Freedom, Security & Justice: European Legal Studies

Rivista giuridica di classe A

2026, n. 1

EDITORIALE SCIENTIFICA

Rivista quadrimestrale on line "Freedom, Security & Justice: European Legal Studies" www.fsjeurostudies.eu
Editoriale Scientifica, Via San Biagio dei Librai, 39 - Napoli
CODICE ISSN 2532-2079 - Registrazione presso il Tribunale di Nocera Inferiore n° 3 del 3 marzo 2017

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2026, n. 1

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Il focus *raccoglie i contributi selezionati a seguito di* call for papers *promossa dal Gruppo di interesse "Diritto internazionale ed europeo delle migrazioni e dell'asilo (DIEMA)" della Società italiana di Diritto internazionale e di Diritto dell'Unione europea (SIDI).*

FORCED LABOUR, TRAFFICKING, AND STRUCTURAL EXPLOITATION OF WOMEN MIGRANT WORKERS: INTERNATIONAL LEGAL PERSPECTIVES

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1. Preliminary Remarks

As reported by the Office on Drugs and Crime of the United Nations (UN) in 2024, globally, women account for 39% of detected victims of trafficking in persons, with 24% trafficked for purposes of forced labour exploitation.[1] In this context, vulnerable groups such as migrant workers face heightened risks[2] due to inadequate legal protections and abusive recruitment practices, particularly in sectors characterized by high levels of informality, including domestic service. Women migrant workers, who experience intersectional discrimination[3] based on both migration status and gender, are therefore doubly exposed to abuse while also encountering multiple barriers throughout the entire migration cycle. Against this backdrop, the present contribution aims to determine whether the existing international legal framework adequately captures, and is well equipped to deal with, the gendered conditions under which the most serious forms of labour exploitation of migrant women occur, with special emphasis on the preventive measures imposed on States to eradicate them. In consideration of the central role played by the International Labour Organization (ILO) in this regard, which promotes labour standards through legally binding conventions, the analysis first examines its approach,

Double-blind peer reviewed article.

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[1] UN OFFICE ON DRUGS AND CRIME, *Global Report on Trafficking in Persons 2024*, Vienna, UN publication, 2024.

[2] According to the global estimates of the International Labour Organization, migrant workers are trafficked at a rate three times higher than non-migrant workers. ILO, *Global Estimates of Modern Slavery*: *Forced Labour and Forced Marriage*, Geneva, ILO publication, 2022.

[3] The term was coined more than thirty years ago in legal scholarship: K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex*: *A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, no. 1, pp. 139-167, p. 140.

drawing on the evolving interpretation of the main instruments governing forced labour, including in the context of trafficking. Therefore, it considers the practice developed by the Committee on the Elimination of Discrimination against Women (CEDAW), which has been instrumental in incorporating a gender lens in the broad anti-trafficking discourse. After assessing the potential degree of compatibility of these two frameworks and the way they may interact, the final section of the present contribution engages with relevant judicial trends within the regional human rights context, focusing on the case law of the European Court of Human Rights (ECtHR), which has articulated a unique systematic line of reasoning in this respect. Notably, it deals with that strand of case law interpreting Articles 4 and 14 of the related Convention, which increasingly conceptualizes forced labour and other forms of serious exploitation as interconnected phenomena arising from conditions of vulnerability of women migrant workers rather than isolated criminal conduct.[4]

2. ILO's Approach to Forced Labour Prevention

The first mention of forced labour in an international instrument dates back to the Slavery Convention of 1926 adopted by the League of Nations,[5] which, under Article 5, does not prohibit it outright but requires States to prevent it from developing into conditions analogous to slavery. During the process of its adoption, the Assembly of the League passed different resolutions, one of which requested the ILO to take over responsibility for addressing the matter.[6] Since then, the ILO has established a sophisticated legal framework intended to suppress forced or compulsory labour. While

[4] A comprehensive analysis of the European Union legislative framework is intentionally beyond the scope of this study, in order to maintain analytical focus on the vulnerability-based approaches established at the international level and judicially enforced in the regional context through the case law of the Court of Strasbourg. At the same time, it is worth noting in this context that the very recent Directive (EU) 2024/1712, which amends Directive 2011/36/EU, has significantly reinforced the European legal framework concerning trafficking in human beings, including for forced labour exploitation purposes. See Directive (EU) 2024/1712 of the European Parliament and of the Council, *amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, of 13 June 2024, in OJ L1712, 24 June 2024, pp. 1-13. In particular, while a gender-sensitive perspective was already embedded in the 2011 Directive, the 2024 amendments reaffirm its centrality. Furthermore, the new text seeks to broadly ensure that measures of prevention, protection, and prosecution fully account for the differentiated vulnerabilities of victims by addressing areas where Member States demonstrated a low degree of implementation. See F. ROLANDO, *L'evoluzione della normativa dell'Unione europea sulla tratta degli esseri umani e sul favoreggiamento dell'immigrazione illegale, tra lotta al crimine internazionale e tutela dei migranti*, in *Quaderni AISDUE*, 2024, no. 4, pp. 1-24.

[5] *Slavery Convention*, Geneva, 25 September 1926 (entered into force on 9 March 1927), in *United Nations Treaty Series*, vol. 212, pp. 17 ff. Notably, a complementary instrument was adopted in 1956 to strengthen international efforts towards the abolition of similar practices, including debt-bondage and serfdom. See *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Geneva, 7 September 1956 (entered into force on 30 April 1957), in *United Nations Treaty Series*, vol. 266, pp. 3 ff.

[6] See the Introductory Note on the Slavery Convention, available in the UN Audiovisual Library of International Law at: https://legal.un.org/avl/ha/sc/sc.html (last accessed February 2026).

early instruments primarily focused on the prohibition of state-imposed measures, later developments modernized the framework to better respond to contemporary forms of forced labour, including those affecting migrant workers. The following sections will provide an overview of such two phases, analyzing the evolution of the ILO's approach in this regard. In order to easily navigate the complexity of the existing international framework as a whole and distinguish forced labour from other forms of labour exploitation, it is useful to bear in mind that there exists "a range of possible situations with, at one end, slavery and slavery-like practices and, at the other end, situations of freely chosen employment". Between these two extremes, a variety of employment relationships can be found, that may or may not amount to forced labour, as clarified by the ILO itself.[7]

2.1. Early Legislative Framework

Since its establishment in 1919,[8] the ILO has brought together representatives of governments, employers, and workers from its 187 Member States to advance labour and human rights, upholding its founding commitment to social justice and decent work for all as a prerequisite for universal and lasting peace. In pursuing this mandate, the organization has developed a comprehensive body of international standards grounded in five fundamental principles, which are reflected in eight core Conventions. The principles, which aim to guarantee a minimum universal threshold of protection for workers, include: (i) elimination of forced or compulsory labour; (ii) freedom of association; (iii) abolition of child labour; (iv) non-discrimination in employment and occupation; as well as (v) safety and health at work.[9]

The first legal instrument addressing forced or compulsory labour, the ILO Convention No. 29 of 1930[10] defines it as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2.1). Embedded in the definition is thus a composite structure, combining work or service carried out under the threat of a penalty with involuntariness. According to its consolidated interpretation, forced or compulsory labour occurs when an individual is subjected to coercion to perform work or service which he

[7] ILO, *The Cost of Coercion*, Geneva, ILO publication, 2009, para. 43. On the urgent need to articulate positive obligations incumbent upon States, commensurate with those governing the prohibition of slavery and servitude, in order to secure an effective and coherent response to the most serious forms of labour exploitation, and thereby move beyond taxonomic distinctions among offences that appear increasingly anachronistic, see S. CANTONI, *Lavoro forzato e* "*nuove schiavitù*" *nel diritto internazionale*, Torino, 2019, p. 13.

[8] The organization was established through Part XIII ('Labour') of the Treaty of Peace of Versailles signed on 28 June 1919; it became the first United Nations Specialized Agency in 1946.

[9] The fifth principle has been added as a result of the 2022 amendment to the 1998 version of the ILO Declaration on Fundamental Principles and Rights at Work. See *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, Geneva, 18 June 1998 (adopted at the 86th session of the International Labour Conference and amended at the 110th session in 2022), para. 2.

[10] *ILO Convention (No. 29) Concerning Forced or Compulsory Labour*, Geneva, 28 June 1930 (entered into force on 1 May 1932), in *United Nations Treaty Series*, vol. 39, pp. 55 ff.

or she would otherwise not have accepted, or not have accepted at the prevailing conditions.[11] Broadly, Article 1.1 of the Convention calls upon States to eradicate all forms of forced labour without delay, a provision that applies to both the public and private sectors,[12] permitting its use only during a transitional period, exclusively for public purposes and as an exceptional measure (Article 1.2), although some cases of exclusion are provided (Article 2.2). Finally, it requires the punishment of the illegal exaction of forced labour as a penal offence and requires States to introduce adequate and strictly enforced penalties (Article 25).

Convention No. 105 of 1957[13] complements the framework by addressing specific forms of forced labour imposed by States, including its use for political education, economic development, labour discipline, punishment for strike participation, or as a means of discrimination (Article 1). Its adoption was largely inspired by the work of the ILO-UN Ad-Hoc Committee on Forced Labour, established in 1951 to conduct an impartial inquiry. The Committee identified the existence of state-imposed forced labour systems threatening human rights in contravention of the UN Charter.[14] In this context, the adoption of the Convention reflected the ILO's determination to intensify its efforts to abolish practices not explicitly covered by Convention No. 29.[15] Building on the framework set out by its predecessor, its text ultimately requires the implementation of effective measures to ensure the immediate and complete abolition of forced or compulsory labour even in relation to cases not previously covered in an explicit way (Article 2).

Significantly, although the two instruments do not expressly refer to migrants, it is the ILO's established view that both prohibit forced or compulsory labour for all individuals,[16] irrespective of their nationality or even migration status.[17]

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[11] P. BELSER, *Forced Labour and Human Trafficking*: *Estimating the Profits*, Geneva, ILO publication, 2005, p. 2.

[12] ILO, *Strengthening Action to End Forced Labour*, Geneva, ILO publication, 2014, p. 7, para. 17. Although the primary focus of Convention No. 29 of 1930 was on forced labour imposed by government authorities, it also explicitly prohibits the use of forced or compulsory labour for the benefit of private individuals, companies, or associations, thus requiring governments to ensure that authorities neither permit nor impose such practices (Art. 4). Furthermore, from the 1980s onwards, the ILO intensified its efforts to counter all forms of forced labour, whether imposed by governments or officials (including certain forms of prison labour) or by private employers and criminal groups. See M. DOTTRIDGE, *Trafficked and Exploited*: *The Urgent Need for Coherence in International Law*, in P. KOTISWARAN (ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge, 2017, pp. 59-82, p. 73.

[13] *ILO Convention (No. 105) concerning the Abolition of Forced Labour*, Geneva, 25 June 1957 (entered into force on 17 January 1959), in *United Nations Treaty Series*, vol. 320, pp. 291 ff.

[14] UN & ILO, *Report of the Ad-Hoc Committee on Forced Labour*, Geneva, 1953, p. 24, para. 548.

[15] M. BORZAGA, M. MAZZETTI, *Forced Labour and Irregular Migrant Workers*: *What Protections under International Labour Law?*, in G. CILIBERTO, F.M. PALOMBINO (eds.), *Labour Migration in the European Union*: *Current Challenges and Ways Forward*, Rome, 2023, pp. 161-186, p. 178.

[16] For a detailed analysis of the contents of both instruments, see J.M. SERVAIS, *International Labour Law*, 8th ed., Alphen aan den Rijn, 2024, pp. 128-131.

[17] ILO, *International Labour Migration*. *A Rights-Based Approach*, Geneva, ILO publication, 2010, p. 122. In 2003, the notion of universal applicability of labour standards to all workers has been explicitly upheld by the Inter-American Court on Human Rights, which unanimously maintained that "the migratory status of a person can never be a justification for depriving him [or her] of the enjoyment and exercise of his [or

Over time, as two of the most broadly ratified international labour instruments, the Conventions have achieved universal recognition, as reflected in the widespread adoption of national legislation and constitutional provisions consistent with them by several Member States. In more recent years, the prohibition of forced or compulsory labour has also been incorporated in equal terms in UN human rights treaties,[18] including those specifically targeting migrant workers. In this regard, Article 11.2 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[19] holds that "[n]o migrant worker or member of his or her family shall be required to perform forced or compulsory labour".

Against this backdrop, several years later, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which in its preamble identifies migrant workers as a particularly vulnerable group warranting special attention, also affirmed that all Member States, by virtue of their membership in the organization, are bound to respect, promote, and realize—in good faith and in accordance with ILO's constitutive instruments[20]—the principles concerning fundamental rights, even irrespective of ratification of relevant Conventions. This broad commitment clearly entails the obligation to eliminate all forms of forced or compulsory labour.[21]

Although the Declaration does not expressly incorporate a gender lens, it provided the foundation for its subsequent integration into the ILO's practice through the establishment of a follow-up framework consisting of two systems. One of them, which builds on Global Reports collecting updated information on progress in achieving results by States,[22] has since informed broad discussions on emerging issues within the ILO's

her] human rights, including those related to employment. On assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his [or her] regular or irregular status in the State of employment. These rights are a consequence of the employment relationship". Inter-American Court of Human Rights, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion, OC-18/03, Ser. A, No. 18, 17 September 2003, para. 134. In the international legal literature, see R. CHOLEWINSKI, P. TARAN, *Introduction*: *Migration Governance and Human Rights*: *Contemporary Dilemmas in the Era of Globalization*, in *Refugee Survey Quarterly*, *Human Rights and Mobility*, 2009, vol. 28, no. 4, pp. 1-33, p. 19; A. JOYCE, *Labour Rights*, in V. CHETAIL (ed.), *Elgar Concise Encyclopedia of Migration and Asylum Law*, Cheltenham-Northampton, 2025, pp. 267-273, p. 268.

[18] See also Article 8.3.a of the 1966 International Covenant on Civil and Political Rights, and Article 27.2 of the 2006 Convention on the Rights of Persons with Disabilities. It is worth noting that the ILO considers the prohibition of forced labour to have a peremptory nature under international law (*jus cogens*), admitting no derogation or exception. ILO, *Giving Globalization a Human Face*, Geneva, ILO publication, 2012, p. 103. Nonetheless, this view has been debated in the legal literature, with some scholars concluding that the peremptory nature of the prohibition is clearly applicable only to the most serious cases of forced labour exploitation, where the conduct also satisfies the criteria of servitude or slavery. J. ALLAIN, *Slavery in International Law*: *Of Human Exploitation and Trafficking*, Leiden, 2013, p. 39.

[19] The Convention was adopted through Resolution 45/158 of the UN General Assembly at its 45th session. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, New York, 18 December 1990 (entered into force on 1 July 2003), in *United Nations Treaty Series*, vol. 2220, pp. 3 ff.

[20] In addition to the 1919 ILO Constitution, the Declaration refers to the 1944 Declaration of Philadelphia, unanimously adopted by the International Labour Conference at its 26th session, which broadened the scope of the ILO's mandate by affirming the centrality of human rights in relation to the world of work.

[21] *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, cit., para. 2.

[22] *Ibid*., Annex (as amended in 2010).

highest decision-making body, the International Labour Conference.[23] The second Global Report on Forced Labour, published in 2005, addressed for the first time the distinct vulnerabilities of women migrant workers in this context. It also considered the emergence of new patterns of exploitation relevant to the context of trafficking[24] in light of the Palermo Protocol, adopted in 2000 as part of the UN Convention on Transnational Organized Crime.[25] The Protocol defines trafficking as the recruitment, transportation, transfer, harbouring, or receipt of individuals through different means, including coercion, deception, abuse of power or of a position of vulnerability, for the purpose of exploiting them, notably including through forced labour or services.[26] In this connection, the ILO Global Report highlighted the potential for migration flows to exacerbate forced labour trends in the context of trafficking in the globalization era, through a dynamic primarily driven by private actors pursuing unlawful financial gains, who are often linked to organized crime. Furthermore, it drew attention to specific forms of forced labour emerging in highly feminized sectors, such as domestic service and agriculture, while also identifying new means of indirect coercion, including confiscation of identity documents or threats of denunciation to the immigration authorities for workers with an irregular status.

A further 2005 ILO report entitled "Human Trafficking and Forced Labour Exploitation", intended to provide legal guidance to Member States on how to properly detect instances of forced labour, whether occurring independently or in trafficking contexts, consistently clarified that the "menace of penalty" element does not necessarily involve a penal or other type of sanction imposed by a court of law, as it may take subtle forms, sometimes psychological, or even manifest in terms of loss of rights or

[23] Detailed information is available on the ILO website at: https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work/about-declaration/text-declaration-and-its-follow (last accessed February 2026).

[24] ILO, *A Global Alliance Against Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva, ILO publication, 2005, p. 9.

[25] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, Palermo, 15 November 2000 (entered into force on 25 December 2003), in *United Nations Treaty Series*, vol. 2237, pp. 319 ff. The Protocol was adopted by the UN General Assembly through resolution A/RES/55/25 at its 55th session.

[26] In particular, according to Article 3.a, "[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". In this context, it is worth mentioning that, according to the consolidated interpretation of the provision, it is not necessary to establish that actual exploitation took place in order to prove the *mens rea* of the perpetrator. Consequently, trafficking is treated as a serious crime that may be considered a completed offense even at the early stages of its commission. See N.F. KAHIMBA, *Human Trafficking under International and Tanzanian Law*, The Hague, 2021, pp. 44-60. Notably, while this aspect allows for the prosecution of all individuals involved in the complex trafficking "chain" (including recruiters, transporters, intermediaries, and other parties), it is also crucial for distinguishing trafficking from forced labour, as well as from slavery and servitude, all of which require that subjugation or exploitation be effectively carried out in practice. L. SALVADEGO, *Il contrasto alla tratta di persone nel diritto internazionale penale*, Napoli, 2025, p. 56.

privileges.[27] It follows that such a menace may be inflicted by any person or body, and not solely by public authorities.[28]

Without a doubt, the subjective concept of the lack of the voluntary nature of the work, which is grounded in consent or freedom of choice, is considerably more difficult to frame. On the one hand, it overlaps with the notion of a "menace of any penalty," given that genuine freedom to choose whether to work is, in principle, incompatible with any form of coercion.[29] On the other hand, if such consent were to exist in theory, the very occurrence of forced labour could be called into question, potentially creating a barrier to the characterization of trafficking-related offences.[30]

Notably, in this regard, the 2005 ILO report clarified that when deception or fraud is involved, a person's initial consent to perform the work becomes irrelevant, as he or she would not be free to leave the abusive employment.[31] Accordingly, consent would constitute an overarching element that must be assessed throughout all stages of the factual circumstances.[32] In this connection, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO body responsible for supervising States' compliance with ratified Conventions since 1926, also explained that psychological compulsion, such as the mere need to work in order to earn one's living, could become relevant only in combination with other factors,[33] which may relate to the distinct vulnerable condition of the victim.[34]

Overall, as repeatedly emphasized by the ILO, trafficking and forced labour represent two conceptual categories that are closely intertwined, both with each other and with "the failure to protect workers, be they nationals of the State or foreigners".[35]

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[27] ILO, *Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement*, Geneva, ILO publication, 2005, p. 20.

[28] A. WEATHERBURN, *Labour Exploitation in Human Trafficking Law*, Cambridge-Antwerp-Chicago, 2021, p. 123.

[29] J. ALLAIN, *Slavery in International Law*: *Of Human Exploitation and Trafficking*, cit., p. 221.

[30] On the complex issues underlying the relationship between trafficking and forced labour in this regard, see A. GALLAGHER, *Using International Human Rights Law to Better Protect Victims of Trafficking*: *The Prohibition on Slavery, Servitude, Forced Labor, and Debt Bondage*, in L.N. SADAT, M.P. SCHARF (eds.), *The Theory and Practice of International Criminal Law*: *Essays in Honour of M. Cherif Bassiouni*, Leiden, 2008, pp. 397-430.

[31] ILO, *Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement*, cit., p. 23. See also A. SCIURBA, *Vulnerability, Freedom of Choice and Structural Global Injustices: The "Consent" to Exploitation of Migrant Women Workers*, in J.C. VELASCO, M. LA BARBERA (eds.), *Challenging the Borders of Justice in the Age of Migrations*, Cham, 2019, pp. 225-241.

[32] C.-É. CLESSE, F. KURZ, P. LE COCQ, V. TRUILLET, *La traite des êtres humains et le travail forcé*, Brussels, 2014, p. 7.

[33] ILO, *General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22, and 35 of the Constitution), Geneva, ILO publication, 2007, pp. 20-21.

[34] On this point, see the blog post by the Director of the ILO Country Office for China and Mongolia: T. DE MEYER, *Exploitation vs. forced labour -- What can we learn from international labour standards?*, 2015, available on the ILO website at: https://www.ilo.org/resource/article/exploitation-vs-forced-labour-what-can-we-learn-international-labour (last accessed February 2026).

[35] ILO, *Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement*, cit., p. 3.

It is worth noting in this respect that attempts to define the precise boundaries of their relationship, specifically when they intersect as the process of trafficking has reached its intended purpose, have been contentious for some time, due also in part to the main historical focus of Convention No. 29 of 1930 on state-imposed forced labour. Nonetheless, it is also important to recognize that the very emergence of the anti-trafficking discourse ultimately proved instrumental in drawing renewed attention to the most serious forms of exploitation affecting migrant workers, including women. This development has had a considerable influence on the evolution of the ILO's approach.[36]

Broadly, the organization's evolving commitment in this field can be framed by building on the principle concerning the elimination of discrimination in employment and occupation. In this context, the ILO significantly recognized that gender-based inequalities can impair women's access to regular migration channels and, therefore, expose them to heightened risks of being trafficked.[37] In line with the objectives of the Palermo Protocol, but going beyond the need to impose criminal penalties to punish isolated conduct, preventive measures emerge as crucial, with international cooperation on migration and labour law having the potential to play a pivotal role as part of a multi-faceted, holistic approach.[38] This approach may be particularly effective when forced labour is regarded as a result of structural power imbalances,[39] with women often disproportionately affected due to the intersection of both gender- and migration-related vulnerabilities.

2.2. Recent Developments: Decent Work for All as an Antidote

In 2006, the ILO adopted its non-binding Multilateral Framework on Labour Migration, a set of guidelines grounded in a human rights-based approach that advocates a gender-sensitive perspective, underscoring its central role in the governance of this field.[40] The Framework, which clearly recognizes the "sovereign right of States to develop their own policies to manage labour migration", recommends giving adequate consideration to international labour standards. These include underlying equality principles of ILO Conventions governing migrants' rights, such as the Migration for Employment Convention No. 97 of 1949[41] and the Migrant Workers (Supplementary

[36] In this regard, see also R. PLANT, *Forced Labour, Slavery and Human Trafficking*: *When Do Definitions Matter?*, in *Anti-Trafficking Review*, 2015, no. 5, pp. 153-157, p. 155.
[37] ILO, *Women and Men Migrant Workers*: *Moving Towards Equal Rights and Opportunities*, Geneva, ILO publication, 2008, p. 2.
[38] *Ibid*., p. 10.
[39] K. SKRIVANKOVA, *Between Decent Work and Forced Labour*: *Examining the Continuum of Exploitation*, York, Joseph Rowntree Foundation publication, 2010, p. 9.
[40] ILO, *Multilateral Framework on Labour Migration*: *Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration*, Geneva, 2006, p. 12.
[41] *ILO Migration for Employment Convention (Revised), (No. 97)*, Geneva, 1 July 1949 (entered into force on 22 January 1952), in *United Nations Treaty Series*, vol. 120, pp. 71 ff.

Provisions) Convention No. 143 of 1975.[42] The Framework also takes into consideration other relevant international instruments for the ultimate purpose of ensuring that the distinct vulnerabilities of certain categories of migrant workers are adequately addressed. It further calls on States to take actions explicitly tailored to the needs of women, by: (i) dealing with the abuses they may face during the migration process; (ii) exploring new avenues for regular labour migration based on objective labour market analyses that incorporate gender considerations; (iii) establishing measures to prevent abusive practices, focusing on the root drivers and impacts of trafficking in persons with due attention to gender aspects; and (iv) introducing anti-discrimination legislation for migrant workers and ensuring regular data collection to capture relevant gender-based patterns.[43]

The subsequent adoption of the Domestic Workers Convention[44] in 2011 may be seen as reflecting the organization's gradual effort to formalize this approach for a specific segment of the labour market. As clarified in contemporaneous ILO guidance addressed to Member States, the instrument was created in response to the highly feminized nature of the sector, for the purpose of advancing gender equality in the world of work.[45] In this respect, building on the ILO's central commitment to promote decent work for all under conditions of freedom, equity, security, and human dignity,[46] the Preamble of the Convention expressly acknowledges that domestic work, predominantly carried out by migrant women, remains widely undervalued and largely invisible.[47] Furthermore, due to the intersecting vulnerabilities associated with gender and migration status, it considers the sector especially prone to discrimination in employment and working conditions, as well as to other human rights abuses. This concern is reflected in several provisions of the Convention, which articulate the scope of States' obligations. Of particular relevance is Article 15, which urges Member States to protect migrant workers including through the establishment of conditions governing the operations of private employment agencies.

[42] *ILO Convention (No. 143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, Geneva, 24 June 1975 (entered into force on 9 December 1978), in *United Nations Treaty Series*, vol. 1120, pp. 323 ff.

[43] ILO, *Multilateral Framework on Labour Migration*: *Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration*, cit., pp. 12, 21, 22, 27.

[44] *ILO Convention (No. 189) concerning Decent Work for Domestic Workers*, Geneva, 16 June 2011 (entered into force on 5 September 2013), in *United Nations Treaty Series*, vol. 2955, pp. 407 ff.

[45] ILO, *Decent Work for Domestic Workers, Convention 189 & Recommendation 201 at a Glance*, Geneva, ILO publication, 2011, p. 2.

[46] The definition was provided for the first time in the ILO Agenda on Decent Work, presented by the Director-General to the International Labour Conference in 1999. See ILO, *Report of the Director-General: Decent Work*, Geneva, 1999, available at: https://webapps.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm (last accessed February 2026). See also ILO, *Gender Equality and Decent Work*: *Selected ILO Conventions and Recommendations that Promote Gender Equality as of 2012*, Geneva, ILO publication, 2012.

[47] For a detailed analysis of the text of the Convention and its limits concerning effective legal protection of female migrant domestic workers, see F. GAUDIOSI, *ILO and the Protection of Female Migrant Domestic Workers*: *Ongoing Limits and Recent Developments*, in A. DI STASI, I. CARACCIOLO, G. CELLAMARE, P. GARGIULO (eds.), *International Migration and the Law*: *Legal Approaches to a Global Challenge*, London-New York-Turin, 2025, pp. 129-148.

Significantly, Article 17.2 also requires the development and implementation of measures for labour inspection, "with due regard for the special characteristics of domestic work, in accordance with national laws and regulations". Of broader scope is Article 3.2.b, which links all the measures to be adopted under the Convention to the ILO Fundamental Principles and Rights at Work, thereby including elimination of forced or compulsory labour. The provision is further reinforced by Recommendation No. 201 accompanying the Convention, which explicitly refers to the need to cooperate at the bilateral, regional, and global levels for enhancing protection of domestic workers especially in "matters concerning the *prevention of forced labour and trafficking in persons*" [48] [*emphasis added*].

A few years later, the adoption of the 2014 Protocol to Convention No. 29 of 1930[49] drew renewed attention to the distinct vulnerabilities of migrant workers. Significantly, its preamble recognizes that patterns of forced labour evolved over time and that "trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation […] requires urgent action for its effective elimination".[50] In response to such developments, in a significant departure from Convention No. 29, the Protocol formally expanded the scope of its provisions without replacing the original text, by reaffirming the previous definition of forced or compulsory labour, while also introducing new measures to be established by Member States that "shall include specific action against trafficking in persons for the purposes of forced or compulsory labour" (Article 1.3). Importantly, the Protocol, structured around the twofold pillars of prevention of abuses and protection of victims, including by providing access to remedy, introduced a critical human rights dimension in this field in an unprecedented manner, while also embedding international cooperation among relevant authorities as an integral component of its framework.[51] In more detail, the first pillar encompasses, *inter alia*, actions intended to reduce the risk of abusive and fraudulent practices affecting migrant workers, both during recruitment and placement (Article 2.d). It should be noted that, although there is no explicit reference to women in the instrument, its accompanying Recommendation clarifies that States should develop national action plans incorporating a gender-sensitive approach in order to implement the required measures.[52] In this context, rather than being addressed through targeted provisions, gender emerges as a far more relevant cross-cutting consideration.

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[48] ILO, *Domestic Workers Recommendation (No. 201)*, 16 June 2011, para. 26.2.
[49] *Protocol of 2014 to the Forced Labour Convention, 1930*, Geneva, 11 June 2014 (entered into force on 9 November 2016), in *United Nations Treaty Series*, vol. 3175, pp. 201 ff.
[50] For a comprehensive analysis of the provisions of the Protocol, see D.K. ANTON, *Introductory Note to Protocol of 2014 to the Forced Labour Convention, 1930 (ILO)*, in *International Legal Materials*, 2014, vol. 53, pp. 1227-1235. See also UN INTER-AGENCY COORDINATION GROUP AGAINST TRAFFICKING IN PERSONS, *Trafficking in Persons for the Purpose of Forced Labour*, Issue Brief, 2020, no. 9, p. 2.
[51] B. ANDREES, A. AIKMAN, *Raising the Bar*: *The Adoption of New ILO Standards Against Forced Labour*, in P. KOTISWARAN (ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, cit., pp. 359-394, p. 381.
[52] ILO, *Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour (No. 203)*, 11 June 2014, para. 1(a).

Finally, it is worth adding that the Protocol also provides that States should introduce adequate measures to sanction perpetrators.

Overall, a combined reading of the 2011 Domestic Workers Convention and the 2014 Protocol to Convention No. 29, together with their accompanying Recommendations, highlights a crucial strengthening of the ILO's ongoing engagement in safeguarding women migrant workers from serious forms of exploitation, with such protection functioning as a means to prevent, eradicate, and counter forced labour, including in the context of trafficking.

In this connection, through its supervisory practice, the CEACR has provided a significant contribution concerning visa-sponsorship systems governing the transfer of foreign domestic workers from the first recruiter to other employers in the Gulf countries. In 2024, in its Observations addressed to Oman, it pointed out that, under Section 7(4) of Ministerial Decree No. 189/2004, such transfers are permitted only provided that the recruiter agrees to release the sponsorship and completes the required procedures. In its view, weak employment legislation concerning labour rights legitimizes such practices, which may also consist of retention of passports, non-payment or underpayment of wages, and deprivation of liberty, thereby increasing workers' risk of being victims of abuses that, in some cases, can even amount to forced labour. Therefore, it highlighted "the importance of taking effective action to ensure that the system of employment of migrant domestic workers does not place them in a situation of increased vulnerability".[53]

From a broader perspective, in a Direct Request for technical information on the number of complaints received and inspections undertaken in relation to living and working conditions of migrant domestic workers in Peru,[54] the CEACR held that such workers, most of whom are women and young persons, are at particular risk of certain forms of exploitation, a condition that is even more concerning for those in an irregular situation, "as fear of deportation may deter them from attempting to seek help from national authorities when faced with abuses by an employer".[55]

Finally, it is worth mentioning that ILO's collaboration with other organizations, such as the UN Entity for Gender Equality and Empowerment of Women (UN Women) has led to significant tangible results in recent years. The Safe and Fair Programme, carried out between 2018 and 2023 in the Member States of the regional intergovernmental Association of Southeast Asian Nations (ASEAN),[56] improved labour migration

[53] CEACR, *Observation, Forced Labour Convention, 1930 (No. 29), Oman*, 2024.

[54] Notably, labour inspection is a public function carried out by government agencies to ensure the application of labour legislation in the workplace. According to the definition provided by the 2022 ILO Guidelines, "[c]omplaint inspection refers to an inspection of a place of business that has been reported as not following the relevant laws. The labour inspector must issue a written order to the employer to correct the misconduct promptly within a specific timeframe". ILO, *Labour Inspection Guidelines with Attention to Women Migrant Workers, Violence and Harassment, Domestic Workers and Forced Labour*, Geneva, ILO publication, 2022, p. 9.

[55] CEACR, *Direct Request, Domestic Workers Convention, 2011 (No. 189), Peru*, 2024.

[56] Founded in 1967, the organization aims to promote economic growth, political stability, and social development; it includes the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste, and Viet Nam.

governance from a gendered perspective by addressing key issues, such as the imposition of restrictive bans on departure from countries of origin, ultimately reducing vulnerability of women migrant workers to trafficking.[57]

3. Relevant CEDAW Committee's Practice in the Context of Trafficking

At this stage of the analysis, building on the evolution of ILO's approach to forced labour exploitation of women migrant workers, it is useful to examine the role played by the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[58] in this respect. As a preliminary consideration, it must be noted that the Convention, regarded by the UN as the International Bill for the advancement of women's rights,[59] does not explicitly refer to migrant workers. At the same time, the scope of application of certain key provisions is sufficiently broad to argue for their inclusion. Indeed, beyond the expansive definition of discrimination contained in Article 1, Article 2 condemns discrimination against women "in all its forms," while Article 3 obliges States Parties to adopt appropriate measures "in all fields" to ensure the full enjoyment of their human rights. Based on such a far-reaching interpretation of the provisions, the CEDAW Committee, the UN treaty-based body of independent experts that monitors the implementation of the Convention, provided authoritative guidance on their applicability with regard to women migrant workers through General Recommendation No. 26 of 2008.[60] The Recommendation confirms that all of them must be protected, irrespective of the regularity of their immigration status.

Importantly, according to the Committee, the push and pull factors driving migration are not gender-blind, as women often flee entrenched discrimination, including unequal employment, harmful cultural practices, and gender-based violence in their countries of origin, and are further affected by sex-specific divisions of labour across multiple sectors, which generate corresponding demand in countries of destination.

Overall, migration *per se* cannot be regarded as gender-neutral for a number of reasons, including the distinct position that female migrants occupy compared with males in terms of access to legal migration channels, the sectors in which they work, the types

[57] More detailed information is available on the ILO website at: https://www.ilo.org/projects-and-partnerships/projects/safe-and-fair-realizing-women-migrant-workers%E2%80%99-rights-and-opportunities (last accessed February 2026).

[58] *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 18 December 1979 (entered into force on 3 September 1981), in *United Nations Treaty Series*, vol. 1249, pp. 13 ff.

[59] The statement was made following the Fourth World Conference on Women, held in Beijing in 1995: UN, *The United Nations and the Advancement of Women*, 1945-1996, UN Blue Books Series, vol. VI, New York, UN publication, 1996, p. 5. See also R. HOLTMAAT, *The CEDAW*: *A Holistic Approach to Women's Equality and Freedom*, in A. HELLUM, H. SINDING AASEN (eds.), *Women's Human Rights*: *CEDAW in International, Regional, and National Law*, Cambridge, 2013, pp. 95-123; M.A. FREEMAN, *The Convention on the Elimination of All Forms of Discrimination Against Women*, in N. REILLY (ed.), *International Human Rights of Women*, Singapore, 2019, pp. 85-105.

[60] CEDAW COMMITTEE, *General Recommendation No. 26 on Women Migrant Workers*, 5 December 2008, CEDAW/C/2009/WP.1/R.

of abuse they may experience, and the consequences they face.[61] Against this backdrop, the CEDAW Committee pays special attention to undocumented female workers who migrate without a valid residence or work permit, as particularly vulnerable to serious forms of exploitation including forced labour, due to their irregular status.

Broadly, the Recommendation underscores that, while States retain the authority to control their borders and regulate migration, they must do so in accordance with their obligations under ratified or acceded human rights treaties. This entails establishing safe migration procedures and ensuring that the human rights of all women migrant workers are respected, protected, and fulfilled throughout the entire migration cycle.[62]

It must be observed that these statements take on considerable significance in light of the fact that other relevant instruments, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, failed to adopt a sufficiently gender-sensitive approach to migration.[63]

Notably, in detailing the contents of the obligations specific to countries of destination, the Recommendation only provides that undocumented women migrant workers already coerced into forced labour must have access to justice, without focusing on preventive measures. In more detail, States parties should ensure due process and free legal aid, while also repealing or amending laws and practices that impede access to courts or other systems of redress.[64] The Committee indeed further specifies that the Recommendation addresses only the work-related situation of migrant women and that, while it remains relevant in certain respects, it does not cover other vulnerabilities associated with trafficking, as these fall within the scope of Article 6 of the Convention, which is aimed at suppressing "all forms of traffic in women and exploitation of prostitution of women".

Importantly, CEDAW is one of only two human rights treaties to explicitly address trafficking, albeit with a central focus on exploitation related to the sex sector,[65] the other

[61] *Ibid*., para. 5.
[62] *Ibid*., para. 3.
[63] It is worth noting that the Committee supervising the implementation of this Convention participated in drafting CEDAW General Recommendation No. 26. Nonetheless, in General Comment No. 1 of 2011, while acknowledging that women constitute the overwhelming majority of domestic workers, it devotes only a brief section to a gender perspective and makes just two references in the recommendations directed at Member States in this regard. Taken together, all these elements depict a framework that remains clearly insufficient to address the distinct vulnerabilities of migrant women. V. CHETAIL, *The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*, in F. MÉGRET, P. ALSTON (eds.), *The United Nations and Human Rights*: *A Critical Appraisal*, 2nd ed., Oxford, 2020, pp. 601-644, p. 622.
[64] CEDAW COMMITTEE, *General Recommendation No. 26 on Women Migrant Workers*, cit., para. 26.l. See also J.S. HAINFURTHER, *A Rights-Based Approach*: *Using CEDAW to Protect the Human Rights of Migrant Workers*, in *American University International Law Review*, 2009, vol. 24, no. 5, pp. 843-895.
[65] Notably, the Convention does not provide a definition of "all forms of trafficking". Furthermore, a careful reading of the *travaux préparatoires* indicates that the drafters intended the term to refer exclusively to trafficking for sexual exploitation. CEDAW COMMITTEE, *Background Paper concerning Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women*, 13 May 2003, CEDAW/2003/II/WP.2, pp. 1-8. See also S. DE VIDO, *Della tratta di donne e ragazze nel diritto internazionale ed europeo*: *riflessioni sulla nozione giuridica di* "*sfruttamento sessuale*" *alla luce della sentenza S.M. c. Croazia della Corte europea dei diritti umani*, in *GenIUS*, 2021, pp. 1-19, pp. 5-7.

being the 1989 Convention on the Rights of the Child.[66] In this context, although subsequent legislative developments, including the 2000 Palermo Protocol and 2014 ILO Protocol, have led to a broader understanding of the matter, according to prominent scholars, the Convention's framing of trafficking as rooted in discrimination remains an important paradigm for analyzing its underlying causes and identifying States' obligations.[67] Moreover, the fact that no State party entered a reservation to Article 6 reinforces its potential to set a foundational, gender-sensitive approach to trafficking of women and girls in light of the CEDAW Committee's practice.[68]

Through the adoption of the more recent General Recommendation No. 38 of 2020 on Trafficking in Women and Girls in the Context of Global Migration, the Committee has then expressed the view that countering the phenomenon requires a response at the intersection of multiple international legal regimes. In this regard, the Convention emerges as the instrument that can enhance the other ones when they fall short of explicit gender equality provisions.[69] In line with the ILO's approach, the Committee identifies the existence of States' direct obligations to prevent trafficking, protect victims, and ensure remedies, while also clarifying that criminal legislation alone is unable to provide a proper anti-trafficking response, due to uneven harmonization, both between and within countries, as well as enforcement-related difficulties.[70] In the context of prevention, it better articulates the contents of such obligations in terms of identifying, addressing, and eliminating the root causes of trafficking in light of a gender-sensitive, anti-discriminatory approach. Ultimately, this reflects the recent and clear expansion of the original focus of the Convention from trafficking for the exploitation of women in prostitution to the inclusion of labour-related abuses, laying the groundwork for an approach that reinforces and complements that of the ILO.[71]

This is also consistent with the stance that the UN General Assembly has adopted with regard to trafficking in women and girls since 1995 through Resolution 49/166, when growing concern over the phenomenon as a border-security issue began to emerge. In that case, the General Assembly condemned the "clandestine movement of persons across national and international borders […] with the end goal of forcing women and girl

[66] *Convention on the Rights of the Child*, New York, 20 November 1989 (entered into force on 2 September 1990), in *United Nations Treaty Series*, vol. 1577, pp. 3 ff., Articles 32, 34, 35.
[67] On this point, see also General Recommendation No. 19 of 1992, which identifies trafficking as a form of violence against women and, consequently, as a manifestation of sex-based discrimination. CEDAW COMMITTEE, *General Recommendation No. 19: Violence against Women*, 30 January 1992, CEDAW/C/GC/19, paras. 14-16.
[68] J. CHUANG, *Article 6*, in M.A. FREEMAN, C. CHINKIN, B. RUDOLF (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, Oxford, 2012, pp. 169-196, p. 172.
[69] CEDAW COMMITTEE, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, 20 November 2020, CEDAW/C/GC/38, para. 13.
[70] *Ibid*., para. 19.
[71] Early indications in this regard can also be found in General Recommendation No. 19 of 1992 on Violence against Women, which acknowledges the existence of new forms of trafficking, particularly the recruitment of domestic labour from developing countries to perform work in developed countries, albeit still framed as instances of sexual exploitation.

children into sexually or economically oppressive and exploitative situations […] as well as other illegal activities related to trafficking, such as forced domestic labour".[72]

Resuming the analysis of Recommendation No. 38 of 2020, it is useful to observe that, as a whole, in elaborating on the root causes of trafficking in women for the purpose of informing effective national legal responses, the CEDAW Committee places special emphasis on how gender-blind approaches in both migration and labour regimes interact to foster conditions conducive to exploitation.

In more detail, it clarifies that, before leaving their countries of origin, women face indirect discrimination from migration laws imposing sex-neutral prerequisites, such as minimum income requirements, in order to obtain a visa. In countries of destination, visa rules may exacerbate these inequalities, especially when creating legal dependency on an employer. Furthermore, migration regimes often channel them into so-called "female" occupations, such as domestic service and agriculture, with the result of reinforcing sex-based stereotypes and perpetuating gender-segregated labour markets. In these cases, their vulnerability is at further risk when employment protections are limited. Similarly, the temporary and seasonal work programmes in which migrant women are often engaged rarely provide pathways to healthcare or other gender-responsive social protection schemes.[73]

Crucially, this entire analysis lies at the core of the Recommendation's legislative guidance directed to States at the nexus of labour and migration, which largely addresses similar issues as those covered by the ILO and the UN Special Procedures—the independent human rights mechanisms that monitor thematic and country-specific concerns across the UN system—albeit from different perspectives.

In particular, the CEDAW Committee encourages States parties to:

(a) Introduce employment legislation designed to protect migrant workers, irrespective of their documentation status (para. 54.a). Recent practice of the CEDAW Committee has consistently emphasized the necessity of adopting legislative measures to protect migrant women workers from exploitation, including through explicit prohibitions of prolonged passport retention and guarantees of adequate housing, food, medical care, daily breaks, and weekly rest days. This is the precise stance taken by the Committee in October 2024 in its Concluding Observations on the fifth periodic report of Saudi Arabia, which drew its findings based on the recognized absence of a legal framework regulating domestic employment.[74]

(b) Strengthen the mandate and investigative powers of labour inspectors for the purpose of enabling them to carry out gender-responsive, safe, and confidential inspections (para 54.b). The Committee has emphasized the important role played by

[72] UN GENERAL ASSEMBLY, *Traffic in Women and Girls*, 24 February 1995, A/RES/49/166, p. 2. On this aspect, see also L. PALUMBO, *Taking Vulnerabilities to Labour Exploitation Seriously*: *A Critical Analysis of Legal and Policy Approaches and Instruments in Europe*, Cham, 2024, p. 15.
[73] CEDAW COMMITTEE, *General Recommendation No. 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration*, cit., paras. 27-28.
[74] CEDAW COMMITTEE, *Concluding Observations on the Fifth Periodic Report of Saudi Arabia*, 30 October 2024, CEDAW/C/SAU/CO/5, para. 41.

labour investigations in systematically detecting labour exploitation in highly feminized sectors. In February 2024, in its Concluding Observations on the eighth periodic report of Italy, it explicitly called on the State party to enhance the capacity of the National Labour Inspectorate, as well as to establish confidential complaint procedures to allow women migrant workers to lodge complaints against employers without fear of reprisal, arrest, detention, or deportation.[75] UN Special Procedures have also pointed out that labour inspections are essential in preventing trafficking. In its latest report, published in April 2025, the Special Rapporteur on Trafficking in Persons, Especially Women and Children, noted with concern that, in many countries, labour inspectorates lack the legal authority to monitor working conditions in domestic households and that, even when inspections are legally permitted, they are rarely carried out in practice.[76]

(c) Ensure that all migration policies and programmes, including those related to employment, labour rights, detention, and the issuance of passports, visas, and residence permits, are informed by a robust gender analysis (para. 56.c). In this connection, in March 2021, in its Concluding Observations on the ninth periodic report of Denmark, the CEDAW Committee recommended that the State party adopt a human rights-based approach in its efforts to combat trafficking, placing a strong emphasis on prevention. The Committee further urged Denmark to revise its migration legislation on deportation of migrant women to ensure that it is applied in a non-discriminatory manner.[77] In February 2025, in its Concluding Observations on the ninth periodic report of Sri Lanka, the Committee expressed concern about the surge in labour migration to the Gulf countries and the Middle East under the visa-sponsorship framework (*kafalah*), noting that this system can expose Sri Lankan women migrant domestic workers to heightened risks of forced labour and abuse.[78]

(d) Sign bilateral agreements to strengthen cooperation on the regulation of working conditions in compliance with international labour and human rights standards (para. 57.a). In this regard, in its 2023 report, the UN Special Rapporteur on the Human Rights of Migrants also significantly observed that "[i]t is the responsibility and obligation of States to institutionalize rights-based migration governance, guided by the principle of

[75] CEDAW COMMITTEE, *Concluding Observations on the Eight Periodic Report of Italy*, 27 February 2024, CEDAW/C/ITA/CO/8, para. 40.
[76] UN GENERAL ASSEMBLY, *Migrant Domestic Workers and Trafficking in Persons*: *Prevention, Rights Protection and Access to Justice*, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, *Siobhán Mullally*, 28 April 2025, A/HRC/59/56, para. 34.
[77] CEDAW COMMITTEE, *Concluding Observations on the Ninth Periodic Report of Denmark*, 9 March 2021, CEDAW/C/DNK/CO/9, para. 23.b.
[78] CEDAW COMMITTEE, *Concluding Observations on the Ninth Periodic Report of Sri Lanka*, 28 February 2025, CEDAW/C/LKA/CO/9, para. 51. On the legislative reforms introduced in Qatar since 2018 to dismantle, at least *de jure*, some of the characteristic elements of the *kafalah* system, see I. CARACCIOLO, *La lunga strada per un effettivo rispetto degli standard internazionali di protezione dei lavoratori migranti*: *il caso del Qatar in occasione dei mondiali di calcio del 2022*, in I. CARACCIOLO, G. CELLAMARE, A. DI STASI, P. GARGIULO (eds.), *Migrazioni internazionali*. *Questioni giuridiche* "*aperte*", Freedom, Security & Justice: European Legal Studies series, Naples, 2022, pp. 385-409, p. 397.

non-discrimination for all workers".[79] These conclusions have been articulated in the context of temporary migration schemes, whose inherent restrictions tend to heighten the vulnerability of migrants, often pushing some into irregular status, especially when returning to their countries of origin is not a viable option.

Overall, it is important to emphasize that the CEDAW Committee's Recommendation No. 30 of 2020 explicitly refers to the Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly in December 2018. This non-binding framework recognizes that no State can manage migration alone, given the inherently transnational nature of the phenomenon, thus calling for coordinated international, regional, and bilateral cooperation to address relevant issues.[80] Notably, in turn, the Compact, which is deeply grounded in international human rights law and guided by the principles of non-discrimination, non-regression, and gender-responsiveness, highlights the importance of protecting the specific needs of women migrant workers through the adoption of measures capable of preventing all forms of exploitation and abuses in order to guarantee decent work for all.[81]

4. Regional Trends: ECtHR's Evolving Case Law

At the regional level, the case law developed by the European Court of Human Rights (ECtHR), the judicial body established in 1959 as an institution of the Council of Europe (CoE) to adjudicate violations of the European Convention on Human Rights,[82] plays a central role in the analysis presented herein. Among relevant provisions, Article 4.1 requires that "no one shall be held in slavery or servitude" in absolute terms, while Article 4.2 prohibits forced or compulsory labour, subject to certain limits. In fact, Article 4.3 provides a list of four exemptions that do not fall within the meaning of forced or compulsory labour, largely reflecting the provisions set out in Article 2.2 of the ILO Forced Labour Convention No. 29 of 1930. Notably, in this regard, in the decision rendered in *Van der Mussele v. Belgium* in 1983, the Court stressed that the two ILO Conventions on forced or compulsory labour serve as a model for interpreting relevant provisions of Article 4.[83] Overall, although not extensive, the case law in this area provides authoritative guidance for clarifying the relationships between the different types of prohibited conduct, while also detailing the contents of States' obligations to uphold crucial safeguards for women migrant workers' rights.

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[79] UN General Assembly, *Protection of the Labour and Human Rights of Migrant Workers, Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales*, 14 July 2023, A/78/180, para. 67.
[80] UN General Assembly, *Resolution adopted by the General Assembly on 19 December 2018, Global Compact for Safe, Orderly and Regular Migration*, 11 January 2019, A/RES/73/195, para. 15.b.
[81] *Ibid*., para. 22.k.
[82] *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950 (entered into force on 3 September 1953), in *United Nations Treaty Series*, vol. 213, pp. 221 ff.
[83] European Court of Human Rights, Plenary, judgment of 23 November 1983, application no. 8919/80, *Van der Mussele v. Belgium*, para. 32.

In *Siliadin v. France* (2005), the ECtHR affirmed that labour exploitation of irregular migrant workers, including in domestic settings, fall within the scope of Article 4. The case concerned a Togolese national who arrived in France in 1994 at the age of fifteen, having been entrusted to a French woman who had obtained her parents' consent through false promises. Upon her arrival, she was required to work as a domestic servant and subsequently placed with another family, where her passport was confiscated and she was compelled to work without remuneration for several years, for approximately fifteen hours a day, seven days a week. The applicant contended that French criminal law did not afford her effective protection against the treatment she had suffered, which amounted to conduct prohibited under Article 4.1 of the Convention, or, at a minimum, to forced labour within the meaning of Article 4.2.[84]

Notably, in its reasoning, the Court explicitly referred to Recommendation 1663 (2004) of the Parliamentary Assembly of the CoE concerning domestic slavery, highlighting the particular vulnerabilities faced by women migrant workers in this context:

Today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers […]. Most have come voluntarily, seeking to improve their situation or escaping poverty and hardship, but some have been deceived by their employers, agencies or other intermediaries, have been debt-bonded and even trafficked. Once working […] they are vulnerable and isolated. This creates ample opportunity for abusive employers […] to force them into domestic slavery.[85]

The Court further noted that, although slavery had been officially abolished more than 150 years earlier, its modern form—referred to as "domestic slavery"—continues to exist in Europe and affects thousands of people, the majority of whom are women.[86] Against this backdrop, it found that the applicant's situation did not amount to slavery, as no right of ownership has been exercised over her, relying on the definition provided by the 1927 Slavery Convention in this regard. Nonetheless, it held that her situation fell within the scope of Article 4, as involving both (i) forced labour, and (ii) servitude.

On the first point, having due regard to the ILO Forced Labour Convention, the Court argued that, although the applicant was not threatened by a "penalty", she was in an equivalent position in terms of the perceived seriousness of the threat, being menaced by the fear of arrest due to her irregular status.[87] As regards the second matter, the Court further agreed that the applicant had been held in servitude, as she was deprived of her autonomy and subjected to coercion. In doing so, it referred to a report of the former

[84] H. CULLEN, *Siliadin v France*: *Positive Obligations under Article 4 of the European Convention on Human Rights*, in *Human Rights Law Review*, 2006, vol. 6, no. 3, pp. 585-592, p. 588.
[85] COUNCIL OF EUROPE, *Recommendation 1663 (2004)*, *Domestic Slavery*: *Servitude*, *Au Pairs and Mail-Order Brides*, 22 June 2004, para. 2, available at: https://pace.coe.int/en/files/17229 (last accessed February 2026).
[86] European Court of Human Rights, Second Section, judgment of 26 July 2005, application no. 73316/01, *Siliadin v. France*, para. 111. On this aspect, see also C. ORTIZ FERNÁNDEZ, A. QUIROZ ENCISO, *The Case of Siliadin V. France*: *Modern Slavery*, *Nation and Supranational States*, *Gender and Power*, in *Review (Fernand Braudel Center)*, 2012, vol. 35, no. 3/4, pp. 297-309, p. 303.
[87] European Court of Human Rights, Second Section, *Siliadin*, cit., para. 118.

European Commission of Human Rights,[88] clarifying that servitude includes, in addition to the obligation to perform certain services for others, the obligation to "live on another person's property and the impossibility of altering his condition".[89] On the whole, the decision not only defined the precise boundaries between the various categories of misconduct prohibited under Article 4 of the Convention,[90] based on an interpretation that took into account the existing international legal framework, but also emphasized for the first time that States have specific positive obligations under Article 4 to ensure practical and effective protection, albeit limited to the context of criminal law.[91]

In 2010, through the landmark *Rantsev v. Cyprus and Russia* case (2010) concerning a young Russian woman trafficked to Cyprus for sexual exploitation purposes, the ECtHR provided an important contribution to the expansion of the scope of Article 4 so as to include trafficking while also elaborating on States' positive obligations under the same provision.[92] In particular, according to the Court, these obligations ultimately require States to maintain a wide range of safeguards in national legislation—including the immigration domain—that encompass operational measures to effectively protect the rights of potential victims, in addition to criminal law provisions to punish perpetrators.[93]

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[88] *Ibid*., para. 123. The decision referred to the Commission's report of 9 July 1980, Series B No. 44, p. 30, paras. 78-80, concerning the admissibility of the application in the case of *Van Droogenbroeck v. Belgium*. Notably, the European Commission of Human Rights, which was responsible for examining individual and inter-state applications under the European Convention on Human Rights, was abolished in 1998 with the entry into force of Protocol No. 11 (1994) that restructured the Convention system and established a full-time Court. See A. DRZEMCZEWSKI, *The European Human Rights Convention*: *A New Court of Human Rights in Strasbourg as of November 1, 1998*, in *Washington and Lee Law Review*, 1998, vol. 55, no. 3, pp. 697-736, p. 697.

[89] Cf. A. NICHOLSON, *Reflections on Siliadin v. France*: *Slavery and Legal Definition*, in *The International Journal of Human Rights*, 2010, vol. 14, no. 5, pp. 705-720, pp. 710-711.

[90] Notably, in a subsequent judgment, the Court held that servitude is a distinct, "aggravated" form of forced or compulsory labour, characterized by the victim's perception of his or her condition as permanent and unlikely to change. European Court of Human Rights, Fifth Section, judgment of 11 October 2012, application no. 67724/09, *C.N. and V. v. France*, para. 91.

[91] European Court of Human Rights, Second Section, *Siliadin*, cit., para. 149. For a comprehensive overview of the ECtHR's case law on positive obligations, see A.R. MOWBRAY, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, London, 2004; V. STOYANOVA, *Positive Obligations under the European Convention on Human Rights*: *Within and Beyond Boundaries*, Oxford, 2023.

[92] See C. GRABENWARTER, *European Convention on Human Rights*: *Commentary*, Munich-Oxford-Baden-Baden-Basel, 2014, p. 60. Nonetheless, prominent scholars have emphasized that the Court's reasoning is contradictory, insofar as it affirms that Article 4 serves as a vehicle for considering issues of trafficking, while simultaneously evaluating them primarily through the lens of slavery, thereby generating confusion. See J. ALLAIN, *Rantsev v Cyprus and Russia*: *The European Court of Human Rights and Trafficking as Slavery*, in *Human Rights Law Review*, 2010, vol. 10, no. 3, pp. 546-557. It is also worth noting that the ECtHR clarified in subsequent judgments that the concept of "forced or compulsory labour" under Article 4 has autonomous significance, offering protection against serious forms of exploitation even beyond the context of human trafficking. European Court of Human Rights, Fifth Section, judgment of 7 October 2021, application no. 20116/12, *Zoletic and Others v. Azerbaijan*, para. 148.

[93] European Court of Human Rights, First Section, judgment of 7 January 2010, application no. 25965/04, *Rantsev v. Cyprus and Russia*, para. 284. For a discussion of the relevance of the arguments put forward by the Court in *Siliadin* and *Rantsev*, as further developed in subsequent rulings concerning migrant women, see A. SANGIORGI, *La vulnerabilità delle donne migranti nella giurisprudenza della Corte EDU tra profili di tutela e problematiche irrisolte*, in A. DI STASI, R. CADIN, A. IERMANO, V. ZAMBRANO (eds.), *Donne*

In the more recent *Chowdury and Others v. Greece* judgment (2017), the Court took particular account of the applicants' situation of vulnerability as irregular migrants without resources, and at risk of being arrested, detained and deported, to infer that they had been subjected to forced labour exploitation in the context of trafficking.[94] The case is especially relevant despite not involving women, as it sheds light on typical forms of exploitation in the agricultural sector, with the applicants being a group of Bangladeshi men recruited to work as strawberry pickers in Greece.

In 2022, the Committee of Ministers of the Council of Europe adopted a Recommendation specifically dealing with preventing and combating trafficking for the purpose of labour exploitation, which broke new ground by acknowledging that this phenomenon may be compounded by different factors, including multiple, intersecting forms of discrimination.[95] In more detail, as observed in the Explanatory Memorandum accompanying the text, although trafficking generally affects all persons, it also entails a gender dimension, insofar as men and women are impacted in different ways.[96]

This approach appears to have influenced subsequent cases.

In *F.M. and Others v. Russia* (2024), the Court found that women taken from Uzbekistan and Kazakhstan and forced to work in convenience stores in Moscow had been subjected to servitude in the context of cross-border trafficking.[97] Notably, in this case, the ECtHR approached the relevant issues from a gendered perspective for the first time and found violations of Article 4 in conjunction with Article 14 (Prohibition of Discrimination). It ultimately recognized that the victims faced intersectional discrimination as both women and foreign workers without legal residence in Russia, which made them particularly vulnerable to abuse, a situation further exacerbated by the authorities' inaction.[98] Similarly, in *I.C. v. the Republic of Moldova* (2025), the Court highlighted the applicant's distinct vulnerabilities as a woman with an intellectual disability, noting that the authorities' passive response contributed to her exploitation and resulted in violations of both Articles 4 and 14 of the Convention.[99]

migranti e violenza di genere nel contesto giuridico internazionale ed europeo, Freedom, Security & Justice: European Legal Studies series, Naples, 2023, pp. 743-778, p. 759.

[94] European Court of Human Rights, First Section, judgment of 30 March 2017, application no. 21884/15, *Chowdury and Others v. Greece*, paras. 97, 100. For a detailed overview of the case, see E. CORCIONE, *Nuove forme di schiavitù al vaglio della Corte europea dei diritti umani*: *lo sfruttamento dei braccianti nel caso* '*Chowdury*', in *Diritti umani e diritto internazionale*, 2017, no. 2, pp. 516-522.

[95] COUNCIL OF EUROPE, *Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation*, Recommendation CM/Rec(2022)21 of the Committee of Ministers, 27 September 2022, p. 8.

[96] *Ibid*., p. 13.

[97] European Court of Human Rights, Third Section, judgment of 10 December 2024, applications nos. 71671/16 and 40190/18, *F.M. and Others v. Russia*, para. 278.

[98] *Ibid*., para. 346.

[99] European Court of Human Rights, Fifth Section, judgment of 27 February 2025, application no. 36436/22, *I.C. v. The Republic of Moldova*, paras. 149, 213-223.

5. Conclusion

Without a doubt, the legal framework governing the prevention of serious forms of exploitation of women migrant workers is shaped by the interplay of multiple international and domestic regimes. In light of the analysis conducted thus far, it emerges that most of the considerations advanced by the CEDAW Committee to clarify States' obligations at the intersection of migration and labour law largely converge with those reflected in the ILO's interpretive guidance and the CEACR's practice. Rather than operating in isolation, these two regimes seem to interact, thus complementing each other in reinforcing a human rights-based and gender-sensitive understanding of labour migration governance. At the same time, the CEDAW Committee's perspective has the potential to advance a transformative approach that seeks not only to remedy individual instances of abuse but also to challenge the entrenched gendered power relations that render migrant women workers particularly vulnerable, including in the context of trafficking. Furthermore, this reinforces the argument, also supported by the ILO, that criminal law alone is not, in principle, adequately equipped to deal with structural patterns of abuses, which instead require targeted efforts to challenge deep-rooted cultural stereotypes.

At the regional level, the contribution provided by the ECtHR is crucial insofar as it seeks not only to clarify the boundaries between different forms of serious labour-related exploitation but also to articulate the contents of States' positive obligations to prevent such abuses under Article 4 (Prohibition of Slavery and Forced Labour) of the European Convention. Crucially, by building on the existing international legal framework in interpreting the Convention and emphasizing that systemic discrimination may exacerbate the vulnerabilities faced by women migrant workers, its evolving case law is paving the way for progressively stronger and more comprehensive State measures to ensure effective protection.

ABSTRACT: In recent years, migration has contributed to a globalized and gendered division of labour, especially in receiving countries, where women migrant workers are disproportionately concentrated in low-paid, informal, and unprotected sectors. These dynamics expose them to heightened risks of severe forms of exploitation, particularly forced labour, including in the context of trafficking, while simultaneously reinforcing gender stereotypes and discrimination. Against this backdrop, the present article examines the existing legal regime and related practice developed at the international level, notably the CEDAW Committee's and International Labour Organization's approaches, while also assessing how these issues are addressed in the European Court of Human Rights' case law. The article ultimately argues that, since violations of women migrant workers' rights are rarely

episodic and instead reflect systemic forms of exploitation, effective migration governance must combine a gender-sensitive approach with robust labour standards.

KEYWORDS: Women Migrant Workers – Forced Labour – Trafficking – Gender – Structural Exploitation.