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### Protection of Migrant Workers under Conventions of International Labor Organization

<sup>1</sup> Xuan Duong Luong, <sup>2</sup> Thi Thu Ha Bui, <sup>3</sup> Van Doanh Vu  
<sup>1, 2, 3</sup> University of Labor and Social Affairs, Hanoi, Vietnam

Corresponding Author: Xuan Duong Luong

#### Abstract

At the beginning of the 20th century, as industrial sectors emerged and developed, countries engaged in economic, cultural and social exchanges, which led to a situation of workers migrating to other countries to find jobs and better living conditions. However, migrant workers may face unequal treatment compared to native workers and not be granted the same protective policies in the hosted countries

they immigrated to... Therefore, the International Labor Organization (ILO) introduced Conventions to ensure the rights and dignity of migrant workers. In this article, the authors will do research on the protection related to employment, equal treatment and social security of migrant workers in other countries where they are not inhabitants, focusing on the fundamental ILO Conventions.

**Keywords:** Protection, Conventions, Migrant Workers, International Labor Organization

#### 1. Introduction

Since the beginning of the 20th century, as the industry was formed and developed in many countries, the need for labor emerged within factories and companies. Workers tended to move from the agricultural regions to industry and services, leading to a steady rise in the wage labor force. Workers tended to relocate to areas with better job prospects and living conditions. Initially, this movement occurred internally within a country's border. Subsequently, in conjunction with the expansion of cooperation among nations, labor migration evolved into cross-border mobility, encompassing both legal and illegal means. The trend of labor migration has been increasing due to the following reasons: (i) Unequal growth in population and gap between affluence and poverty across countries and regions, especially between developed and developing nations; (ii) Globalization and trade liberalization; (iii) The remarkable advancement of information technology and means of transport; and (iv) The development of "networks of migrant workers".

Although migrant workers make great contributions to the economic development of host countries and their status, their rights are protected by the United Nations Convention on the Rights of Migrant Workers, they still face discrimination in treatment compared to local workers, including legally migrated individuals, as well as encounter many risks, such as language barriers, cultural differences, lack of essential social security rights (life insurance in case of risk, medical services, housing). Migration is an inevitable global trend. Managing labor migration in general and protecting the legitimate rights and interests of migrant workers in particular require global efforts, the involvement and cooperation of countries, especially those that receive and send workers, in order to establish a legal framework that ensures the safety, legitimate rights and interests of migrant workers and their families. Addressing this issue requires efforts at three levels: national, regional and international.

At the international level, International Labor Organization (ILO) was founded in 1919 when countries signed the Treaty of Versailles, with the fact that "And whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required" (ILO Constitution 1919) <sup>[2]</sup>. To address this issue, ILO has established an international system of labor standards that governs all labor-related aspects. International labor standards are legal instruments developed, adopted and prescribed principles and basic rights in labor by ILO's tripartite partners, including: governments, employers and workers. Acknowledging that migrant workers may face difficulties in employment and social security when moving to countries where they lack citizenship, as well as recognizing potential risk of losing their entitlement to social security schemes in their home countries due to their absence, many international labor standards adopted over the years by the ILO are important for safeguarding the dignity and rights of migrant workers. In principle, all international labor standards are applicable to migrant workers, unless otherwise stated. Although not all countries have ratified ILO Conventions, even member states have not ratified all Conventions, many countries refer to ILO Conventions when formulating policies regarding

migrant workers within their own borders to align with international practices.

## 2. Objective and Methodology

The main objective of this paper is to study the inevitability of international migration trends, the protection of these migrant workers from the basic ILO Conventions, related to employment, Equality of Treatment and social security, and point out the advantages and limitations of these Conventions. Based on this, there are some recommendations with countries in general, to ensure the right of workers, who migrate to other countries (they have no nationality).

The article utilized the documentary research method to study the basic ILO Conventions protecting the rights of migrant workers. Using analytical and comparative methods to analyze the content of the Conventions, compare the Conventions, thereby have an objective assessment of them.

## 3. Basic Content of Conventions on Migrant Worker Protection

### 3.1 Convention on Equality of Opportunity and Treatment

Since its inception, ILO has issued several Conventions and Recommendations to fulfill its function of “promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity”. Among those Conventions, there are eight fundamental Conventions, covering topics that are considered fundamental principles and rights at work, including freedom of association and recognition of effectiveness of the right to make collective bargaining; abolishment of all forms of forced or compulsory labor; elimination of child labor; and ending discrimination in labor and profession. These international standards are not only for local workers but also for migrant workers, unless otherwise stated. Regarding equality of opportunity and treatment of migrant workers, there are two most important Conventions, namely Convention No. 97 on Migration for Employment (as amended in 1949) and Convention No. 143 on migrant workers in 1975 (supplementary provisions). These two conventions are important because they address issues that arise during the entire process of labor migration, from the time the workers are in their home country, to the process of working in the country of migration, and upon returning to the country of origin.

#### 1. Convention No. 97 in 1949

Adopted by ILO on June 8, 1949, the Convention entered into force on January 22, 1952. With 23 articles and 3 appendices, it is an amendment to the 1939 Convention on Migration for Employment (while the 1939 Convention did not come into force). The Convention can be considered as the first international legal document on the protection of migrant workers and regulating their rights, covering the following contents:

- Regulations on support and protection of migrant workers

Member States have the following obligations: (i) Provide relevant information to the International Labor Office and other Member States, such as information on national policies, laws and regulations relating to immigration, information on special regulations relating to migration for employment, working conditions and occupations of

migrants for employment; and information concerning general agreements and special arrangements on matters adopted by the Member States. Relevant information is provided to migrant workers free of charge. (ii) Support for the travel and reception of migrant workers. (iii) Maintain and provide appropriate and free services to support migrants for employment, including health, living, sanitation, and employment services. (iv) Work together to combat misinformation on migration and immigration issues.

- Regulations on equal treatment of migrant workers
- Member States commit that they would not have discrimination behaviors on the basis of nationality, religion or sex with migrant workers, with respect to workers who are legally migrants in its territory. Migrant workers would be treated equally to citizens of their country in administrative matters, wages, hours of work and rest, minimum age and in other aspects of industrial relations, participation in the Confederation of Labor and collective bargaining, welfare, housing issues, taxes, and legal proceedings. Furthermore, the Member States also allow migrant workers to transfer their income and savings abroad. Convention No. 97 only applies to legal migrant workers, not to illegal migrants and to professionals who are permitted to stay short-term. It met the need and was suitable for the social context at that time, which was to encourage the movement of labor from countries with surplus to countries with shortage of labor.

#### 2. Convention No. 143 in 1975

Convention 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary provisions) adopted on June 4, 1975, entry into force on December 9, 1978, supplemented the provisions of Convention 97 in 1949 and Convention 111 on Discrimination (Employment and Occupation) in 1958. In terms of content, the Convention reaffirms the obligations of Member States to respect the most basic human rights of migrant workers. It consists of two parts. The first part applies to all migrants but adding provisions to protect illegal ones. Member States should examine the situation of migrant workers being illegally recruited and take appropriate measures to stem the flow of such workers. In addition, they should impose sanctions or criminal prosecution against employers of illegal migrants as well as underground brokers in labor trade. The second part of the convention applies only to legal migrants. It aims to ensure fairness in treatment between legal migrant workers and indigenous workers; to give legal migrant workers equal opportunity and treatment in the field of employment, occupation, social security, trade unions, cultural rights and individual freedoms.

Compared to Convention 97, Convention 143 has added provisions for illegal migrant workers, measures to limit illegal migration and is much more detailed to ensure that there is no discrimination against legally migrant workers.

#### 3.2 Convention on Social Security

Social security is considered one of the human rights. It has been recognized in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948 that “Everyone, as a member of society, has the right to social security and is entitled to realization,

through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”. The specialized agencies of the United Nations have different views on the human right to social security, which is enshrined in many international legal documents over time.

ILO, with its mission, has issued several conventions to protect the social security rights of workers in general and those of migrant workers in particular, mainly approaching social security rights from the perspective of employment-income protection. Some of the basic ILO Social Security Conventions includes:

### **1. Convention 102 in 1952**

Convention No. 102 in 1952, adopted on June 28, 1952, on social security is the most basic legal document, stipulating minimum standards for social security, covering 9 social security regimes, namely (i) Medical care; (ii) Sickness benefit; (iii) Unemployment benefit; (iv) Old-age benefit; (v) Employment injury benefit; (vi) Family benefits; (vii) Maternity benefit; (viii) Invalidity benefit; and (ix) Survivors' benefit. The content of each regime includes the subject of application, scope of application, and entitlement level. Member countries, depending on their conditions, may choose to implement social security regimes, but at least 3 of 9 regimes must be implemented. In addition, one of the five regimes, specifically Unemployment benefits; Old-age benefit; Employment injury benefit, Invalidity benefit; Survivors' benefits must be applied. The provisions in the Convention are minimal, encouraging countries to build social security regimes with a broader scope and higher benefits than the Convention.

The Convention also provides that non-citizen residents will have the same rights as domestic residents. In other words, migrant workers have the same rights as native workers. With social security schemes that contribute to the protection of workers, migrant workers are also obligated to contribute, unless otherwise provided by bilateral or international agreements.

It can be seen that, right from the beginning of recognizing the right to social security, ILO has focused on two key issues, namely the health and income of workers in general and migrant workers in particular. Along with the development of society, the role of Social Security as well as Social Security rights has been further expanded. In 2012, ILO released its Recommendation on Social Security Floor No. 202 - a new initiative on a social security model that has been widely accepted globally with the support of many international organizations. This Recommendation has paid attention to hedging rather than just providing financial security after the risk occurs.

### **2. Convention No. 118 in 1962**

Convention No. 118 in 1962, adopted on June 28, 1962, on Equality of Treatment (Social Security), clearly stated the principle of "Equality of Treatment" between domestic workers and foreign workers in all nine social security regimes (same as Convention 102). To ratify this Convention, States must have social security laws in place within their territories. Each Member State may apply this Convention to one or more social security schemes, provided that it specifies the content of the ratification. If the

social security programs for migrant workers are based on contributions from the parties involved (employees, employers), how to apply the policy to domestic workers? The same is recommended for foreign workers, both in terms of coverage and benefits. ILO also recommends that citizens of a country would be treated with the same social security policies as regulated in the law on social security enacted by such country toward foreign workers. Convention No. 118 requires Member States to provide mutual support, free and necessary administrative assistance in order to facilitate the application of the Convention, to ensure the preservation of the rights of citizens of member states and migrant workers from countries that have not ratified the Convention but accept its obligations.

### **3. Convention 157 in 1982**

Convention 157 on Maintenance of Social Security Rights in 1982, was adopted on June 21, 1982. It still applies the principles established by Convention 118, which relate not only to equality of treatment but also to the maintenance of acquired rights. The Convention covers the following contents: general provisions; legislation; maintenance of rights acquired, including social security benefits under Convention 102; maintenance of rights acquired abroad; administrative assistance and assistance to persons covered by the Convention. In addition, the Convention also requires member states to clarify the contribution responsibilities and benefits of the nine regimes.

Convention 157 adds two matters not covered in Convention 118, which is to determine the applicable law according to the rules established by the Convention to avoid conflicts of law and provide administrative assistance. It requires Member states to the Convention to promote the development of social services to assist those covered, including migrant workers. All Member States must endeavor to join and cooperate with other countries to maintain social security rights for workers in their own country or when migrating to another country.

### **4. Recommendation and Suggestions**

Transnational migration is an inevitable need in the context of globalization of both workers and countries. For workers, it is the desire to have a job and a stable life while countries might take advantage of high-skilled or cheap labor resources of other countries. In a developed and progressive society, in addition to economic benefits, social issues also need to be fully considered. The rights and interests of workers should be fully guaranteed, no matter where they are working. To ensure the rights of workers in general and migrant workers in particular, countries are encouraged to ratify ILO Conventions, including those that guarantee workers' rights in the workplace and social security. This action is essential in relation to migrant workers and is implemented through bilateral or multilateral agreements on employment, equal treatment, and social security. By ratifying the Conventions, States not only demonstrate openness about their adherence to the principles of the Conventions, but also commit to applying these principles in their national legal systems and practice. The ratification of the Conventions benefits workers moving in and out the ratifying country. The Conventions directly guarantee to migrant workers of ratifying countries equal treatment with nationals of the receiving State. Furthermore, ratification of the Conventions will also contribute to strengthening that

country's position in negotiations and enhancing cooperation with other States (whether member or non-member of the Conventions). Some recommendations for countries to ensure the rights of migrant workers are:

- Early participate in ratification of ILO Conventions. Depending on economic and social conditions, countries may participate in part or the whole of one or several Conventions. Although participating the Convention will cause them to carry out more responsibilities, especially in terms of economy and society, for the receiving countries, signing the Conventions will bring benefits to the countries. First of all, they will have a competitive advantage to attract highly qualified and skilled workers. Next, the reputation of that country in the world is also enhanced, as a humane and worth living country. Participation in ratification of ILO Conventions, in addition, also has the effect of promoting socio-economic cooperation between that country and other countries.
- Countries with migrant workers to other countries need to take the lead in signing the Conventions because this will better ensure the rights of their workers when participating in labor in other countries. The countries of this group also need to link up with each other, actively mobilize and put pressure on labor-receiving countries to cause them to join and implement those Conventions.
- International organizations (such as the United Nations, ILO...) as well as regional organizations (EU, ASEAN...) need to have a roadmap to change from encouraging countries to participate to compulsory participation. They need to have support policies for participating countries in the first time, creating benefit exchange forums... to encourage participation. Besides, there must be corresponding coercive/sanctions measures to countries that do not comply with the regulations.
- ILO needs to conduct in-depth studies based on survey data on migrant workers to issue appropriate policies.

## 5. Conclusion

Ensuring the rights of migrant workers is not only the responsibility of the sending countries, but also the receiving countries, because they, in turn, must also send workers to work in other countries, and need protect their workers by signing bilateral, multilateral treaties, and international conventions. In any era, human resources are also a decisive factor to the development of countries. In terms of integration, the world only has a soft border, so ensuring the rights and interests of workers, including migrant ones, is needed.

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