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***THE ISSUES OF MIGRATION WORKERS AND INTERNATIONAL LAW
DURING COVID-19***

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INTRODUCTION

Migrant workers have increasingly been accepted by the host countries where according to the United Nations, more than 200 million migrant workers have been exercising their rights in the host countries that they are living. All migrant workers have rights to be protected in the host countries covered under some instruments provided by the United Nations and International Labour Organization (ILO). Even though the migrant workers have rights and protections covers under international migration law, there are still increasing issues in preserving and ensuring their rights that are violated. International Organization for Migration (IOM) also has provided mechanisms for protecting the rights of migrant workers during crisis time.

In addition, migrant workers have a special instrument in protecting their rights that covered under the ICRMW. There are also other instruments in protecting migrants from exploitation and discrimination under several instruments that provide by the United Nations. The other instrument provided does not explicitly mention the migrant workers, rather it is generally provided for the rights and protection of migrants and refugees. For instance, the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the International Covenant on Civil and Political Rights 1966 (ICCPR) cover the rights and protection of all human beings regardless of their legal status and nationality. Here, migrant workers, non-citizens or non-nationals, are entitled to the same protection of the general rights as non-migrants under these two instruments. Moreover, the rights and protection of migrant workers also covers under the ILO conventions such as Migration for Employment Convention 1949¹, Migrant Workers Convention 1975², Occupational Safety and Health 1981³ and more

¹ Migration for Employment Convention (Revised) 1949 (No 97).

² Migrant Workers (Supplementary Provisions) Convention 1975 (No 143).

³ Occupational Safety and Health Convention 1981 (No 155).

which guarantees the rights of men and women workers regardless of their nationality and legal status, and promotes equal treatments without discrimination.

All of these instruments provides some minimum standards of protection like forced labour, degrading or inhuman treatment or punishment, freedom from slavery, exploitation and abuse, discrimination and others protection that has been stated. However, ICRMW and ILO conventions intended to ensure that the fundamental rights of all migrant workers have been protected regardless of any situation, whether they are employed illegally or immigrated. In practice, these instruments have had limited success in protecting the rights of migrant workers as there are still some countries that refuse to ratify and implement all of these international frameworks for migrant workers.

The implementation of legal instruments toward migrant workers fails to satisfy their rights in protecting them as migrant worker. This is because every state attempt to please its citizens rather than non-citizens. Here, we can say that there are still many issues in abuse and exploitation of the migrant workers, especially the workers that receive lower incomes from the host countries. For instance, most migrant workers received a lot of issues and cases that their rights have been violated such as their living conditions, wage manipulation and limited access to health care services. Therefore, this paper will discuss and explain the current issues of migrant workers violate their rights provided under the international migration law. The issue focuses on the implementation of international migrant workers during Covid-19. Lastly, this paper comments and critiques whether the practice and implementation of legal instruments provided for migrant workers have protected their rights or not.

ISSUES OF MIGRANT WORKERS AND INTERNATIONAL LAW

The outbreak of Covid-19 has affected more on non-citizens like migrants and refugees compared to non-migrants and non-refugees. This is because their living conditions have not guaranteed by the government, such as poor access to health care services, limited access to essential needs like food and water, and inadequate access to living places that have been provided. Their rights as migrant workers have increasingly violated the legal instruments on human rights, especially during Covid-19. As the outbreak of Covid-19 shocked the whole nations and each state struggling in handling the cases of their own citizens, the states have enduring health crisis and forgotten to protect non-citizens such as migrant workers who also suffer in accessing their rights especially during Covid-19.

Other than that, migrant workers also suffer to access their rights on medical care services during Covid-19 as most states are more likely to provide priority protection for non-migrants and neglect the migrants. With the outbreak of Covid-19, the most essential protection is to get access to medical care services, including testing and prevention. Moreover, migrant workers may face a higher risk of the infection of Covid-19 as their living conditions in a poor environment with the overcrowded place that could easily get infected by Covid-19. The migrant workers with the low income may face with limited access to medical care services as they cannot afford it.

In addition, with the spread of the Covid-19 pandemic, most of the migrant workers fully or partially lose their jobs and employment due to the lockdown announced by the state, where many companies shut down and annulling the contract of migrant workers without notice. This has caused the migrant workers unable to pay their rent, buy any essential supplies like food, water and protective equipment. Furthermore, it has been found that some countries have introduced a policy to implement unpaid leave and payment of wages reduction for migrant workers as some employers failed to pay for the jobs. Moreover, the ILO has estimated

that the outbreak of Covid-19 would affect 3-5 million fulltime migrant workers to lose their jobs which 1.35 million have already lost their jobs in the first three months of 2020⁴. Here, the rights of migrant workers stated in human rights conventions have been poorly implemented by the states that the economy itself also affected by the Covid-19.

Lastly, the spread of Covid-19 has made migrant workers wanted to return to their original countries as they believe that the host countries cannot guarantee their fundamental rights as migrant workers. This proved that their living conditions during Covid-19 forced them to live in their original countries rather than live in such a poor condition. However, not all migrant workers choose to return home as some of them are comfortable with their lives and jobs, and afraid to lose their jobs. Due to border closure and lockdowns, the process of returning the migrant workers becomes difficult as some countries would not be allowed to leave and enter in order to prevent the spread of Covid-19 inside their countries. This has violated their rights as migrant workers to return to their original countries, as stated in conventions.

DISCUSSION OF THE ISSUES

Living Conditions of Migrant Workers During Covid-19

The spread of Covid-19 pandemic affected the living conditions of migrant workers, especially low-income migrants. They often live in overcrowded conditions such as dormitories shared with 20 persons, each without basic access to sanitation and limited space to implement the basic prevention measures like social distancing. In some countries, the cause of increasing cases of Covid-19 mostly from migrant workers such as Malaysia⁵, Singapore⁶ as well as the

⁴ 'ILO Monitor: COVID-19 and the World of Work. Fourth Edition' 24.

⁵ 'Social Protection Spotlight' [2020] International Labour Organization.

⁶ "'We're in a Prison': Singapore's Migrant Workers Suffer as Covid-19 Surges Back' (*the Guardian*, 23 April 2020) <<http://www.theguardian.com/world/2020/apr/23/singapore-million-migrant-workers-suffer-as-covid-19-surges-back>> accessed 9 June 2021.

Gulf Cooperation Council (GCC) countries⁷. Since the government lacks in protecting migrants compared to non-migrants, the increasing cases tend to come from migrants.

The rights of migrant workers should have been protected by the government even during Covid-19 as provided under the legal instruments of human rights. According to one of the ILO conventions, Occupational Safety and Health Convention 1981, the migrant workers should be taking care of their safety, making sure that their living conditions are under control and in good health⁸. This means that the government must provide adequate protection for the migrant workers to prevent them from infected to Covid-19. These measures also have been regulated even before the spread of Covid-19 and therefore, the government must ensure that the living conditions of migrant workers are to be protected. Moreover, it is an obligation of the states to protect the migrant workers in fulfilling their basic human rights protection such as food, water, health service, shelter and information⁹.

Other than that, the migrant workers also suffered in living conditions that the government provided house for them. For instance, in Singapore, migrant workers have to live in the overcrowded environments and unsanitary conditions¹⁰. This has caused more clusters came from migrant workers as Covid-19 tends to get infected in crowded places. Also, the position that the migrant workers live is in poor condition that could easily expose by the Covid-19. Therefore, the government must take any measures to reduce the migrant workers' exposure to Covid-19 as stated under the ILO conventions; the government should provide guidelines for them to have an obligation in following it legally¹¹ and require punishment if they violate any of the legal obligations that have been stated¹².

⁷ 'Covid-19 Puts Gulf Migrant Workers in Dangerous Situation' - Heidi.News' <<https://www.heidi.news/geneva-solutions/covid-19-puts-gulf-migrant-workers-in-dangerous-situation>> accessed 9 June 2021.

⁸ Occupational Safety and Health Convention, Article 16.

⁹ International Covenant on Economic, Social and Cultural Rights, Article 11(1).

¹⁰ "‘We’re in a Prison’: Singapore’s Migrant Workers Suffer as Covid-19 Surges Back" (n 6).

¹¹ Occupational Safety and Health Convention, Article 10.

¹² Occupational Safety and Health Convention, Article 9(2).

The government is also obliged to provide equal treatment to migrant workers as they have the right to enjoy the same treatment as non-migrant workers, especially in providing adequate living conditions like housing¹³. However, those rights only applied to documented migrant workers and not to undocumented migrant workers. There is no convention that provided those rights and protections for undocumented migrant workers. Thus, it also stated in one of the ILO conventions where the migrant workers shall be treated the same as the non-migrant workers without any discrimination regardless of nationality, race and sex¹⁴. Therefore, with regards to the prevention of Covid-19, the states should take measures in providing migrant workers adequate places and avoiding them share the place that are overcrowded, which the outbreak of Covid-19 tends to be higher for migrant workers than non-migrant workers.

Limited Access On Medical Care Services During Covid-19

As discussed before, the higher risk of Covid-19 infection is in crowded places and lack of sanitation facilities in preventing the infection. The discrimination has been placed after the states have prioritized its citizens in accessing medical care services such as proper treatment and test, especially during Covid-19. The migrant workers should not be discriminated to access their rights on medical care services. It has been provided that migrant workers have the right to receive any medical care equally and cannot refuse to receive emergency medical care for them¹⁵. On the other hand, ILO conventions also provided that migrant workers must provide adequate protective equipment to prevent the risk of any illness¹⁶. In addition, the state

¹³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 43(1)(d).

¹⁴ Migration for Employment Convention, Article 6.

¹⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 28.

¹⁶ Occupational Safety and Health Convention, Article 16.

must ensure that any person has the rights to access to medical care services and treatments with the improvement of all aspects of the environmental to prevent the Covid-19 infection¹⁷.

Therefore, in order to prevention of Covid-19, the states should provide basic human protections equally without any discrimination in preventing them from infection of Covid-19 like masks, sanitizers and gloves. This is because it shows that 60% of 223 migrant workers in GCC countries receive inadequate basic protections in preventing them from the infection of Covid-19¹⁸. The states must take any measures to protect the rights of migrant workers accessing the medical care services while preventing the increasing infection of Covid-19. For instance, Qatar provides free medical check-ups for coronavirus and free quarantine services to both citizens and non-citizens ¹⁹. The same measures have been applied by Saudi Arabia, it provides medical treatments and testing for free to all Covid-19 infection cases regardless of their nationality²⁰.

Many countries have limited access to medical care services during Covid-19 as the pandemic suddenly attacks the world with insufficient medical care and protective equipment not just to migrants but also non-migrants. Moreover, the right to access medical care services is limited to documented migrant workers and many undocumented migrant workers suffering to access medical care services. This has been stated in ILO conventions, where the documented migrant workers shall enjoy the same medical treatment and test as non-migrant workers²¹. Therefore, the conventions only give advantages towards documented migrant workers and preventing undocumented migrant workers from seeking treatment, including

¹⁷ International Covenant on Economic, Social and Cultural Rights, Article 12.

¹⁸ Harihar Bhawan, 'Rights of Migrant Workers in the Clutches of COVID-19 Pandemic Study Report' 122.

¹⁹ Harry Moroz, Maheshwor Shrestha and Mauro Testaverde, *Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers* (World Bank, Washington, DC 2020) <<http://hdl.handle.net/10986/33625>> accessed 10 June 2021.

²⁰ *ibid.*

²¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 43(1)(e).

women and children. It also happened in Malaysia, where hundreds of undocumented migrants, including Rohingya, have been detained in order to prevent the spread of Covid-19 infection and stated that they have no rights to seek for treatments that would risk the spreading of Covid-19 infection as they illegally came to Malaysia²².

However, the undocumented migrant workers should provide at least minimum access to basic medical care services as part of states' protection from preventing them from the spread of Covid-19 infection and part of states' measures in decreasing the case of positive. Some countries have taken measures in providing access to medical care services to migrant workers regardless of their nationality. For instance, Colombia and Portugal have given equal access to medical care services including treatment and test for both migrants and non-migrants without any discrimination²³. Regarding vaccination, the human rights experts have stated that states should provide access to Covid-19 vaccination equally to all migrants regardless of their nationality and legal status without any discrimination²⁴. It also has been stated that vaccination must be prioritized to migrants that have mostly been exposed to Covid-19 infection like low-income migrants²⁵. This is because if the states do not equally provide access to vaccination, the risk of increasing cases of the Covid-19 pandemic remains not only to states but to the entire population of the world.

Loss of Jobs and Income During Covid-19

As many companies have shut down and stopped their business during Covid-19, migrant workers face losses of jobs and income including unfair termination of contract, forced unpaid leave and reduced work hours. With the loss of jobs and lack of income, many migrant

²² 'Malaysia Cites Covid-19 for Rounding up Hundreds of Migrants' (*the Guardian*, 2 May 2020) <<http://www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants>> accessed 10 June 2021.

²³ 'Social Protection Spotlight' (n 5).

²⁴ 'Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants'.

²⁵ *ibid*.

workers have poor access to basic needs like food and water, access to medical care services and other basic needs. Moreover, many companies and businesses have implemented a policy to reduce the payment of wages for migrant workers resulting them suffering and struggling to get access to basic needs for them and their families. For instance, the government of the United Arab Emirates has introduced a policy to forced unpaid leave and reduction of wages to migrant workers²⁶. Not just that, the government of Qatar also violated the rights of migrant workers where it was found that they have not being paid for their leaves²⁷. This has been stated that the migrant workers are facing abuses from irresponsible employers.

The human rights conventions have expressly provided that the rights of migrant workers where with regards to the termination of contract, they should have given the right to enjoy the payment of wages after dismissed²⁸. However, many governments have violated the rights of migrant workers where they supposed to be paid for their leave with the termination of contract as stated in the human rights conventions²⁹. The ILO conventions also provide that member states must implement the rights of migrant workers to be paid for their works without any distinction of their nationality. The treatments must be implemented equally as its applied to non-migrants. Therefore, the states which ratified the conventions must provide payment for their jobs and if the contract is terminated, the migrant workers must be paid for their leaving.

Moreover, the IOM has provided specific guidance for migrant workers with regards to payment of wages where the states must take efforts to support them financially by continuing their payments during Covid-19³⁰. For instance, providing short-term payment of wages for the migrant workers who have lost their jobs or income with the fundamental human rights

²⁶ Bhawan (n 18).

²⁷ *ibid.*

²⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 25(1)(a).

²⁹ *ibid.*

³⁰ 'ICC COVID-19 Response: Guidance on Protection for Migrant Workers during the COVID-19 Pandemic'.

need like food. These measures were provided by ILO to protect migrant workers during Covid-19. Some countries have applied the same measures where Brazil has provided emergency basic income for three months to those who have been lost their jobs or self-employed including migrants workers regardless of their legal status³¹.

Thus, the rights of migrant workers should be protected even states are in economic crisis resulting from the spread of Covid-19. The states must provide equal treatments for both their citizens and migrants as the basic human rights principle in the constitutions is equality and non-discrimination regardless of nationality and legal status. In order to help reducing the unfortunate migrant workers during Covid-19, a risk management policy would save them by providing financial support for basic needs such as food, medical care services and protective equipment like masks, sanitizers and gloves. With this, the average of unemployment among migrant workers will decrease and states could maintain their image as the state that protects the human rights of migrants even during Covid-19.

Access of Migrant Workers To Returns Home During Covid-19

In order to reduce the spread of Covid-19, states have implemented economic restrictions, including border closure and lockdowns, which led to many migrant workers stranded in various destination countries. Most of the migrant workers applied to return to their original countries but could not do so as the cross border restriction. With the loss of jobs and income, migrant workers have chosen to return to their original countries rather than risk living in foreign countries that could not guarantee their rights and protections as migrant workers, especially basic needs like food supplies and medical care services. Some migrant workers could not return to their original countries as their permit labour expires and faces problems in the host countries with no legal basic access to their rights as migrant workers.

³¹ 'Social Protection Spotlight' (n 5).

Therefore, some countries have taken the initiative to manage and arrange the return of their citizens that stranded in the host countries. For instance, Malaysia has been informed that the original country of migrant workers needs to manage and arrange the return of their own citizens and not the host countries³². Besides, with the spread of Covid-19, the original countries must ensure and guarantee to rescue their citizens, who choose to return, stranded in the host countries. This is because every person has right to return to their original countries regardless of nationality³³. Apart from that, the ICRMW also provides that migrant workers have the right to return to their original countries at any time³⁴.

With the rights to return to their original countries, if the states could not organise or pay for the return travel of the migrant workers, who are unable to pay for their return, the employers may organise and pay it with the conditions that the migrant workers need to pay back the return funds once they are being recruited³⁵. Furthermore, the original countries itself must provide support for their citizens during crisis like Covid-19 pandemic, as such support would be needed for the people that could not guarantees and protects their rights in the foreign countries.

Apart from that, the rights of migrant workers to return to their original countries has been violated as most states refused to allow crossing border during Covid-19. For instance, in Thailand, 300 migrant workers were arrested and detained for attempting to cross the border to return to their original countries, as a result, the government of Thailand no more provides anyone permitted to cross the border³⁶. Therefore, the host countries must oblige what

³² Bhawan (n 18).

³³ International Covenant on Civil and Political Rights, Article 12(4).

³⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 8(2).

³⁵ 'ICC COVID-19 Response: Guidance on Protection for Migrant Workers during the COVID-19 Pandemic' (n 30).

³⁶ 'COVID-19: Guidance for Employers and Business to Enhance Migrant Workers Protection during the Current Health Crisis' [2020] International Organization for Migration.

has been provided in the human rights conventions but accordance with the host countries' conditions including measures of protection in preventing the spread of Covid-19 infection³⁷. Nevertheless, once the cross border has been lifted, the host countries must guarantee that the rights of migrant workers to return to their original countries with proper precautions from the expose of Covid-19.

COMMENTS AND CRITIQUES

It is the responsibility of the state to protect and guarantee the rights of migrant workers from the risks in the current situation during Covid-19. The basic rights and protection must be preserved to avoid them from human rights abuses, including providing food, shelter, any medical care services and treatments including vaccines to the migrant workers that affected by the Covid-19 and at any cost protect them from the spread of Covid-19 infection. As the fundamental principle is non-discrimination, the state must ensure that the migrant workers protect from any discrimination, including poor living conditions with unable to access basic human needs, limited access to medical care services during pandemic, unfair work termination, forced unpaid leave and denied partially or full payment of wage.

Regarding living conditions, the migrant workers who live in poor environments, state must take actions to verify the conditions of migrant workers are safe, hygienic and reflect the current requirement of social distancing. The state or employer may reorganize their living arrangements to ensure social distancing by providing 1-2 people per room. Not just that, their basic needs such as food, water, and electricity as well as medical care services must ensure that they can access it without difficulties. As conventions allows employers to provide guidelines for safety and health when working, they may ensure that the migrant workers follow-up and implement the taken measure for Covid-19 prevention like cleaning and hygiene

³⁷ 'Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants' [2020] United Nations.

measures, social distancing with effectively isolate and provide medical assistance for the migrant workers that have symptoms or tested positive Covid-19.

During this pandemic, the health check-ups and medical treatments must be prioritized and implemented to the most migrant workers especially with the low income to prevent the spread of Covid-19. The human rights law has formulated and enforced different strategy, plan and policy for the state to implement the prevention measures in the context of Covid-19. However, some countries have a weak implementation in protecting migrant workers during Covid-19 with no proper efforts was made to protect their human right standards. Therefore, the state and employer must implement health-related measures to ensure that the migrant workers get access to medical care services. The measures must include the reinforcement of social distancing and protective measure which provides mask, sanitizers and gloves to reduce the risk of Covid-19 infection among migrant workers.

Furthermore, in order to reduce the spread of Covid-19, the state must provide and ensure that migrant workers get access to Covid-19 vaccination equally without any discrimination regardless of their nationality and legal status, as stated in Article 28 of the ICRMW and Article 12 of the ICESCR. Besides, states have duty to respect the rights of migrant workers to access to medical care services including vaccination. Such assistance essential to guarantee the rights of migrant workers to prevent from Covid-19 infection and to those countries facing obstacles to get vaccines for both migrants and non-migrants, special consideration will take into account.

The decline of irresponsible states and employers to the loss of migrant workers' jobs and income during Covid-19 affects the living conditions of migrant workers. With the loss of jobs and income reduction, migrant workers could not access basic human right like inadequate financial support for food, water, shelter, medical care service and treatments, and

other basic supplies. During the outbreak of Covid-19, the most essential need is protective equipment like masks, sanitizers and gloves for migrant workers to safeguard their safety and health from the infection. As discussed before, the states and employers must play roles in protecting the rights of migrant workers who have lost their jobs and income during this pandemic by giving financial supports for basic essential needs. In addition, some measures must be taken by states to ensure the fundamental rights of migrant workers are protected in accordance with various legal instruments provided by the United Nations, ILO and others.

As for the migrant workers who choose to return to their original countries, the states must assist and manage the process of returning them to their destination countries during Covid-19 as most of the host states do not allow crossing the border. The migrant workers have the right to return to their destination countries as stated in the instruments, so the state must oblige to return them if they are willing to do so. However, with the spread of Covid-19, the states must ensure that the migrant workers who have returned to their original countries follow the safety rules during and after travel like mandatory quarantine and provide basic essential needs during the quarantine.

In conclusion, as there are many violence and discrimination towards migrant workers, international human rights law has provided all these legal instruments to protect their rights as migrant workers – these legal instruments concern the discrimination of migrant workers in any country. Even though there is still a lot of discrimination that could not be avoided but international human rights law itself has to play its role in eliminating the practice of non-discrimination towards them. The protection provided for particular migrant workers proved that international human rights law respected their rights and protection which prevents the creation of any discrimination regardless of nationality.

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