

The Issue of Human Rights of Migrant Workers in Multinational Corporations An Answer from the Global Governance System

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ABSTRACT

This essay aims to explore the problems related to the human rights of migrant workers in Multinational Enterprises and give practicable solutions using a cross disciplinary approach by integrating previous and present international situations with future trend of development of the legal system and the economy. Through analysing and discussing the literature review of several laws and conventions promulgated by the United Nations and the International Labour Organisation, the root causes of exploitation and discrimination have been discussed including low status of migrant workers, different cultures, and language barriers, which can be exacerbated by inadequately operated MNEs. With specific case studies of Walmart and McDonald, more detailed explanations in terms of states, MNEs and migrant workers themselves are given accompanied by the current situation of these workers as well as the effectiveness of existing ways to protect their rights. Finally, the feasible solution is produced by researching global governance system covering its definition, the advantages and disadvantages of “Top-Down” governance path and the “Bottom-Up” approach to governance with analysis in depth. The conclusion that the “bottom-up” “tripartite negotiation” mode can be adopted in the governance of migrant workers’ human rights in MNEs is reached.

Keywords: *Multinational Enterprise (MNE), Migrant Workers, Human Right, Regulation, Global Governance System.*

1. INTRODUCTION

With the exponential growth of the world’s population, more and more scholars, including but not limited to anthropologists, sociologists, jurists, etc, to emphasise the future prospects of the distribution of labour resources. As predicted by sociologists, the world population will peak at 12.7 billion in the near future [1]. It is worth pondering that, under the circumstance that the world's total resources are only decreasing but not increasing, the excessive population in the future will inevitably lead to the situation of insufficient supply and uneven distribution of labour resources, which may give rise to a series of social, economic and even legal problems. In order to avoid the unbalanced distribution

of international labour resources and the large gap in economic capacities among countries, the significance of migrant labour should be emphasized under the impetus of economic globalization. Astonishingly, the International Organization for Migration (IOM) released the World Migration Report 2020, which shows that the total number of migrants in the world in 2019 is 272 million, which is equivalent to the entire population of Indonesia [2]. Therefore, the immense immigrant group will deservedly bring a traditional social problem with the characteristics of The Times: Migrant Workers.

Work is the foundation of most immigrants’ livelihood in their host country and usually the main aim of migration. Since the emergence of multinational

corporation, disputes over the workers' rights have never stopped, especially for migrants. Multinational corporations play an important role in the employment of migrant workers. Their strong capital strength, centralized and unified management and other characteristics are incomparable to ordinary enterprises. However, overseas workers from developing countries are engaged in almost all types of jobs due to the fact that they are usually poor-educated, and few of them actually make it to the management level of the international company. Also, because of migrant workers' low recognition of law and responsibilities of enterprises, corporations usually put a larger number of tasks and pressure on them with lower salaries than native people, most of them are at the bottom of the employment camp and are usually engaged in the dirty, dangerous and difficult so-called "3D jobs" [3]. Numerous cases have revealed that these immigrants' rights are not well protected. For example, a lot of African-American and Mexican-American labor's work at the bottom of multinational corporations in the United States. Although migrant workers may be paid more than they would be working in their home countries, their rights are almost always trampled upon, denied or even violated in their host countries. They have almost no social security, which should be guaranteed by enterprises. Through these ways could corporations shrink their responsibilities and exploit these migrant workers. Moreover, this phenomenon may lead to many other problems. For example, these kinds of workers in multinational enterprises are always at great risk of racism, xenophobia and forced labor [4].

However, the international Labour protection mechanism is still incomplete. Increasing transnational labor mobility has become a serious issue in modern society. The management of migrant economic activities and the establishment of a fair treatment for migrants in the global economy should be a vital topic of concern for all countries. Undeniably, the progress and development of world civilization will inevitably abandon all kinds of human rights violations. In the 1990s, the economist Friedman [5] famously said that the only social responsibility of business was to increase profits. It is no longer applicable today. Legislation is needed to regulate the responsibilities and obligations of multinational enterprises to solve urgent problems.

This paper analyses the current trend of economic development and value concept of fairness and justice through case studies, and gives feasible methods and future prospects towards this issue.

2. LITERATURE REVIEW

2.1. ILO and UN Conventions concerning Migrant Workers: A Complementary Set of Standards

International Agreements conducted by the International Labour Organisations (ILO) that initially provide comprehensive resolutions to the human rights issues relating to migrant workers are the Migration for Employment Convention (No. 97) and the Migrant Workers (Supplementary Provisions) Convention (No. 143), adopted by the United Nations (UN) in 1949 and 1975 respectively [6]. The former convention is ratified by forty-five member states and the latter is ratified by nineteen [7]. These initiative ILO instruments and treaties firstly reveal the importance of ensuring safety and rights of family members of migrant workers, thus providing guarantees and establishments to protect both migrant workers and their families throughout the emigration process, and the assistance afterwards [8]. Cécile Vittin-Balima has commented that "Such agreements have the advantage that they can be adapted to the specific characteristics of particular groups of migrants and that both sending and receiving countries can share the burden of ensuring adequate living and working conditions for these migrant workers" [9]. The ILO Conventions provide protection on human rights to all employees, including the marginalised social parties, such as migrant workers discriminated by their gender, race, nationality, Etc. Due to the nature of the job, female migrant workers can be more socially vulnerable, especially when they are recruited as sex workers, the number of female migrant workers in prostitution and other sex works in South Asia has grown rapidly [10], and the uniformity of the ILO Conventions assures the protection of rights of vulnerable parties like females.

It is also noteworthy that the clauses and protocols do not intrude on the state sovereignty of home states and host states, nor their right to refuse the entry of migrant workers. States that migrant workers intend to enter will also be deciding methods of assessment on entry, and the regulatory systems after workers migrate into the state. Another remarkable concept of these ILO conventions is that they were not conducted to follow the reciprocity principle, but to solidly solve the human right issues of migrant workers, therefore, disadvantaged groups like refugees and homelessness are also included in the scope of protection.

Although these ILO conventions are not perfectly comprehensive, because they do not include the elaboration of domestic migrant worker policies and legislations, their main principles are still recognised as milestones on the solutions of migrant workers' human rights issue, since the principles provide guidelines and structural framework to each state, and the fundamental component for domestic policies. It also shows the extent

of protection of migrant workers and the facilitative limitations on the migration process, which means states are able to create similar migration measures to welcome the international workforce. Furthermore, these conventions call on alleviating irregular and illegal migration behaviours and labour trafficking, as well as eliminating exploitation and illegal recruitment of migrant workforce. Same as their main principles, these specific measurement includes collaboration between both home states and host states.

However, with full recognition of their benefits, it is notable that there are some parties being neglected or excluded from these ILO conventions, these parties include frontier workers, short-term employed members of liberal occupations and artists, seafarers and self-employed workers. Convention No.143 especially excludes internships and special duty assignments, which means migrant workers in these specific parties are not being protected by the convention. Yet these exclusions are only for the second part of the convention, where the national equal opportunity are discussed, the conventions still ensure their basic human rights and safety.

2.2. International Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

The UN Convention ICRMW was adopted by the United Nations, Committee on Migrant Workers, in December 1990, which was signed by thirty-four member states [11]. Though it has not been ratified by major trade and employment states, the majority of significant nations of origin, such as the Philippines, have ratified it [12]. The major progress of ICRMW is establishment of practical and concrete provisions of the ILO conventions, by embodying the clauses in the ILO convention No. 97 and No. 143, their programmes of actions can combine to trigger further progress.

As the primary aim of the ICRMW is to further protect the rights of individual migrating for employment, even it has a long-term goal of alleviating irregular and illegal migration, those irregulars migrated natural persons under the working objectives are also included in the scope of protection. Furthermore, another valid progress is that the retired member states are prohibited to exclude migrant workers from application and occupation under discriminative reasons, and this clause includes every category of migrant workers, including those excluded in the ILO convention No. 143 [13]. This means the equal rights of migrant workers of every status in every occupation can be guaranteed, and its indivisibility and comprehensiveness further strengthen this regulation. As the ICRMW includes and adopted wider scope of protected parties, and it considers the modern differentiation and progression of the migrant workers, this convention's emphasis on equal treatment is more comprehensive and effective. Furthermore, the

equality scope of ICRMW includes but is not limited to: equal respect and treatment to workers before the courts and tribunals, equal social welfare to migrant workers and residents, equal treatment for family members of migrant workers (medical welfare and education entry requirement) [14]. Health has also been a familiar issue of migrant workers, their right to health could be further weakened by collective discrimination from society or corporations. These health rights have been directly addressed and emphasised within the ICRMW, including the right to not be subjected to torture or cruel, inhuman or degrading treatment or punishment [15]; the right to not be held in slavery, servitude or be required to perform forced or compulsory labour [16]; the right to liberty and security of person, including the right to be protected against violence, physical injury, threats and intimidation by public officials or private individuals, groups or institutions [17]. These assurances on migrant workers' right to health further protect their human rights and regulate the community to achieve equal treatment.

However, comparing the ICRMW to the ILO conventions, the latter has made a clearer definition of migrant workers' right in terms of reimbursement social security (Section I.2.3, VII.5.2, VIII.4.4), this means that migrant workers are receiving less guaranteed protection for the reimbursement aspects than before, and that the multinational enterprise has a tactic on exploiting these migrant workers by threatening them on reimbursement. For the part of additional benefits that the migrant workers and their families members may receive from formal documents and authorisation (ICRMW Part IV), the ICRMW fails to make concrete progress, and even made more vague regulations. This is because the ILO conventions provide classified rights of migrant workers in trade unions, rather than the equity of regular workers regarding social welfare accessibility, which means migrant workers' human right can be more effectively protected by the ILO conventions instead of the ICRMW.

2.3. Protecting Rights of the Irregular Migrant Workers

The issue that should be prioritised is the exploitation and discrimination problems of migrant workers, and its root causes are usually their low social status, different cultures, and difficulty of communication (different language), which can be reinforced by inadequately operated multinational enterprises. On top of this, migrant workers that entered without formal authorisation or formal labour contrast will receive more severe exploitation. These irregular migrant workers are usually distributed into department with less regulation and weaker applications. These situations mean that though irregular migration should be alleviated, irregular migrant workers' human rights should still be firmly protected and respected. This significance of protection is revealed in the ILO convention No. 143 and the

ICRMW, where the fundamental level of human rights protection for every migrant worker (despite the extent of regularity) is compulsory for every signed member state. Human rights of irregular workers were previously limited by the ILO convention No. 143, yet with full recognition of the essentialness of ensuring human rights for every worker, the ICRMW broadened the scope of protection so that basic rights of migrant workers without formal authorisations are also protected.

To further improve the resolution on the human right issue of migrant workers in MNEs, the ILO conventions and the ICRMW have recently greatly emphasised the importance and endeavour to alleviate irregular migration and illegal or informal employment, as well as reinforced the essentialness of each states formulating specific regulations to make practical influences on human rights protections. Suggestions made by the ICRMW and the ILO conventions include but are not limited to: the imposition of consequences on irregular migration and irregular employment; information exchanging support to migrant workers; and building of social welfare service facilities [18].

3. CASE STUDY: ANALYSIS ON HUMAN RIGHTS OF MIGRANT WORKERS

After studying the human rights of migrant workers, our group will use two particular cases to analyse on human rights of migrant workers. Traditionally, it is often assumed that illegal violations of migrant workers' human rights often happen in relatively small companies to uneducated foreign workers. In practice, however, the situation is not that simple. According to our group's study, even large multinational companies violate foreign workers' human rights, and even well-educated foreign workers are hurt. To better demonstrate and explain the use of the human rights of foreign workers by multinational corporations, this essay will discuss two specific cases of Walmart and McDonald.

3.1. Case 1: Walmart-contracted Warehouse Companies

Walmart now contracts with a number of warehouse companies that primarily supply Walmart in order to provide people with different kinds of products. Unfortunately, there is some evidence that these companies are also violating foreign workers' human rights.

In 2012, the National Union of Room Workers found adult room workers, mostly from Mexico, at a Walmart supplier in Blue Bridge, Los Angeles [19]. As the workers say, some supervisors are forced to work 16-20 hour shifts a day, which can take a huge toll on their physical and mental health. Some people may argue that because of the high pressure of work, there are long working hours around the world. Some people may be

willing to work more hours a day to earn more money. But in this case, things seem really different. Do these workers get paid more for being under so much pressure? The answer is no. On the contrary, according to these workers' records, their wages have been significantly reduced for different reasons [20]. Some workers even said they were threatened not to talk to the outside world or strike, or their families would be harmed. The same thing happens to many workers, of whom, according to statistics, three thirds are immigrants and foreign workers whose special status makes it easier for companies to take advantage of them. All in all, these foreign workers are facing more working hours.

Sometimes this exploitation falls not only on traditional foreign workers who are always uneducated, but also on well-educated foreign workers, such as students. The second case is about Mr. Donald, which is also a company familiar to people from all over the world. Many people's childhoods are linked to Mr. Donald's, but it must be admitted that Mr. Donald's childhood also had problems with the human rights of foreign workers.

3.2. Case 2: McDonald

In March 2013, some foreign workers in McDonald's in central Pennsylvania who were students from Latin America and Asia resigned due to the fact of cut salaries and endless overtime [21]. They were students from Latin America and Asia that was really well-educated. They came here for further education and they worked at McDonald's to pay their way through school. In the traditional view, the exploitation of workers' human rights seemed to be aimed only at those at the bottom of society who have relatively little knowledge and few horizons. As well-educated people, it seemed like that these students would have the ability to maintain their human rights while working. However, in fact this could not protect them from being exploited as foreign workers. And here is how they were treated. They were housed in some basements that were very cramped [22]. The living conditions were very poor. What's more, the boss even used the supply of the basement as an excuse for cutting their salary. The rent was claimed to be extremely high, which was apparently mendacious. As a result, their payment was always brought to even zero. After such a period of time, students had to choose to quit and asked the media for help. These facts were proved by the National Guestworker Alliance, who always fought for the human rights of foreign workers. These foreign students still had the awareness and ability to strike and seek for help. In contrast, as we can imagine, there are a lot of uneducated foreign workers who do not have that kind of awareness and knowledge to fight for their human rights. So their situation would be even worse.

3.3. Opposite idea: Is more working hours an exploitation or an opportunity?

For the ideas above, an unavoidable question is, is more working hours an exploitation or opportunity? There are some opposite ideas which assert that working for more hours will help people get more opportunities and experience, which will be beneficial for their further development [23]. Some ideas also suggest that this will help workers to earn more and some workers are actually willing to do that.

Our group disagrees with this idea. The main reason is that the situation in the cases above could not provide foreign workers with more money or opportunities. Firstly, more working hours does not always mean more money paid. In the cases above, the workers did not get more money and on the contrary, in the McDonald's case, their salary is cut off with the excuse of renting houses. Secondly, they are not willing to do that. In the case of Walmart, the foreign workers are threatened not to tell the situation to others or their family will be hurt. This is incredible. Last but not least, they are simply forced to do repetitive work as cheap labor. Few opportunities and experience will be gotten. Foreign workers get nothing but exhaustion and pain from long working hours. So a sound conclusion can be reached that this is actually a kind of exploitation.

3.4. Reasons

From the cases above, it's not difficult to see that the companies in these cases are very famous multinational enterprises, which are always known as good business reputation. However, apparently these multinational enterprises are not meeting their responsibilities to foreign workers. It is conceivable that other smaller companies may be in even worse shape. There must be some inherent reasons for these kinds of violations. From our group's point of view, there are three main causes from three different angles.

3.4.1. States

The country does not carry out effective supervision and control over multinational enterprises. Maybe there are a number of laws and regulations that restrict this. But in fact, the state has not carried out vigorous supervision and restriction against this phenomenon, which provides some MNEs with the chance to exploit their foreign workers. They are aware that the chances of being caught and prosecuted are very low. Without oversight there can be no rule of law. In some areas, supervision can be even more significant than the rules themselves.

3.4.2. Multinational Enterprises

The fundamental purpose of a company is to make a profit. Sometimes, though, some entrepreneurs are very

focused on fulfilling their social responsibilities. But more often than not, companies will use every possible opportunity and resource to make more profits, especially in today's extremely brutal market. Under the drive of competitive pressure, many multinational corporations will choose to take the risk of exploiting their foreign workers' human rights, even though this is illegal.

3.4.3. Foreign Workers

The special status of the foreign workers themselves will also be an important reason for the violation. In fact, foreign workers are very different from native workers. They are always uneducated, which means they don't know how to use the law to defend their human rights, or even what their rights are. They always have few relatives or friends in a new country, which means their social connections and networks are very weak. They are desperate to make quick money, which lowers their judgment. To conclude, they have special status and this makes them easier to be exploited and poor at defending.

4. FUTURE PROSPECTS OF GLOBAL GOVERNANCE OF MIGRANT WORKERS' HUMAN RIGHTS IN MULTINATIONAL CORPORATIONS

The rights of migrant workers have been an issue of concern and discussion since the end of the 20th century. In particular, the United Nations issued the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" in the 1990s, which regarded the rights and interests of migrant workers as human rights and emphasised that the legitimate rights and interests of migrant workers should be respected and protected in all aspects of society. Unfortunately, 20 years later, fewer than 50 countries had ratified the treaty, none of which is a major country of migration [24]. It is clear that the vast majority of these countries do not regard the right to migration as a human right to codify and ratify national law. Therefore, in order to fully protect the rights of migrant workers and effectively safeguard their basic human rights status in the host country, the international community should seek a more practical approach to govern the issue of migrant workers' human rights.

4.1. Definitions of Global Governance

The idea of global governance is generally believed to be first put forward by the American scholar James Rosenau who believes, global politics, economy and culture are experiencing an unprecedented development of integration and fragmentation coexist at the same time, in such a world political, economic and cultural background, the political authority's important position in the migration, the governance of human social life and therefore from the state as the main body of the

government management to multi-level management, which is very important in the governance of the global level [25]. Therefore, the international community generally agrees to divide global governance into two types: one is "top-down" supranational governance, and the other is "bottom-up" multi-level governance [26]. Naturally, as one of the main issues of global governance, the human rights protection of migrant workers in multinational corporations should be discussed from these two governance paths.

4.2. "Top-Down" Governance Path

The "top-down" approach to governance is that countries cede some of their sovereignty to a higher-level body, be it international or regional or inter-state, that sets rules, standards and documents to restrain and monitor bad behaviour, and may even impose sanctions. Although the principle of subsidiarity in decentralised governance may limit its scope, in the recognised areas of its authority, such a supranational system trumps national sovereignty [27]. As we all know, sovereignty is an important attribute of a country, which is embodied in internal dominion and external autonomy. The sovereignty of a country is sacred and inalienable. Therefore, this way of governance beyond national sovereignty will make all countries in the world reluctant to relinquish part of their power. This will result in a "top-down" governance path that is difficult to properly solve specific problems, and even lead to the blocking of relevant countries or selective acceptance of supervision by international organisations when it is beneficial to them. Unfortunately, however, no country in the world can now choose to ignore the international community and solve the problem of migrant labor in multinational corporations on its own. For example, no matter how perfect a country's immigration policy is, it cannot prevent international illegal immigrants from ignoring the country's specific immigration policy and being illegally employed by the country's domestic enterprises. Therefore, it is difficult for a country to protect the human rights of all types of migrant workers through its own domestic laws without the international community.

4.3. The "Bottom-Up" Approach to Governance

This "bottom-up" approach began with the rise of a range of bilateral, regional and interregional institutions dealing with international migration, which enabled countries to selectively engage in different forms of cooperation with other countries. In addition to the emerging bilateral and regional institutions, a number of multilateral institutions are also involved because their functions relate to some aspects of international migration governance. As a result, a series of legal norms concerning international labor migration have emerged, such as multilateral system, regional and trans-regional treaties and bilateral arrangements [28]. Some scholars

believe that the cooperation between countries on migrant labor is the best way to deal with this issue, because such cooperation is usually based on the policy cooperation and exchange of migrant rights and illegal immigrant repatriation, and the bilateral agreement signed thereon is an important means to protect migrant labor between countries [29]. At the same time, it also provides practical suggestions for the establishment of international monitoring bodies and provides international legal sources for future international treaties. In addition, at the regional level, regional integration frameworks, many free trade agreements and regional negotiation processes all contain governance factors of international labor migration. The Southern African Migration Dialogue (MIDSA), for example, provides good practice in the area of migrant Labour governance through the exchange of migration information, data, and managerial experience, based on trust and consensus building [30]. In this light, the basic thinking of the "bottom-up" approach follows a three-tiered framework of national, regional and global governance outcomes through bilateral agreements, regional consultative processes, and global initiatives. This seemingly trivial and complex governance path, in fact, there are rules to follow, further demonstrating the fragmentation of the current governance of international labor migration.

4.4. Prospect of Future Management of Migrant Workers' Human Rights

In the era of economic globalisation, the human rights issue of migrant workers has become a global issue. Therefore, through the analysis of the international governance model above, the "bottom-up" bilateral and multilateral governance approach should be the most practical governance model at present. Generally speaking, it is difficult for countries to reach a unified international consensus in the face of their own interests. Similarly, due to their different legal systems and immigration policies, it is also difficult for countries to formulate unified international standards or even legal rules and principles. On the other hand, it is well known that the establishment of international institutions with "top-down" governance is a very complex process that requires multiple rounds of negotiations and a balance of interests. However, if bilateral or multilateral agreements are adopted to deal with the human rights of migrant workers for a long time, the international governance will inevitably form a decentralised and chaotic situation, which will result in uneven standards for the human rights of migrant workers, and the international community will be more unable to effectively supervise and govern. In fact, to some extent, these two paths are not independent, either or state, but mutually reinforcing and complementary situation. For example, in the same way that bilateral agreements between countries can make up for the weakness of international regulatory institutions when they are weak, these bilateral or

multilateral agreements can also promote the establishment and change of international authorities.

To sum up, in the future, the governance of migrant workers' human rights in multinational corporations can adopt a "bottom-up" "tripartite negotiation" mode, that is, the government, enterprises and workers can negotiate and talk to jointly formulate an agreement that meets the interests of all parties. As a global tripartite organisation, the ILO has organised a series of regional tripartite consultations on Labour migration since 1999, such as the EU-funded ILO project "Managing Labour migration as a means of development in the Euro- Mediterranean region, East and West Africa", etc. These meetings were attended mainly by senior officials from national ministries of Labour and senior leaders from national trade unions and employers' confederations. Training methods were used to ensure that participants engaged in an equal dialogue and speech, expressed their views and exchanged views on issues of common concern concerning Labour migration. Thus, this "tripartite consultation" model not only establishes specific standards for the protection of migrant workers' rights, but also provides feasible suggestions for the future development of regional institutions or the reform of specific domestic policies in the relevant countries.

5. CONCLUSION

This thesis has discussed the human right issue relating to migrant workers in Multinational enterprises and feasible solutions towards this issue, but more centrally it has analysed the advantages and disadvantages of two main types of frameworks (Chapter 2), with full consideration of the existing international laws and conventions (Chapter 2-4). The main argument of this thesis is that selecting the most compatible resolution frameworks by unravelling the way it is implemented ensures both state sovereignty and individual rights, and guarantees both trade efficiency and employment equity when addressing Migrant workers in MNEs. In analysing the theoretical, practical, and farsighted effectiveness of two main frameworks, "Top-down" and "Bottom-up", this thesis has demonstrated both individual and socio-economic effects of these representations.

Considering the multidimensional and multifaceted characteristic of migrant worker human right issue, a cross disciplinary approach was used. Analysis perspectives from mainly Law, and a small proportion of economic, social sciences and public policy were employed to comprehensively explore the effectiveness of two types of resolution frameworks. Law especially and solid theoretical foundations have provided the general frameworks of this thesis to discuss how the existing frameworks towards migrant worker issue can be improved, while researching techniques allowed this paper to explore scholars' perspective on international

conventions and international frameworks, and to make a combination with our critical aspects. Particular attention was paid to the cases of Walmart and McDonald's to both inform the current situation of migrant workers in MNEs and to introduce the effectiveness of previous ways of protecting workers' rights, and this thesis has firmly emphasised that the unjustifiable treatment of migrant workers in MNEs has severe socio-economic consequences.

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