have related issues; as humans, they both seek better improvements in their lives; also, some scholars claim that a migrant under duress is a refugee.

### *Smuggling and trafficking protocols*

In addition to the conventions mentioned above, two additional protocols are dealt with specific international crimes against migrants and victims of trafficking. First is the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crimes, which was adopted in November 2000.<sup>79</sup> As stated in Article 2, ‘the purpose of this protocol is to prevent and combat the smuggling of migrants and promote cooperation among states parties to that end while protecting the rights of smuggled migrants.’<sup>80</sup> It protects migrants by criminalising the smuggler of migrants; however, the Protocol sets limited rights for smuggled migrants; it generally mentions in Article 19 that state members shall guarantee the ‘Rights that are set in international human rights and humanitarian law, especially the 1951 convention and 1967 protocol relating to the Status of Refugees and rights to non-refoulement.’

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<sup>74</sup> Anja Weiß (2018). Becoming a refugee. A life-course approach to migration under duress, *Sociologias*, Vol. 20, No. 49, pp. 110–141.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, 35.

<sup>78</sup> *Ibid.*, 74.

<sup>79</sup> Protocol against the Smuggling of Migrant by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, (adopted 15<sup>th</sup> November 2000, not in force) 2241 UNTS 507. Available at [https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-21%20AM/Ch\\_XVIII\\_12\\_bp.pdf](https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-21%20AM/Ch_XVIII_12_bp.pdf). Accessed June 2021.

<sup>80</sup> *Ibid.*

In addition, the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crimes, was adopted in November 2000.<sup>81</sup> As stated in Article 2, the purposes of this Protocol are (a) to prevent and combat trafficking in persons, paying particular attention to women and children, (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties to meet those objectives.<sup>82</sup> The Protocol, together with the Convention, also sets a number of rights for victims of trafficking these including but not limited to, right to housing, the right to remain permanently or temporary in the received State, the right to health, and the right to compensation. As the previous Protocol emphasised more on the crime of trafficking under international law, little attention has been given to the victims' situation.

## CONCLUSION

Analysing the causes of migration, the human rights challenges, and the existing human rights treaties and laws for immigrants and refugees, this paper suggests that immigrants' rights are not well protected, internationally. While the nine major international treaties and four specific treaties provide protection for migrants, such treaties provide limited capacities to accommodate all the migrants' protection needs, creating a vacuum gap where migrants' protections and rights are put at risk. People are on the move and in greater numbers, partly because of war, conflicts, and human rights abuses. As long as such precarious situations exist, mass population moments will continue to take place. As discussed above, the causes and challenges of conflicts, wars, human rights abuses, and migrant exploitations (responsible for global refugee movements) can be wide-ranging. Various international treaties, conventions, and protocols designed to protect the rights and lives of migrants and refugees are ratified over many decades. Nevertheless, these international laws and protocols are not often implemented or respected in some host countries, while other countries use restrictive local laws and policies that limit the impact of such international human rights laws. The effectiveness and recognition of international refugee and migrant rights are being slowly shredded. A key recommendation is for the UN to urgently organise a new congress to review how to strengthen the rights of refugees and immigrants through the already established national and international laws.

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<sup>81</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nation Convention against Transnational Organised crimes (adopted 15<sup>th</sup> November 2000 and not in force) 2237 UNTS 319. Available at [https://www.unodc.org/documents/human-trafficking/2020/TiP\\_LegislativeGuide\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2020/TiP_LegislativeGuide_Final.pdf). Accessed June 2021.

<sup>82</sup> *Ibid.*