

Migrant Workers' Rights from a Human Rights Perspective

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ABSTRACT—: Migrant workers constitute 59 percent of the migrant population. Migrant worker as a phenomenon is here to stay. Migrants contribute to growth and development in their place of destination, while the place of origin benefits from their remittances and the skills acquired. Migration is a fundamental human right to work and move in freedom. The two main approaches to deal with migration are the migration management and the human rights approach. The human rights approach is based on international human rights law. Under international human rights law, all migrants are entitled to the respect, protection, and full enjoyment of their human rights, regardless of their migration status. This paper deals with the provisions for the protection of migrant workers and examines the provisions by looking at case studies of migrant workers. In addition, it examines the plight of migrant workers during COVID-19 in the light of travel restrictions, loss of employment and stigma.

Keywords: Labour Rights, Human Rights, migrant workers, COVID-19, Human Rights violations

Introduction

In an ever-evolving globalized world, international labour migration has become a central issue, affecting virtually all countries. The International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalization, 2008, identifies migration as one of the characteristics of globalization that reshapes the world of work in profound ways. (ILO,2016)

Migrant workers are labourers who go from place to place searching for work seasonally or long-term. Migrant workers travel within their own country or across borders and travel to other countries for work. People move away from their place of origin, searching for employment, prone to human rights abuses. They often are seen as outsiders or troublemakers who take jobs away from locals. (Lewis and Skutsch, 2001). Other terminology used when referring to migrant workers includes overseas workers, foreign workers, aliens, foreigners and foreign nationals, non-national workers, immigrant, and non-immigrant workers, and “expatriate employees” (ILO,2016).

Though member states of UN and ILO use different terminologies for migrant workers in their national legislation, they adhere to the rights of migrant workers in their legislation. The UN recommendations on statistics of international migration define the “stock of international migrants present in a country” as “the set of persons who have ever changed their country of usual residence, persons who have spent at least one year of their lives in a country other than the one in which they live at the time the data is gathered” (UNDESA,2015).

Many countries like the Philippines, Bangladesh, Pakistan, and other developing countries export migrant workers as their remittances are essential for their home economies. For example, the Government of Pakistan indicated that the inflow of remittances in 2013–14 was US\$15.83 billion. Likewise, the Government of Bosnia and Herzegovina indicated that remittances amounted to 7 percent of the overall gross domestic product in

2011 (ILO,2016).

There are variations between countries regarding migrant workers: Morocco, Peru, and Russia are countries both of origin and of destination; Pakistan has many people going to work abroad and is also a transit point for Afghanistan. Myanmar, Nepal. Ukraine has had a significant number of people leaving the country; on the other hand, Bahrain and Singapore receive many migrant workers. (ILO,2016).

In 2015, there were 243.7 million international migrants globally, about 3 percent of the global population, compared with 172.7 million in 2000; 48.2 percent of migrants globally are women (compared to 49.1 percent in 2000) (ILO,2016). In 2010, almost one-third of overseas Filipinos were domestic workers, 98 percent being women. Almost 98.47 percent of migrant domestic workers from Indonesia were women. (ILO,2016). There is also a regional variation in migration; migrant workers from Asia moved in large numbers to other regions. The governments of Australia and Sweden, reported that they had most migrant workers from India. The governments of Nepal and Pakistan reported that most of their migrant workers moved to the Gulf and Middle East countries.

Migrant workers represent a very significant share of the global workforce in many countries. ILO estimates show that globally, migrant workers constitute 4.4 percent of all workers. They are 35.6 percent of all workers in the Arab states, 20.2 percent in Northern America and 16.4 percent in northern, southern and Western Europe. (ILO,2015) Approximately 9.1 million victims of forced labour (44 percent of the total of 20.9 million) have moved either internally or internationally.

ILO research suggests significant decent work deficits concerning migrant workers' fundamental rights at work. Migrant workers lack freedom of association, access to equal and fair wages, proper skills matching, decent working conditions, and adequate social protection, including non-availability of social

security benefits. Migrant workers are disproportionately affected by a higher occupational injuries rate than the native population. Many child migrants end up in agriculture or services such as domestic work, and some are victims of trafficking in persons (Birchall ,2016).

International Instruments For Protection Of Migrant Labour

The ILO and the United Nations (UN) have worked toward protecting the rights of migrant workers and their families. The ILO convention applies to all forms of labour or work.

From its origin, the ILO also resolved to protect “the interests of workers employed in countries other than their own” (ILO Constitution, 1919, Preamble, recital 2)¹ and has spearheaded the development of international standards for the governance and protection of migrant workers. ILO has adopted two Conventions, in 1949 and 1975, accompanied by non-binding Recommendations². The ILO standards are essential for safeguarding the dignity and rights of migrant workers. All international labour standards apply to migrant workers. Certain instruments address the specific issues of migrant workers. The ILO recognizes the issues faced by migrant labour and has tried to address it through their various standards.

Migrant specific instruments are Migration for Employment Convention(revised)1947; Migration for Employment Recommendation(revised) 1949; Migrant workers(supplementary provisions) Convention,1975; and, Migrant workers recommendations, 1975. The selected conventions and recommendations containing specific provisions on migrant workers are-Equality of Treatment (accident compensation) Convention 1925; Em-

1 See https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO

2 See <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

ployment Service Convention 1948; Social Security (minimum standards) Convention 1952; Protection of Migrant Workers (underdeveloped countries) Recommendation 1955; Plantations Convention 1958; Equality of Treatment (social security) Convention, 1962; Maintenance of Social Security Rights Convention 1982; Private Employment Agencies Convention 1997; HIV and AIDS Recommendation 2010; Domestic Workers Convention, 2011; and Domestic Workers Recommendations 2011 (ILO, 2021).

United Nations System

After the Universal Declaration of Human Rights (UDHR)³ and the Genocide Convention of 1948⁴, the UN produced two composite international agreements in 1966 - the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The ICESCR came into force in 1976 (Davidson, 1993). The ICESCR dwells on the working details of the economic, social, and cultural “human rights” which are to be made available to the people by the state. The ICESCR lays down the following rights - right to self-determination (Article 1), a guarantee of equal rights of enjoyment of economic, social and cultural rights by people without discrimination of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status (Article 2 and 3); an equal opportunity to all people to the right to work under just and favourable conditions of work and to earn a living thereby (Article 6); the right of workers to form trade unions and join the trade union of choice, and to be engaged in lawful activities (Article 8); the right of everyone to social security, including social insurance (Article 9) (Gupta, 2004). The term “other” in Article 2(1) of the ICESCR includes non-national, such as refugees,

3 Refer <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

4 See https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

asylum seekers, migrant workers, and victims of international trafficking, irrespective of their legal status and documentation.

The Convention on the Elimination of All Forms of Racial Discrimination applies to non-citizens too. The Convention on the Elimination of Discrimination against Women (CEDAW) talks of women and includes migrant women (Cholewinski,2010).

From 1999-2001 several UN initiatives for labour migration were undertaken with the ILO. In 1999, the mandate of the UN established a Special Rapporteur on the human rights of migrants. The UN Convention against Transnational Organized Crime and its associated Protocols (including trafficking in persons and migrant smuggling) was adopted in 2000. In 2001, the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, adopted a Declaration, referring to the necessity of eliminating racial discrimination against migrant workers⁵. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990 (hereafter the UN Convention on Migrant Workers) entered into force in July 2003. The UN Convention on Migrant Workers elaborates on the human rights of all migrant workers and members of their families, including those in an irregular situation.

The purpose of the instruments is to ensure cooperation between member States to regulate international labour migration and to ensure equality of opportunity and treatment for workers working in countries other than their own. These rights include:

- the right to life (Article 9);
- protection against inhumane or degrading treatment (Article 10);
- freedom of thought and religion (Article 12(1));
- equal access to legal proceedings (Article 18(1));

⁵ See Declaration - <https://www.un.org/WCAR/durban.pdf>

- the principle of no less favourable treatment of migrant workers with nationals concerning remuneration (Article 25(1);

Furthermore, that States shall take appropriate measures to ensure that migrant workers enjoy any of the rights derived from this principle because of the irregularity of their stay and others. (Article 25 (3))⁶.

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), established according to the international Convention, includes the ILO in an official consultative capacity. In 2001 the “Berne Initiative”⁷, was launched with the International Organization for Migration (IOM) as secretariat. It was “a States’-owned consultative process of national migration authorities”; the resulting International Agenda for Migration Management (IAMM) included chapters on the human rights of migrants and labour migration. In the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), only a few states have ratified the Convention. The obstacles for the low level of ratification include political will, legal barriers, economic obstacles, political obstacles, lack of awareness, public attitudes, and national sovereignty. Some states that have ratified the ICMW, such as Guatemala, Ecuador, Mexico, and Sri Lanka, do not fully conform to its obligations as there are still legal discrepancies, lack of awareness, corruption, and poor governance (Sookrajowa and Pécoud, 2019).

At the first UN General Assembly High-level Dialogue on International Migration and Development (HLD) held in 2006, its principal outcome was the Global Forum on Migration and Development (GFMD)⁸, established in 2007 as a voluntary, informal, non-binding and government-led process. The GFMD process includes government-only meetings, separate meetings for civil society, workers’, and employers’ organizations, “common

6 Full document available from - <https://www.unhcr.org/496323780.pdf>

7 See <https://www.iom.int/berne-initiative>

8 See <https://www.gfmd.org/>

space” sessions for governments and civil society, and a newly developing separate dialogue track between governments and the private sector. The GFMD recognizes the presence of private sector in the labour market and has included all the parties involved in the protection of rights of labourers (Cholewinski,2010).

The importance accorded to rights of migrant workers is seen in the inclusion of migrant workers in SGD-8 as part of Sustainable Development Goals (SDGs) of the United Nations 2030. The target 8.8 is on sustained, inclusive, and sustainable economic growth, full and productive employment and decent work for all, is concerned with the need to “protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”⁹.

In 2008, on the eve of the 60th anniversary of the Universal Declaration of Human Rights (UDHR), the GMG prepared a report on international migration and human rights in which it underscores vital messages in several areas. Concerning the legal framework, the report contains five key messages:

- Migrants are human beings with rights protected by States as they exercise their sovereign right to determine who enters and remains in their territory.

- Migration, development, and human rights are intrinsically interconnected. Respect for the fundamental rights and freedoms of all migrants is essential for reaping the full benefits of international migration.

- The human rights of migrants are a shared responsibility. Governments of origin, transit, and destination each have an essential role to play in safeguarding the human rights of migrants.

- The ICMW offers States the most comprehensive framework for protecting the human rights of migrants. Concerns linked to its low level of ratification and efforts must be intensified better to articulate a human rights approach to migration, includ-

⁹ <https://www.sdg.gov.bd/page/indicator-wise/1/323/2/0#1>

ing through greater dissemination of tools to strengthen States' capacities in this regard. Good practices should be documented to serve as guidance to inform States' approaches.

- Intergovernmental organizations and civil society have vital roles in working with governments and migrants to protect their rights and respect their obligations. Intergovernmental organizations and civil society should be encouraged, and further cooperation developed (Cholewinski,2010).

The United Nations Development Programme (UNDP) is interested in migration from the human development perspective, and its Human Development Report 2009 takes a "human (rights) approach to migration by exploring how improved migration policies can enhance human development. UNESCO's (United Nations Educational Scientific and Cultural Organisation) international migration program focuses on the promotion of migrants' human rights. UNESCO has campaigned for the ratification of the ICMW.

The New York Declaration for Refugees and Migrants adopted on September 19, 2016, the Global Compact for Safe, Orderly and Regular Migration (GCM) has set out a range of principles, commitments, and understandings among the Member States international migration in all its dimensions. The GCM should make an essential contribution to global governance and enhance coordination on international migration¹⁰.

At the Regional level, various initiatives to protect and promote the rights of migrant workers; one was by the ASEAN in 1997, SAARC in 2014. For labour migration between Asia and the Gulf states, two inter-government regional consultative processes were in operation - the Colombo dialogue and the Abu Dhabi Dialogue. There are several bilateral agreements regarding the protection of migrant workers and various aspects related to the protection of migrant workers. Governments and Inter-

10 See IOM and UN Migration Agency report - https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf

national community at various levels recognizes the presence of the migrant workers and the need to protect the interest of the migrant workers. Initiatives to protect the migrant workers is in place at the sub-regional level, at the regional level as well as at the international level¹¹

Migration, Human Rights and Development Perspective

Development has two aspects - one, the economic aspect and the other, the human aspect. There exists a complementary relationship between Human Rights and development. Human Rights focus on equality and non-discrimination, whereas development focuses on more significant equity in the longer run, which underpins faster growth. The “push factor” for migration is unemployment and poverty. The “pull factor” is wage levels and employment opportunities in the country of destination. Both the country of origin and the host country benefit from the migrants. The country of origin receives remittances, skills, and knowledge from the migrants; with the newly acquired skills and knowledge, the migrants’ aid in the growth and development of their country of origin, resulting in poverty reduction. Remittances that migrants send to their home country funds better children’s education, better health, housing, and family welfare. Women who migrate can influence their societies of origin. They bring new perspectives and ideas into their society. Women who are left behind in their country while their husbands migrate also gain knowledge and skills as they must shoulder new responsibilities and roles in the absence of their husbands (Inter-parliamentary Union et al,2015).

The host country benefits from the work done by the migrants. Migrants fill the gaps in the labour market and bring social, cultural, and intellectual dynamism to the society that they have joined. As per World Bank, “There is considerable support

¹¹ For background information on social protection for migrant workers in ASEAN see - <https://www.social-protection.org/gimi/RessourcePDF.action?id=55654>

for the view that migrants create new business, jobs and fill labor market gaps, improving productivity and reducing inflationary pressures” (World Bank, 2017). Women in developed economies lead a professional life as migrant women act as caregivers for their children and the elderly.

The ICMW lists several rights which address the specific needs of migrant workers: information about their immigration status and employment, and rights and obligations – in a language they can understand; respect for their cultural identity; transfer of earnings and savings during and at the end of their stay. They typically have two complementary goals: on the one hand, they incorporate workers in the underground economy into the formal economy and so increase their contributions to national tax and social security revenues; on the other hand, they limit worker exploitation and abuse. This approach recognizes that migrants who do legal and decent work are likely to contribute more to development than socio-economically marginalized groups (Sookrajowa and Pecoud, 2019).

Various Human Rights instruments recognize migrants as individuals entitled to the full enjoyment of human rights. Apart from economics, the other factors for migration are lack of healthcare, food, education, inequality of opportunity, gender discrimination, environmental degradation, absence of peace and security, human rights violations. A multidimensional link exists between demand and human rights abuses; deficits in development and migration can be apparent in trafficking migrants and the migration of indigenous people. In South Africa, 30-50 percent of the South African health graduates leave for the UK and USA. In the migration of health workers, three clusters of Human Rights are involved: the freedom of movement; second, the labour rights - where poor terms and conditions of work are a primary cause for migration; the third, right of health is underdeveloped in poorer countries of origin and strengthened in more affluent countries of recruitment (Crush, 2019).

The migrants are vulnerable as they are physically away from their home country. As strangers to a society, regular migrants may

be unfamiliar with the national language, laws, and practice. The unknown territory may make them less able than others to know and assert their rights. They may face discrimination, unequal treatment, and unequal opportunities at work and in their daily lives. Irregular migrants may be reluctant to seek protection against rights abuse from police or employment authorities because they fear deportation. In some countries, national employment law does not protect migrant workers, and in any case, migrants are more likely to work in those parts of the informal employment sector where labour standards are not applied. During times of political tension, they may be the first to be suspected – or scape-goated – as security risks; by linking anti-terrorism and immigration control in the context of the 'war on terror', many governments have encouraged – however unintentionally – xenophobia against migrants from particular regions of the world (UNESCAP, 2012).

While the majority of the countries of origin in South and South-West Asia have enacted legislation and put in place mechanisms to protect migrant workers, exploitative practices in labour recruitment and employment in low-wage occupations remain. In addition, the importance of inter-state cooperation among countries of origin in the subregion and destination countries has been recognized but thus far only a few binding agreements have been signed (Executive Summar, UNESCAP, 2012:15)

Women Migrant workers are sometimes characterized as 'double marginalization' – female migrant workers are particularly vulnerable to exploitation and ill-treatment. Distinctions between trafficked women and voluntary women migrants may be challenging to make because both may end up in comparable situations of exploitation, violence, and abuse. As the UN Special Rapporteur on Violence against Women noted, "women and girls left their homes and were trafficked 'in such large numbers' in Asia because of lack of economic opportunities and social discrimination. Discrimination against women was present in inheritance laws, land laws and employment regimes, traditional practices whereby young girls were sold into concubinage for feudal lords,

or into prostitution, and the practice of polygamy. All these made women an easy prey for traffickers” (UNHCR, 2006:6). She reported that this growth in trafficking had been paralleled by an increase in undocumented migration in the region, encouraged by inequality, poverty and all forms of gender discrimination.

From its review of country situations, the Committee on the Elimination of Racial Discrimination (CERD) has noted that severe problems commonly faced by migrant domestic workers include debt bondage, passport retention, illegal confinement, rape, and physical assault. Reports by non-governmental organizations confirm that many women work without contracts, or if contracts exist, they are on unfavorable terms, are paid low salaries, have no insurance, and have no control over working hours. Employers may forbid domestic workers to leave the house, confining them for the period of their employment to the house or apartment building in which they work. (Inter-Parliamentary Union et al., 2015).

Some women can leave abusive employment. Many do not, and the reasons they give illustrate the helpless situation of many domestic migrant workers: a lack of alternative employment; ignorance of rights; financial obligations to family and the fact of their dependence on the worker’s income; lack of financial resources; fear of deportation; restrictions on movement; lack of identity papers; fear of arrest; fear of violence by agents/traffickers/employers; debt bondage; fear of retaliation against the family for unpaid debts; and a general fear of reprisals (UNESCAP, 2012).

There is a clear link between human rights, poverty and development, which is often not acknowledged:

Less attention has been paid to the role of human rights during the migration process or to the ways in which a lack of respect for human rights of migrants reduces their ability to contribute to development. Unless migration is also approached through this perspective, two difficulties arise: first – and self evidently – that the protection of migrants’ rights is not given priority; secondly, that where migration is seen only in economic

terms, migrants may come to be regarded as commodities, rather than as individuals entitled to the full enjoyment of their human rights. There has been relatively little research from a human rights perspective into the reasons why migrants (as opposed to refugees) move. There is a need to go beyond economic explanations of migration which focus on income poverty, and focus also on human poverty, which also takes into account – eg. a lack of health care, food, and education, and inequality of opportunity, including gender discrimination. Seen in this way, the link between poverty and human rights is clear (UNHCR, 2006:4).

Conditions Of Migrant Workers

Singapore

In Singapore, a large workforce for the construction sector comes from Bangladesh, India, China, and Myanmar. The migrant worker pays between US\$ 2400-4800 to the agent in his home country to get them employed in Singapore and to attend to travel arrangements. Many of them are deceived by the agents in the host country too. The agents take away a portion of their salary from them every month. When they want to return home after a few years of stay in Singapore, some cannot get the money they have deposited as savings every month. Their contracts are abruptly ended, and they are left with no money to return home. As the money transactions are undocumented, it becomes difficult for them to file a legal suit and recover their money. If they meet with an accident at the workplace, it results in immediate deportation. In case they protest, the employers abuse them with physical violence (Seneviratne, 2012). During the pandemic in Singapore, hundreds of workers infected with COVID-19 were locked up in dormitories. Wages were not paid for more than two months and unhygienic living conditions made them vulnerable to the virus. Under the Employment of Foreign Manpower Act, migrant workers with Work Permits are ineligible for government health care subsidies, and employers are required

to provide medical insurance. The high number of COVID-19 cases among Singapore's migrant workers highlights the vulnerabilities of migrants globally during this pandemic as they are often excluded from their host country's health programs, which may lead to delayed COVID-19 detection and care. This also increases the risk of outbreaks, as seen in the sudden surge of COVID-19 infections among migrant workers. The COVID-19 pandemic is not the first infectious disease outbreak to disproportionately affect dormitory residents in Singapore, as there have been previously documented outbreaks of dengue, typhus and tuberculosis. Thus the pandemic exposed Singapore government's inhuman accommodation of migrant workers in overcrowded dormitories and the need for civil planning in the treatment of migrant workers (Sun and Smith, 2020).

Middle East

Amnesty International, along with Human Rights Watch, Migrant-Rights.org, and Business and Human Rights Resource Centre (BHRRC) sent a letter to six Arab countries, including Saudi Arabia, Qatar, Bahrain, Kuwait, Oman and the UAE, raising their concerns and suggesting recommendations that aim to protect the rights of migrant workers during the COVID-19 pandemic¹². These six countries host the majority of the 23 million migrant workers living in Arab states, mainly from Asia and poorer Arab and African countries. In the Middle East, during the pandemic, unpaid construction workers were on the brink of starvation.

The labour systems operating in these countries – alongside dire living conditions, scarce legal protection, lack of information, and restricted access to preventive health care measures and treatments – make it extremely difficult for migrant workers to protect themselves during such a pandemic. “Gulf countries are highly dependent on migrant workers in almost every major sector to help grow their economies – and yet they have utterly failed to protect

migrant workers, and treat them with the dignity and respect they deserve”, said Lynn Maalouf, Amnesty International’s Middle East Research Director. “This pandemic has further exposed their extremely vulnerable position, with many cases of COVID-19 being reported amongst migrant worker communities.”

Speaking on Al Jazeera’s Inside Story, Thulsi Narayanasamy, head of labour rights at the Business & Human Rights Resource Centre (BHRRC) argued that the Covid-19 pandemic has exposed the structural inequalities that face migrant workers all over the world. She pointed out that workers such as in Qatar and Kuwait have been living in very unhygienic and cramped conditions that preceded the arrival of the virus. Rather than taking responsibility for improving the conditions of the workers’ living quarters, the onus is now put on sending countries to bring their people back home (Seneviratne, 2020).

European Union

Migrant workers from poorer Eastern European countries working in the EU are also facing similar conditions. A joint investigation by Ethical Consumer and The Observer, the British Retail Consortium, representing UK supermarkets, published in September 2020, found that migrant workers on vegetable farms in Almeria in Spain, supplying UK supermarkets, had been left unprotected in the face of a new wave of COVID-19 infections in the region..

Clare Carlile writing in the Ethical Consumer website, a UK campaign organization supporting better conditions for migrant workers in the EU, pointed out that the situation results from years of neglect of workers. “They got visited by the Spanish army on March 18 and told to stay put, even though in some places running water is several kilometers away.” With COVID-19 fears, a water truck comes twice a week. “If you are at work and miss it, you must walk several kilometres for water after a hard day,” she said. “Failure of employers to provide basic

rights has for years created dire circumstances for the inhabitants of the settlements. Now, the pandemic has pushed the situation to crisis point” (Carlile, 2020).

Asian Countries

BHRRC says that the world’s biggest manufacturer of rubber gloves Malaysia has seen a surge in orders from the EU and US since these regions became the epicentre of Covid-19. The orders have been flowing to companies that have earlier been blacklisted for the exploitation of migrant labour. One such company is WRP Asia Pacific, which the US says no longer use forced labour. The UK’s National Health Service (NHS) has recently bought 88.5 million medical gloves from Supermax, a Malaysian company that was blacklisted in 2019 for recruiting migrant workers that were reportedly exploited, such as by paying excessive recruitment fees to agents, passport confiscations, working 12 hours per day for up to 30 days without rest, poor working and hostel conditions, and wage deductions for speaking out against working conditions (Seneviratne, 2020).

Thailand is home to more than 4 million migrant workers, most of whom are from Myanmar, Cambodia, and Laos. Amid the COVID-19 pandemic, they have urged migrant workers to stay put and avoid travelling back to their countries of origin. However, many migrants returned as no job means no food and a real risk of homelessness.

The Mekong Migration Network (MMN)¹³ urged relevant authorities in countries of origin and destination to take immediate action to protect and support the welfare of migrants and their families. Many migrant workers are left to their own means because most of those in Thailand are either undocumented or are ineligible for government assistance because they are in the informal sector. During the pandemic, the focus must shift from remittances to the welfare of the migrant workers. People are concerned about

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their personal safety and about their family members.

Sending countries like India must put enough pressure on host governments to ensure the safety and health of the workers and their wages paid. “We have seen the situation in Singapore where the migrant workers are being infected and that should be of serious concerns for their families,” she says. “If you can’t speak to your children to say how you are going, I think concerns about those remittances and the impact on the economy should be secondary.” (Seneviratne, 2020)

Migrant workers have, on some occasions, found themselves stranded as they become displaced by enterprise closure but unable to move across closed borders, and others are the victims of infection because of the living accommodation available to them.

The pandemic has hurt the most vulnerable and disadvantaged, has wedged open still further the fracture lines of structural inequality and injustice which disfigure our labour markets and societies. The low paid, the unskilled, the least protected, women, the young, and migrants have borne the brunt of the economic and social crisis. Less developed countries have suffered more than advanced economies. The pandemic is deepening inequality to unacceptable levels, both within and between countries.

The ILO estimates that the number of workers living in moderate or extreme poverty increased by 108 million in 2020, reversing five years of continuous progress. The closure of borders has had a serious impact on the practice and management of migration, which is the most direct response to mismatches in demand and supply for labour and skills, but without materially changing the task of ensuring safe, orderly, and regular migration for all. Migration issues need urgent attention as and when human mobility resumes. Similarly, how the pandemic has highlighted the fundamental importance of social protection to all societies adds compelling reasons to ensure complete, adequate, and sustainable protection systems everywhere, whatever the prevailing demographic dynamics may be (ILO,2021).

Conclusion

The governance of migrant workers is under criticism as the approach is of 'migration management' rather than a rights-based migration (Hujo and Piper, 2015). The rights-based approach to migration is based on international human rights law and form the basis for all migration policies. Under international human rights law, all migrants are entitled to respect, protection, and full enjoyment of their human rights, regardless of their migration status. The migration management approach has a neutral or depoliticized way to 'tackle' migration,, firmly grounded in a neoliberal market ideology.

In recent debates, one of the key achievements is overcoming dichotomies between rights approaches and development approaches to migration and recognizing the complex nature of migration, which requires integrated policies, coherence between different policy areas and decision-making levels, and more robust bottom-up participation and migrant agency. Implementing the 2030 SDG Agenda, including the Paris Agreement (on climatic change) and the Sendai Framework (for disaster risk reduction), successfully, would go a long way in reducing push factors for migration. Indeed, the importance of addressing the root causes of migration is now part of the political mainstream discourse in Western countries or the Global North. It needs recognition that migration is here to stay, has multiple benefits, and is a fundamental human right to work and move in freedom and security. Civil society and critical actors should hold governments accountable for implementing the Sustainable Development Goals (SDGs) and the GCM (Global Compact for Migration)¹⁴. For example, by analyzing and monitoring whether development, security and migration policies are transformative and empowering, redistributing and sharing resources and power (Hujo,2019).

Rights violations against migrants are pervasive, as evidenced in the increasing number of reports published by migrant

¹⁴ <https://www.iom.int/global-compact-migration>

and human rights NGOs in recent years. Progress in protecting migrants remains slow, and such violations are being exacerbated by the present global economic crisis. Migrants are less likely to be viewed as beneficial to the economy and more as taking away the jobs of natives and draining national welfare systems. Many challenges remain in protecting migrants in an irregular situation, temporary workers in low-skilled jobs, and migrant women in domestic work. Challenges also exist in ensuring that unjustifiable distinctions regarding access to fundamental rights are not arbitrarily introduced between specific categories of migrant workers, such as temporary and long-term workers and low-skilled and skilled workers.

Social rights are recognized as being of universal application, in conformity with the fundamental principle of non-discrimination. These challenges can only be addressed by applying the rights' construct to the entire migration life-cycle. Destination countries clearly have the primary obligation to safeguard the rights of all persons on their territories. Countries of origin have a role to play as abuses start, particularly in the process of migrant worker recruitment. Protecting migrants' rights as human and labour rights is also a shared responsibility of countries of origin, transit and destination, and the international community.

References

- AMNESTY INTERNATIONAL.2020. *Gulf: Concerns regarding migrant workers' rights during COVID-19 pandemic*. <https://www.amnesty.org/en/latest/research/2020/04/gulf-concerns-regarding-migrant-workers-rights-during-covid19-pandemic/>
- Birchall, J. 2016. "Gender, Age and migration: An extended briefing." *Institute of Development Studies*. <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/10410/Gender%20Age%20and%20Migration%20Extended%20Briefing.pdf?sequence=1>

- Carlile, C. 2020. "Supermarkets call on Spanish Government to Act." UK: Ethical Consumer. <https://www.ethicalconsumer.org/food-drink/supermarkets-call-spanish-government-act>
- Cholewinski, R. 2010. "Human Rights of Migrants: The Dawn of a New Era?" *Georgetown Immigration Law Journal* 24:585-615.
- Crush, J. 2019. "Rethinking the Medical Brain Drain Narrative." *Southern African Migration Programme*. <https://www.africaportal.org/publications/rethinking-medical-brain-drain-narrative/>
- Davidson, S. 1993. *Human Rights*. Philadelphia:Open University Press.
- Gieseken, H. 2017. "The protection of migrants under international humanitarian law" *International Review of the Red Cross* 99 (1):121–152 - doi:10.1017/S1816383118000103
- Gupta, U. N. 2004. *The Human Rights: conventions and Indian Law*. New Delhi:Atlantic Publishers and Distributors.
- Hujo, K. 2019. "A global social contract: New steps towards a rights-based approach to migration governance?" *Global Social Policy* 19(1-2):25–28; - doi: 10.1177/1468018119849232 journals.sagepub.com/home/gsp
- Hujo, K and Piper, N .2015. *Multiple forms of Migrant Precarity: Beyond 'Management' of Migration to an Integrated Rights-Based Approach (UNRISD Event Brief)* Geneva:United Nations Research Institute for Social Development.
- ILO .2016. "Promoting fair migration International Labour Conference, 105th Session." Geneva:International Labour Organization. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf
- ILO .2021. "Work in the time of COVID Report of the Director-General International Labour Conference 109th Session." Geneva : International Labour Organization. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_793265.pdf

- ILO .2015. “Global estimates on migrant workers Results and methodology. Particular focus on migrant domestic workers.” Geneva: International Labour Organisation. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf
- International Organization for Migration and United Nations .2000. The Human Rights of Migrants. https://publications.iom.int/system/files/pdf/migrants_human_rights.pdf
- Inter-Parliamentary Union, International Labour Organization and United Nations Human Rights Office of the High Commissioner .2015. Migration, human rights and governance Handbook for Parliamentarians N° 24. https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf
- Lewis, J. R., & Skutsch, C. 2001. The Human Rights Encyclopedia. New York:ME Sharpe Reference.
- Mekong Migration Network.2020. MMN Statement on the Impact of Covid-19 on Migrants in the Greater Mekong Subregion. <http://mekong-migration.org/?p=14877>
- Seneviratne, K. 2012. “Migrant workers in Singapore demand justice.” Inter Press Service. February 12. <http://www.ipsnews.net/2012/02/migrant-workers-in-singapore-demand-justice/>
- Seneviratne, K. 2020. “COVID-19: Should Economy Have Priority Over Migrant Workers’ Health?” IDN-Indepth news . May 13. <https://www.indepthnews.net/index.php/opinion/3535-COVID-19-should-economy-have-priority-over-migrant-workers-health>
- Sookrajowa S.S and Pécoud A. 2019. “United Nations Migrant Workers Convention, In Ratuva S. (eds)” *The Palgrave Handbook of Ethnicity*. Singapore :Palgrave Macmillan. https://doi.org/10.1007/978-981-13-2898-5_142
- Sun, Melinda and Smith, Janie.D.2020. “COVID-19 in Migrant Workers: lessons from Singapore.” *InSight, Medical Journal of Australia*. <https://>

insightplus.mja.com.au/2020/45/covid-19-in-migrant-workers-lessons-from-singapore/

UNDESA.2015. *International Migration Report, United Nations Department of Economic and Social Affairs*.https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf

UNESCAP .2012. *Situation Report International Migration in South and South-West Asia*. https://www.unescap.org/sites/default/files/SDD_PUB_Sit-Rep-book.pdf

UNHRC .2006. *Migration and Development: a Human Rights Approach, Report by the United Nations High Commissioner for Human Rights to the High Level Dialogue on International Migration and Development*. <https://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/MigrationDevelopmentHC%27paper.pdf>

World Bank .2017. *How Migrants Can Help Countries Fill Labor Gaps: Learning from Policymakers*. <https://www.worldbank.org/en/news/feature/2017/04/05/how-migrants-can-help-countries-fill-labor-gaps-learning-from-policymakers>