

Study on the Legal Issue of Workers' Rights Protection: From the Perspective of International Human Rights Law

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ABSTRACT

The economic globalization of labor protection has caused the change of labor rights in international trade, some irresponsible international investment has brought harm to the rights and interests of international labor, and some workers all over the world are subject to different degrees of infringement and discrimination every day. At the same time, labor rights violations have attracted more national attention; whether labor rights should be protected and how to protect them has become a hot topic. A country's emphasis on the protection of labor rights could also contribute to its sustainable development. Through the research method of case analysis, this paper analyzes the existing problems and solutions by comparing the legislation and behavior taken in various countries. This article is divided into three chapters. The first part of this paper introduces the past and present examples of labor infringement, the second part describes the existing problems of labor protection, respectively, the subject of obligation is not clear, the labor rights protection mode is single, the relevant legal norms are lacking, the third part will focus on some solutions and suggestions to countries, countries should improve legislation and combine the status quo to enact new international trade relations of labor protection policies.

Keywords- *workers' rights protection, international investment, international human rights law, legal system*

1. INTRODUCTION

In March, the group company HM made a statement about Xinjiang cotton. The statement said that the group company HM would not use the cotton from Xinjiang, China, because there has slave labor in Xinjiang. After the statement, many brands and group companies followed the step of HM, stopped the cooperation with factories in Xinjiang. However, the Chinese Foreign Ministry showed two photos to prove that the statement is false and there has slave labor in America. One of the photos indicates the sight that more than 40% of cotton fields in Xinjiang have already used machines to pick cotton. Another photo is about American slaves who were forced to pick in cotton fields. Not only were American slaves forced to work in the past, but even

today, Indian workers are still forced to work more than 87 hours a week, earning only 1.20 U.S. dollars an hour, which is actually far below the minimum wage stipulated by the laws of the United States and relevant States. In addition, some relevant statistics show that all 50 states and Washington, D.C., have reported cases about slave labor and human trafficking in the past five years. The data also show that as many as 100000 people are trafficked from abroad to engage in slave labor in the United States every year, and half of them are trafficked to "sweatshops" or subjected to domestic slavery. All of these indicate that the human rights of workers and laborers are infringed nowadays.

Years ago, there were many slaves in the world. Capitalism developed by forcing slaves to work all the time. With the abolition of slavery, although there were

no slaves anymore, there still has slave labor in modern society. Many international corporations pay a lower price for the laborers who come from poor countries or developing countries such as India, Mexico, Africa and Latin America and enforce them to work in order to get more profits. Such behaviors have already infringed upon those laborers' human rights, in particular their right to life and health. Many workers have no time to take a rest, have a meal, or sleep. They need to keep working in order to get the low wages that can help them survive. For them, the most significant thing is to survive. What's more, most of them work in an awful environment where they have much more chances to suffer from some illness just like some heart disease and respiratory diseases. Seriously, they may have a sudden death when they are working. They have no life and health security.

The issue about the human rights of laborers is vital not only for individuals but also for companies and corporations. Some international institutions and organizations, such as International Labor Institution, are trying to deal with the problem by signing the Convention and establishing a supervision system. However, it still needs a long time to solve the problem, and everyone needs to work together.

2. REASONS FOR CURRENT PROBLEMS

2.1 Unclear subjects of protecting workers' rights

The main body of protecting laborers' human rights is not clear. In the past, the governments, the labor unions, or some non-governmental organizations were considered that they should be responsible for laborers' human rights because they were strong enough to do that. However, the situation has changed. Hersch Lauterpacht, an English international legist, believes that the traditional positivism doctrine has always been very clear, and only the state is the subject of international law [1]. The development of modern human rights law is mainly in response to large-scale human rights violations committed by the state or government. Today, not only governments, labor unions and some non-governmental organizations are considered as the main body is responsible for the human rights of laborers, but corporations are also thought of as the main body. For example, in China, companies should be responsible for their employees' human rights. They should pay the salaries for workers punctually and provide a clean and comfortable environment for employees to work. What's more, companies also provide some different kinds of insurances for laborers so that they could get

Identify applicable sponsor/s here. (*sponsors*) compensation if something happened.

With the development of globalization, multinational enterprises are becoming more significant in our society.

More and more individuals choose to work at multinational enterprises in order to get a high salary. Although the state or government bears the primary responsibility for the promotion and protection of human rights, international human rights law does not exclude the obligations of multinational corporations in respect of human rights.

The International Human Rights Policy Council divides the human rights obligations of multinational enterprises into indirect obligations and direct obligations based on existing international human rights instruments and the interpretation of the Court of Human Rights. Multinational direct obligation mainly comes from the universal declaration of human rights, international criminal law, the UN's declaration, international human rights treaties, the organization for economic and cooperation development of the multinational company guidance, the international labor organization "on the multinational enterprises and social policy of the tripartite declaration of principles, the voluntary enterprise production rules and other relevant provisions. The multinational indirect obligation is actually a moral requirement. Although the company has moral obligations, the company still has no specific legal obligation to respect and protect human rights [2]. What's more, International labor conventions have more objective and specific provisions on corporate human rights responsibilities. A Chinese scholar Chi mentioned in his paper that International Labor conventions are of great significance for multinational enterprises to assume responsibilities in the field of human rights. Although the conventions are parties to states, their provisions apply equally to multinational enterprises, which are obliged to comply with the Labor standards set out in those conventions in their operations [3].

Therefore, some experts believe that multinationals can be considered as the main body of the laborers' human rights, but some people insist that only governments, labor unions and some non-governmental organizations can be responsible for the human rights of workers.

2.2 Single way of protecting workers' rights

At present, labor security is faced with a variety of problems, after a number of surveys show that overseas workers are experiencing various difficulties, including labor facing the main problems are overtime, wage arrears, personal safety threats, low wages, and workers will also conflict with the local people; In addition, overseas workers are sometimes subjected to fraud from labor intermediaries.

Overtime is not just occasional normal over time, but noticeable over time and a rest day. In some countries, many workers take only one or two days off a month and work more than eight hours a day, or even more than 10

hours, and while their daily working hours are severely overworked, they still work more than five days a week, or even some work seven days without rest. In these countries, however, normal and reasonable working hours are available to normal domestic workers. Obviously, companies treat domestic and foreign employees differently, so it can be seen that the right to the rest of overseas workers cannot be guaranteed and is the main target of abuse.

There are also problems with the protection of labor rights, the lack of opportunities for personal development for overseas workers and the lack of opportunities for further development by enterprises. Long-term high-intensity work when they do not have time for personal study, better technical training, cannot carry out professional qualification or take the title examination. Working in harsh environments is also susceptible to diseases, such as the high risk of tropical infectious diseases in places such as Africa, and hard work can also damage the health of workers. These workers do not have health insurance abroad, and they often face high medical costs if they are seriously ill.

However, the single mode of protection of labor, the difference of international labor standards will bring new contradictions, the International Labor Organization as a professional international organization to adjust and deal with labor relations, its proposed standards are widely recognized. However, the criteria proposed were merely the protection of the fundamental rights of workers, such as freedom of association, the prohibition of forced labor, the prohibition of discrimination and the prohibition of child labor. Economically, monetary compensation for injured workers and the setting of minimum wages are not enough to protect workers around the world.

2.3 Shortage of the relevant legal norms

At present, when sovereign States legislate at home, there will be differences in the terms of human rights. The connotation of human rights is vaguer, it is difficult to define its scope in the legislative time, which leads to the protection of workers' rights will also be difficult, because there is no specific description of what rights workers have. In international legislation, there are fewer legal norms to guarantee labor-related rights systematically, and the lack of uniform international standards leads to contradictions in the determination of human and labor rights. The protection of labor exists in some bilateral and volatile treaties, but only among some countries. For instance, the Paris Agreement was not signed by 10 countries, including Iran, Iraq and Turkey, and the United States withdrew from the agreement on November 4, 2020. The Memorandum of Understanding on Cooperation in the field of labor is also signed between different countries, such as China and New Zealand, and there are no similar agreements between

other countries. Moreover, because of the nature of its soft law, its implementation is not effective, which is one reason why labor rights are not guaranteed. For example, following the outbreak of Covid-19, the United States announced its intention to withdraw from the WHO and formally notified the United Nations on 7 July 2020 that it had withdrawn from the WHO and was not bound by its relevant statutes. This could put the lives and health of workers in the United States at risk.

3. SUGGESTIONS FOR A COMPLETED LEGAL PROTECTION SYSTEM

3.1 Define subjects of protecting laborers' rights

To deal with the problem of unclear subjects of protecting workers' human rights, the best way is to clean and define the main body of protecting laborers' human rights in law.

On one hand, hard law can be a good way to solve the issue. Governments can confirm the main body that should be responsible for laborers' human rights so that when some multinational enterprises want to establish subsidiary corporations in those countries, they must obey the law in those countries. Therefore, multinational enterprises have a clear obligation to protect the laborers' human rights according to the host states' law.

On the other hand, soft law can also be used to deal with the problem. Some international organizations can establish the convention to define the subjects of protecting workers' human rights. For example, the United Nations can establish a convention which is explicitly stipulated the main body of protecting laborers' rights, some methods to protect the human rights of workers and some other necessary contents. After establishing the convention, countries join the convention of their own accord. Once they join the convention, they become the subjects and should be responsible for the human rights of laborers. In addition, the famous American international jurist Professor Henkin Louis specifically explained this in detail. In his article commemorating the 50th anniversary of the Universal Declaration of Human Rights emphasizes: "Every individual includes a legal person. Every individual and every organ of society does not exclude any person, any company, any market, or any cyberspace. The Universal Declaration of Human Rights applies to them all [4]." Moreover, the Universal Declaration of Human Rights declares: the common understanding of the people all over the world about the inevitable and inviolable rights of all members of the human family constitutes the obligation of all members of the international community [5]. Therefore, it is necessary to clear the main body of the obligation of protecting the laborers' human rights. Only when the main body is cleared, workers and

laborers can find precise and express subjects to be responsible for their human rights after some accidents.

3.2 Advise for protecting labor

In order to solve the dilemma of protecting the single means of labor, countries can use legislation to achieve it, and when legislating, they can try to complement and perfect their own laws with the advantages of the laws of other countries. In particular, the types of rights protected by labor are defined in the form of a special chapter under which provisions for the protection of different rights, such as the protection of the right to health, the right to a good working environment, the protection of the right to unemployment prevention and relief, are established. The issue of unemployment, a common concern of workers, is one of the important guarantees of legislation. For example, when a merger results in the loss of a worker's job, Article 24 of the Korean Labor Standards Law restricts the dismissal of Article 1 of which provides that "an employer may not dismiss an employee for business reasons unless there is an urgent business need" in order to protect the employee from dismissal as a result of the merger. In Japan, however, the relevant legal provisions have been amended to state that the transfer and inheritance of labor contracts should be subject to the consent of employees in order to successfully implement mergers and acquisitions and protect employees. In Taiwan (Taiwan is Taiwan, China in this paper), however, the Taiwanese authorities, as lawmakers, play a leading role in solving the problems posed by mergers and acquisitions, but they have not perfected the relevant laws. Thus, when protecting workers through legislative means, Countries or regions can broaden their international horizons and learn from the laws of other countries and improve domestic legislation.

3.3 Negative protection into positive protection

In protecting workers from discrimination or discrimination in employment, the current practice of the International Labor Organization for the protection of workers with disabilities could be drawn upon. Although the Declaration on The Rights of The Disabled Persons was established in 1975 and the World Program of Action of Disabled Persons was adopted by the United Nations organization in 1982, these documents do not solve the problem of employment of persons with disabilities very well. More detailed research is needed to resolve this issue.

In order to address the employment of persons with disabilities, the International Labor Organization has designated a number of bills, including international standards in this area. International labor standards consider the concept of disability in two different

viewpoints: passive measures for income guarantee are given as governmental social assistance and social protection; Active measures are trained and supported by the field of employment. The former is a disability that can occur at work and in military operations, while the latter is that the State should provide social protection mechanisms.

Employment Policy (Supplementary Provisions) Recommendation of International Labor Organization runs "The promotion of full, productive and freely-chosen employment... should be regarded as the means of achieving in practice the realization of the right to work" (ILO, Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)). The International Labor Organization aims to break down barriers between persons with disabilities and society, integrate them into their activities and ensure that they are able to sustain themes and meet their basic needs. The ILO also requires all its members, even if they do not accept the relevant conventions, to respect disabled workers and to work to eliminate discrimination in employment. The Committee on Persons with Disabilities was also established in 2008 to promote the elimination of discrimination against persons with disabilities.

The protection of the labor rights of persons with disabilities could be inspired by the establishment of protective organizations or committees for workers discriminated against on different grounds, specialized legislation and the investigation of discrimination in different countries of the world. At the same time, it should be under known that the solution to the problem of protection of labor rights, not only through monetary compensation, but also in advance to do a good job of prevention, attract the attention of the country or region, and establish a complete protection mechanism in advance. In some European countries, much progress has been made in protecting persons with disabilities. Germany and the Netherlands, for example, have adopted legislation to create new special laws to protect or provide incentives for persons with disabilities. Israel has put in place mechanisms to prohibit discrimination, etc. The situation of persons with disabilities has received attention at the national level. In fact, self-protection from within countries is an important way to protect themselves, whether or not persons with disabilities, whether or not they experience discrimination.

The protection of labor rights should not be just negative, but preventive mechanisms should be actively developed.

For example, the Philippines, a large country that exports labor, has a better preventive mechanism for the protection of labor rights. In order to protect overseas workers to the maximum extent available, the Government of the Philippines has provided early

warning of information to overseas workers, such as security information in some host countries, information on labor intermediaries and information on employers. The release of this information will help workers to be aware of potential pitfalls and prepare in advance. Philippine labor laws also strictly regulate and punish intermediaries that violate the rules.

4. CONCLUSION

Nowadays, there are still many people who live in emerging countries working for low wages to survive. They have no their own human rights and cannot protect the human rights by themselves. Many questions stop them from protecting their human rights. Therefore, the government, international organizations, non-governmental institutions and companies should take responsibility to protect the human rights of laborers, especially those multinational enterprises, because many workers leave their hometown, go to another country and work in multinational enterprises.

However, there are still some problems to prevent multinational enterprises from being responsible for workers' human rights. For this reason, government or international organizations can define the main body of protecting laborers' rights. What's more, countries can write more details in law so that laborers can use the law to protect their human rights more effectively. In addition, the governments can transform the negative protection into positive protection. There are always solutions to deal with the problems.

Human rights are very significant for individuals. Human rights include many rights, such as the right to life, body right, and the right to health. All of those rights are closely linked with everyone. Laborers long to work in a comfortable, and healthy environment, be paid with deserved wages and live happily with their families. This is the right thing to do, not only for laborers but also for

governments, international organizations, and multinational enterprises.

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