
Discrimination Against Migrant Workers During The Pandemic: Reassessing The Country's Obligation Under International Law

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Abstract

Migrant workers have contributed significantly to the development of the Malaysian economic ever since their first arrival in the 1980s. Over the years, the migrant workers have faced constant discrimination and exploitation, and this unfortunate event has further escalated following the the widespread of the pandemic COVID-19. The imposition of the Movement Control Order (MCO) to curb the spread of COVID-19 had force many non-essential sectors were to hibernate and/or minimise their operations. The impacts from this measure were felt more by the migrant, vis-a-vis workers. They were significantly discriminated in their works, including facing job termination, salary cuts, forced leave, etc. Their premises were raided by the authority, which were seemed to be more focusing on criminalising undocumented migrant workers, as opposed to contain the spread of COVID-19. The acts of handling the migrant workers during the pandemic have drew immense criticism, especially from the human rights societies. Accordingly, this paper examines the legal obligation required under the international conventions and the national laws in the treatment of migrant workers with a view to analyse the possible discriminatory treatment committed by against the migrant workers during the pandemic. The study uses a conventional or traditional research methodology, looking at and discussing the pertinent legislation found in the primary data (such as international treaties and local laws) and other published works in the type of secondary data, such as articles, teaching materials, and periodicals. The study finds that discrimination is an area under the human rights law which the international communities seek to combat. Several key international treaties were signed to this effect. Whilst Malaysia chooses not to participate in few international conventions to curb discrimination, the absence of anti-discrimination law and explicit legal provisions on the subject matter has left lacunae and a vague legal position in Malaysia.

Introduction

Migrant workers form a substantial labour force in Malaysia. Their arrival may be dated back to the British colonialism occurred in the late 19th and early 20th centuries (Wahab, 2020), when the European entrepreneurs recruited the unskilled but hardworking Chinese labourers to work at the rubber estates in the Straits Settlements and the Malays States (Ooi, 1963; Gamba, 1955). The numbers of the migrant workers, especially from China and India, increased significantly as the British colonial rule began expanding their economic activities. The migrant workers were brought in to work at large scale plantations for growing coffee, coconut and rubber, as well as to meet the demand of the expanded tin mines operations and the construction sites for building railways, roads and premises (Pappusamy, 2014). Many of these earliest immigrants became permanent residents, which subsequently shape the multi-ethnic society in Malaysia.

Today, Malaysia hosts more than two million migrant workers, making it one of the largest importer of labour in Asia (Rahel & Chowdhury, 2017; Wahab, 2020). They are mainly from the Republic of Indonesia, India, Bangladesh, Nepal, the Philippines and few other ASEAN countries. Typically, they age from 18 to 45 years old. However, not all migrant workers enter the country with valid permits. Almost half of them are undocumented migrants, which in technical sense make them 'illegal migrants' (Rahel & Chowdhury, 2017). The Malaysian government only grants working permit in order for migrant workers to work there of the following six industries or sectors: construction, manufacturing, services, plantations, farming, and house chores (Wahab, 2020).

The term migrant workers are used interchangeably with foreign workers. According to Rahel & Chowdhury (2017), they generally denote the groupings of individuals who labour outside of their home countries. The International Labor Organization (ILO) defines migrant for employment as "a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person

regularly admitted as a immigrant seeking work.” (Art. 11, Migration for Employment Convention (Revised 1949) (C97)). Sivakumaran (2004) wrote that ‘migrant worker’ can be defined as ‘a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national’. Meanwhile, the Malaysian Employment Act 1955 (Act 265) used the term ‘foreign employee’ and defined it as ‘an employee who is not a citizen’ (Section 2). The term ‘migrant worker’ often carries certain perception among the society. According to Pappusamy (2014), they are generally viewed as unskilled and low-wage earning workers that are mainly employed in the construction and plantation sectors, restaurants and as domestic workers. However, in technical sense, the term covers a wider meaning that include also the white collar workers (i.e. skilled workers and the professionals) serving as academics, engineers, contractors and doctors, etc.

The migration of foreign workers increases in parallel with the growing pace of the economic globalization as millions travel to foreign countries for employment and better life opportunities. There was a rise in the need for migrant labour in Malaysia as a result of a number of issues. First, to replenish the labour pool as a result of the expansion of numerous economic sectors, such as the manufacturing industries (such as textile, electrical items, and electronics) and Little- and medium-sized businesses in the culinary, furnishings, and metal fab sectors (Pappusamy, 2014). Secondly, to fill in the gaps or shortages of workers left by the locals, especially in the ‘3D jobs’ (i.e. dirty, dangerous and difficult jobs) and other sectors that largely rely on low-paid, unskilled labour, including at the construction sites, in the plantation sectors and the hospitality industry (i.e. hotels and restaurants) (Kumar, 2016; Ismail, 2013); Wei & Yazdanifard, 2015). Thirdly, to serve in the domestic works as more Malaysian women began leaving their homes to work at offices (Pappusamy, 2014). In this respect, women migrant workers especially from Indonesia are employed as domestic maids to look after the children while their parents leave house for work.

The migrant laborers make an unrivalled economic contribution to the country's economy. The fact that they willingly and readily spend long hours of work and accept low wages, allow the companies to reduce their cost of operation, while at the same time increase their production. Nonetheless, the negative aspects of the migrant workers frequently steal the spotlight. The migrant workers who travel to other countries with their immediate families are said to have contributed to the rise of social problems within the community, like hike in crime rates (Badarulzaman, et al, 2016), illegal squatting, etc. On the pretext of not being the nationals of the host countries, the migrant workers were often treated poorly and were not accorded with sufficient social protection. The mistreatment against the migrant workers, especially in handling the pandemic COVID-19, has come under criticism for being relatively poor, discriminatory, and to certain extent, were inhumane. Many factions expressed their concerns with the government’s action, including from the Bar Council, several civil society organizations, and the United Nations in Malaysia (Sandanasamy, Paavilainen and Baruah, 2020).

Against the above background, this paper seeks to examine selected international documents regulating discriminatory treatment, and accordingly reassesses discriminatory treatment (if any) accorded by Malaysia against migrant workers during the pandemic. Discrimination against migrant workers is crucial because it involves foreign element (i.e. nationals of foreign countries), which may give rise to international conflicts between two nations.

The study involves a qualitative legal research that explains, examines and analyzes in a systematic form the facts and legal provisions of certain laws with a view to present understanding on certain legal issues (Yaqin, 2007). The data are gathered from the primary data, namely international conventions and local statutes, as well as from the secondary data in the form of published articles, text books and news reports. The study employs conventional or typical research methodology involves analysing and outlining pertinent legal precedents in the relevant field of law (Zahraa, 1998). The discussion is divided into two main parts. The first part discusses the discrimination treatment against migrant workers during the pandemic. The second part reassesses the non-discriminatory treatment against migrant workers under international documents.

Discrimination Against Migrant Workers In Time Of The Pandemic

According to Black’s Law Dictionary, discrimination may be understood as: (1) “the effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap, or (2) “differential treatment, especially a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.” The above definition implies that discrimination may come in several forms, such as racial discrimination, age discrimination, gender discrimination, religious or beliefs discrimination, sex and sexual orientation, pregnancy, disability or even marriage discrimination (Badarulzaman, et al, 2016). In general, migrants are group of people who are often discriminated merely because they are foreigners to the host countries. Discrimination against migrants is a global issue, and it exist in wide-ranging areas including in education, housing, work, health and social security (United Nations Human Rights. (n.d.).

Migrant workers entering the country with valid permits also suffers from discriminatory treatment, including labour exploitation, intolerance treatment, reduction or non-payment of wages, worsening working conditions, cramped or inadequate living conditions and job layoffs. Migrant workers suffering from job layoffs not only lose their earning, but the possibility being declared undocumented migrant when their visa or work permits expire. Badarulzaman et al (2016) identified two forms of discriminatory treatment against migrant workers, namely 'direct discrimination' and 'perceived discrimination'. Direct discrimination denotes physical mistreatment and abuse, such as sexual abuse, getting beaten, degrading treatment, etc. Meanwhile, perceived discrimination refers to the act of making 'unfair assumptions to the discriminated group due to their age, religion, disability, race, ethnicity, sexual orientation or marriage.' Negative perception towards the migrant workers occurs as they are seen as job snatchers and the cause for crimes hikes.

The mistreatment against the migrant workers worsened specifically in time of the pandemic. They were discriminated in their works, including facing job termination, salary cuts, forced leave, etc. Likewise, they are regarded a separate community living temporarily in the host country, and hence were left out from policy development and national actions to curb the COVID-19 crisis. While COVID-19 does not choose its victims, the manner in which the government or the companies/employers handle the outbreak of the pandemic differs between the locals and the migrant workers. This part discusses the infection cases of COVID-19 among the migrant workers and discriminatory treatment accorded to the migrant workers during the pandemic.

The Rise Of COVID-19 Cases Among The Migrant Workers

The widespread of COVID-19 is immense and has reached to almost all parts of the world. On 11 March 2020, the World Health Organization (WHO) declared the COVID-19 as a global pandemic (WHO isytihar wabak COVID-19 pandemik, 2020). Despite being a public health emergency, the COVID-19 pandemic has had a significant negative impact on the economy. The lockdown measures enforced throughout the world to combat the widespread of COVID-19 has put many business operations into halt, paralyzing many economic sectors. The ILO reported that as at mid-2020, about 2.2 billion workers, which accounted for 77 per cent of the global labour force suffered from the outbreak of the pandemic, with an estimation of more than 111 million were the migrant workers (International Social Security Association. n.d.). However, the migrant workers, vis-à-vis the locals, are the first to suffer from the outbreak of the pandemic. The closure of non-essential economic sectors, coupled with inadequate access to social protection have placed the migrant workers as among the vulnerable group. Likewise, migrant workers serving in relatively formal jobs were at risk of facing unemployment, salary cuts, termination or suspension of services, and deteriorating work conditions. Meanwhile, migrant workers serving as front liners in various essential sectors including health care, transportation, services, construction and agriculture may have kept their work intact, but they are highly likely to be exposed to the COVID-19 virus. Since October 2020, the infection cases increased significantly reaching to unprecedented four digit numbers per day. Majority of the infected cases were linked to the immigrants. Illegal immigrants that entered the country through illegal means without any documented health record contributed to the rise of infection rate in the country (Media Baharu, 2020). Various immigration detention centres that housed the detained illegal immigrants have recorded a significant number of COVID-19 cases. On top of that, several workplace clusters involving different groups of migrant workers emerged (Hassan, 2021), causing fear and uneasiness within the public. The earliest reported cases involving the migrant workers came in April 2020 following the detection of 79 infections in three buildings in the heart of Kuala Lumpur, namely Selangor Mansion, Malayan Mansion and Menara City One, which housed the migrant workers

(Sandanasamy, Paavilainen and Baruah, 2020; Ravindran, 2020). Workplace clusters involving migrant workers continue to contribute to the rise of COVID-19 cases in the country. On 24 November 2020, as the country recorded 2,188 COVID-19 cases, its highest ever infected cases per day, majority are linked to infection among migrant workers at Top Glove company, the world's leading latex glove maker (Peter, 2020).

As of January 2021, about 225 of 350 clusters (64.3 percent) are reported to be workplace clusters (Ministry of Health, 2021). Most of these workplace clusters involve migrant workers, i.e. 80 clusters from the manufacturing sector (35 per cent), followed by 53 clusters from the construction sector (23.6 per cent), and 31 clusters from the services sector (13.8 per cent). The workplace clusters involving migrant workers emerge in different parts of the country and they are regarded as the single largest contributing factor in the rise of COVID-19 cases in some states (Ruzki & Sulaiman, 2020; Ruzki, 2020; Jalil, 2020). Migrant workers are more exposed to the virus because they live in cramped premises and adhere to poor workplace practices (Wahab, 2020); Hussain, 2020).

There are several factors that contribute to the rising number of COVID-19 infection among the migrant workers. According to Muhamed and Ali (2021), majority of the employers failed to observe the standard operating procedure (SOP) issued by the government, either at the workplace or the workers' dormitories. In most cases, employers failed to provide appropriate accommodations for their migrant workers by stuffing large numbers of workers in a relatively small space or unit, in contrary with the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446). Migrant workers living in cramped premises can hardly practice

social distancing. The level of hygiene adhered to by the migrant workers are also low, which further escalate the widespread of COVID-19 between them. Besides, some employers disregard the government's directive to send their migrant workers for compulsory COVID-19 test, which hindered the government's effort for earlier detection of infection cases among the migrant workers.

In a report published by the World Bank, the poor living and working conditions attached with the migrant workers, especially overcrowded dormitories and unsanitary conditions, increased the number of COVID-19 infection among the workers (Moroz, Shrestha & Testaverde, 2020). In Malaysia, most migrant workers live in substandard and precarious accommodation, such as a box longhouse, which lacks basic sanitation facilities, enough electricity, and water supply (Das, 2018). In fact, it was revealed that many employers still provide substandard housing for their migrant workers during the pandemic. One of the reported cases involved the Top Glove company, following the mass closure of its chain factories due to the widespread of COVID-19 among their workers (Peter, 2020). According to statements by the workers, the company observe to the basic SOP to prevent the widespread of COVID-19 by supplying gloves and masks to the workers, taking temperature before the start of each shift, and reminding the workers on practicing physical distancing. However, the welfare of the workers at their dormitories were not taken care off, as most workers were made to live in overcrowded room (i.e. about 30 persons per room), cramped with bunk beds and piles of laundry, and with poor ventilation. Besides, the workers revealed that they were never tested despite their building bloc was placed under lockdown (Peter, 2020).

Reports And Complaints On Discriminatory Treatment Against The Migrant Workers

Whilst the world recognized Malaysia's effort to contain the widespread of COVID-19 (Wahab, 2020; Lai & Aravinthan, 2020; Bernama, 2020b), a number of reports and writings disclosed the discriminatory treatment accorded to the migrant workers. One of the apparent occasions involves the challenging and action for COVID-19 (Wahab, 2020). Initially, the administration exempted all COVID-19 patients—regardless of nationality or citizenship—that were admitted at any government facility from paying outpatient fees, which include registration, examination, treatment and hospital fees (Ministry of Health, 2020). However, the subsequent announcement required the migrant workers to pay for testing and treatment fees related to COVID-19. This was followed with another announcement that placed the burden on the employers to bear the cost of carrying out the COVID-19 swab test imposed on the migrant workers (Bedi, 2020; Sandanasamy, Paavilainen & Baruah, 2020); Anis, 2021; Bakar, 2021). The direction was met with criticism, especially from the Malaysian Employers Federation (MEF), who viewed the policy as placing additional burden on already struggling companies (Alhadjri, 2020). To ease the burden of the employers, the government agreed for the COVID-19 screening on the migrant workers to be carried out, for individuals who pay into the scheme, the cost will be covered by the Social Security Organization (SOCSO) via the Prihatin Screening Programme (PSP), either at the work or through a mobile screening service supplier (Bedi & Anis, 2020; Bernama, 2020a).

There were also reports revealing the mistreatment against the migrant workers affecting their welfare. In a report published by ILO, the Regional Office for The COVID-19 pandemic was noted throughout Asia and the Pacific to have paired with the enforcement of MCO have caused varying impacts on the migrant workers (Sandanasamy, Paavilainen & Baruah, 2020). Those working in the non-essential sectors were forced to stay home when their companies' operations were put on a temporary halt. As a result, many were running out of money to maintain their expenditure since they heavily rely on daily wages (Priya, 2020). In some other cases, these migrant workers were forced to quit jobs. For example, in the textile sector, it was reported that few garment and apparel companies, like Esquel, Pen Apparels and Imperial Garment were forced to close and have caused thousands of the employed migrant workers jobless (Loone, 2020a; Loone, 2020b). In this fortunate event, Foreign workers should be let go first if layoffs are necessary, the Ministry of Human Resource advised employers. (Human Resources Ministry releases FAQ during MCO period, 2020). The migrant workers from the essential services also faced difficulties when their labour rights were alleged to have been violated by the employers. Reports showed that companies manufacturing the rubber gloves to meet the high demand of the medical sector have sidestepped the SOP issued by the government to the detriment of the migrant workers. These companies were reported to have violated the rules on Social isolation, workplace safety and health, the number of hours that can be worked, forced labour, and housing conditions (Thomas, 2020).

On the same premise, reports also showed that the migrant workers were excluded from receiving the various stimulus measures announced by the government to reduce the negative impacts brought by COVID-19. This included the Employment Retention Package issued by SOCSO and the Prihatin stimulus packages announced by the Prime Minister, Such as the RM250 billion Prihatin Rakyat Economic Stimulus Package and the RM10 billion Prihatin Plus (Sandanasamy, Subsidiary, & Baruah, 2020; Social Security Organization (SOCSO), n.d.; Prime President's Office of Malaysia, 2020a; Prime Minister's Office of Malaysia, 2020b). For instance, as part of the Prihatin Rakyat stimulus plan, the government introduced a pay subsidy scheme to assist firms in keeping their staff and, as a result, prevent people from leaving their jobs (Arumugam, 2020). However, Wahab (2020)

stressed that the wage subsidy programmes, which was aimed to advantage at least 3 million workers, excluded the refugee labors.

In a study conducted by Wahab (2020), the implication of COVID-19 and government's decision to temporarily stop business operations and restrict the people movement had led to different other mistreatment against the migrant workers. Among the important issues is the lack of food supplies. Shortened business hours had caused hardship to migrant workers who live in remote areas and outside the city centres because they have to travel long hours on road to get their food supplies. Meanwhile, migrant workers who purchase basic supplies near their workplaces or lodgings were discriminately asked to pay excessive prices by local traders (Human Rights Commission of Malaysia, 2020). Additionally, they were also reports suggesting that food assistance contributed by the government and various other NGOs, which were channeled through the community leaders, were not distributed to the migrant workers, vis-à-vis the locals, due to the shortage in supplies. Likewise, health care services are crucial, and majority of the migrant workers, including their family members, were denied of the basic access to the health care services (International Social Security Association, n.d.). This ignorant could be fatal, especially in time of the pandemic as the impacts and risks caused by the untreated virus may have far reaching effect on the society as a whole. In the related aspects, Wahab also noted that the migrant workers were 'discriminately' denied the rights to gain basic information on combating COVID-19. This is because, the information materials that contained prevention advices and SOPs are prepared in languages that are foreign to them (i.e. either in Malay or English language). This had prevented the migrant workers that cannot read in the local and English languages, or more so the illiterates, from gaining adequate information on matters such as the precautionary measures for avoiding infections, the symptoms of COVID-19, as well the risk that they could carry to public health (Wahab, 2020).

The other obvious mistreatment accorded to the migrant workers is the violation of labour rights during the pandemic (Wahab, 2020). Unlike the local workers, SUHAKAM reported that some migrant workers were withheld from receiving salaries throughout the MCO period (Human Rights Commission of Malaysia, 2020). This has affected their daily spending to buy basic needs or foods, pay bills and house/room rental. Poor living conditions, unfair layoffs, and unpaid wages are other common labour rights violations that migrant workers experience. There were minimal physical distancing practiced among the migrant workers, especially when they were forced to spend more time at their shared and overcrowded houses due to the closure of non-essential industries. Meanwhile, migrant workers from the essential sectors faced other violations of labour rights. While they were allowed to work during the restrictive movement period, they were denied the rights to work under safe and healthy environment. Reports showed that migrant workers were forced to work in factories under long working hours and at high level of heat, and in the absence of physical distancing as well as sufficient personal protective equipment (PPEs) (Makichuk, 2020; Lee, 2020).

The mistreatment against the migrant workers could also be seen in terms of the adoption of the preventive measures by the government to combat COVID-19. Muhamed and Ali (2021) wrote that the government introduced the national vaccination programme to combat the widespread of COVID-19. The country's vaccination programme will be implemented in three phases beginning February 2021. The first phase involves vaccinating the front liners from the health sector, police and army; the second phase involves senior citizens aged 60 years and above as well as the high risk individuals; and the third phase covers the public aged 18 years and above. However, they observed that unlike in Singapore which included the migrant workers in the list of priorities for vaccination, the migrant workers in Malaysia were left out from the national vaccination programme. The exclusion of the migrant workers from the vaccination programme may carry serious consequences. The risk of COVID-19 infection among the migrant workers will continue to increase, and subsequently, the high numbers of infection could possibly threaten the unvaccinated children (i.e. below the age of 18 years), pregnant women, etc. Whilst acknowledging the financial burden borne by government in providing free vaccination to the migrant workers, they believed that strategic mechanisms must to be devised to combat the widespread of COVID-19. For instance, by subsidizing the private sectors in the form of providing tax exemption/reduction in favour of the employers that vaccinate their migrant workers. Likewise, the government could have regulated for compulsory COVID-19 vaccination as condition for the migrant workers to renew their work permits.

Reassessment Of Discriminatory Treatment Against Migrant Workers

The principles of equality and non-discrimination are the cornerstones of personal freedom. Considered "the origin of all liberties," they are seen as the most basic human rights (Baderin, 2003). The protection against inequality and discrimination form the core elements of the international human rights, and appeared in almost all constitutions of the countries worldwide. In other words, states are expected to eliminate direct and indirect forms of discrimination, both in law and practice. Migrant workers are human beings, and hence are entitled to enjoy the basic human rights, including right to equal treatment and protection against non-discrimination, which no society or State should deny. This part examines selected international documents regulating the

discriminatory treatment against individuals, in particular the migrant workers; and accordingly reassesses the discriminatory treatment (if any) accorded by Malaysia against the migrant workers during the pandemic.

Examining International Documents Relating To Discriminatory Treatment

The United Nations Charter lays forth the broad acceptance of human rights, with a focus on the principle of non-discrimination (UNC). The UNC's preamble states: "the peoples of the United Nations determined [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, [...]" The UNC goes on to define the purpose of the United Nations, which include *inter alia*, "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." (Article 1(3) of the UNC). The United Nations and its Member-States commit to promoting "full respect for, and respect of, rights and fundamental freedoms for all without difference as to color, gender, dialect, or creed" in order to safeguard the ideal of equal rights for all peoples. (Articles 55(c) and 56 of the UNC).

The 1948 Universal Declaration of Human Rights is one of the early post-World War II international declarations that established the universal acknowledgment of fundamental human rights (UDHR). In general, the UDHR affirms that the fundamental tenets of global justice and peace are everyone's inherent worth, equality, and unalienable rights (Preamble, UDHR). The Universal Declaration of Human Rights (UDHR), which has 30 articles, aims to advance and uphold two types of human rights: civil and political rights (Articles 3 to 21) and economic, social, and cultural rights (Articles 22 to 30). (Articles 22 to 27). Among the fundamental human rights recognized under the UDHR are right to life, liberty and security of person (Art. 3), right not to be held in slavery or servitude (Art. 4), right not to be subjected to torture or to cruel, inhuman or degrading treatment (Article 5), the right to be treated equally before the law and to equal protection of the law without regard to race, gender, or national origin (Article 7), the right to an effective remedy by the appropriate national courts for acts violating fundamental rights (Article 8), the right not to be exposed to arbitrary arrest, detention, or exile (Article 9), and the right to a fair and public hearing (Art. 10).

Additionally, the UDHR also promotes the rights to employment and adequate living for all human beings. The rights to employment was laid down under Art. 23, which reads:

- "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests."

Art. 24 further provides, in addition to the rights that guaranteed employment, all persons shall enjoy the right to rest and leisure. It must involve keeping appropriate hours and taking some paid holidays on occasion. In the meantime, Article 25(1) assures that everyone has the right to a quality of living that is sufficient for his or her own health and well-being as well as the welfare of his or her family. These rights include the right to adequate housing, food, clothing, and medical care as well as the right to security in the event of joblessness, illness, handicap, widows, old age, or even other lack of livelihood due to factors beyond his regulation. They also include the right to necessary public care.

The UDHR is an important statement of human rights, but it lacks the status of an international treaty and has no legal standing (Hamid, 2019; Cassese, 2005). However, the Universal Declaration of Human Rights (UDHR) paved the way for the creation of additional significant international human rights conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966. (ICESCR). Both agreements contain the UDHR's highlighted clauses to a great extent.

The UDHR's civil and political rights are often included into the ICCPR. These rights were included in order to prevent states from interfering with people's freedoms while upholding everyone's right to take part in civil society. These rights include the right to life (Article 6), the right to be free from slavery (Article 8), the right to liberty and security of person (Article 9), the right to be treated with humanity (Article 10), the right to equality before the law (Article 26), and others. By virtue of Art. 2(1), the State-Parties are required to accord the rights mentioned in the ICCPR on all individuals within their territories and jurisdictions without any distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Nonetheless, Art. 4(1) permits a State-Party to depart from its obligations arising from the ICCPR when the state of public emergency which threatens the life of the nation is officially proclaimed in the territory. Even so, this permission is not absolute and must be exercised subject to certain restrictions. First, any action taken by any State-Party in such situation must comply with the State's obligation under the international law and without discriminating any individual solely on ground of race, colour, sex, language, religion or social origin. Second,

Art. 4(2) prohibits the State-Party against departing from any obligation regulated under articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 of the ICCPR.

The ICESCR, meantime, reinforces the UDHR's economic, social, and cultural rights. The States Parties to the current Covenant undertake to ensure that men and women have an equal right to the exercise of all economic, social, and rights outlined in the present Covenant, according to ICESCR Art. 3: "The States Party to the present Charter." These rights include the freedom to work (Articles 6 and 7), the right to social security (Articles 9 and 11), the right to a livable wage (Articles 11 and 13), the right to an education (Articles 13 and 14), and other fundamental freedoms that safeguard the needs of life. Similar to the ICCPR, the principle of non-discrimination forms the basic requirement of the ICESCR. State-Parties undertake to guarantee and accord the rights enunciated in ICESCR without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Art. 2(2), ICESCR).

As previously stated, one of the fundamental rights recognised by the ICESCR is the right to work. By virtue of Art. 7, the ICESCR imposed specific obligations on the State Parties to ensure the individuals' enjoyment of just and favourable working conditions, which are:

- “(a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

Besides the two key international conventions regulating the fundamental human rights, there are also specific treaties devised to combat discriminatory treatment against individuals. The main agreement on the subject-matter is the International Convention on the Elimination of All Forms of Racial Discrimination 1966 (ICERD).

Art. 1 reads:

- “(1) in this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
- (2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”

On reading the above definition, it may be concluded that the ICERD does not prohibits discrimination on the grounds of religion and nationality.

In giving effect to the provisions of ICERD, Art. 2(1) imposes duties on State Parties to take all necessary measures to eliminate all forms of racial discrimination within their own local jurisdictions. These measures shall cover the promulgation of policies and legislations that outlaw racial discrimination, the empowerment of public authorities and public institutions to combat racial discrimination, and the adoption of any other acts that eliminate racial discrimination. By virtue of Art. 5, State Parties agree to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. The non-discriminatory treatment will be accorded to all aspects of activities, including in the areas of social and economic, like the rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration, housing, public health, medical care, social security and social services. The other important convention on combating discrimination is the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW). CEDAW specifically outlaw all acts of discrimination against women. According to Art. 1, the term "discrimination against women" means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” At the same time, CEDAW advocates for gender equality in a number of contexts, including political and public life (Articles 7 and 8), education (Articles 10, 11, and 12), employment (Articles 11, and 12), and economic and social life (Articles 13).

In the context of migrant workers, there are few conventions devised to promote the rights and fair treatment of the migrant workers. They either come under the umbrella of the International Organization's workers' conventions or the human rights treaties (ILO). The Global Convention for the Protection of the Rights of All Migrant Workers and Relatives is one of the human rights agreements that apply to migrant workers (ICRMW).

By virtue of Art. 1(1), The Convention applies to all migrant workers and their families without regard to any factor, including gender, racial group, coloring, dialect, religious doctrine or guilty verdict, political view, nationwide, cultural, or cultural origin, ethnicity, maturity level, financial state, assets, family status, conception status, or even other status. Additionally, Clause (2) states that the Convention shall be applicable during the full process of migrant workers' migration, covering the period of "preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence."

The ICRMW ensures that migrant workers' fundamental human rights are protected. For instance, Article 7 makes it illegal to treat migrant employees differently based on the rights they possess. The provision reads: "States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status." Part III of the Convention (i.e. Arts. 8 – 35) details out various human rights for migrant workers. They also include right to life (Article 9), the prohibition against torture and other cruel, abhorrent, or subjected to torture (Article 10), the prohibition against being held in slavery or servitude or subjected to forced labour or other forms of compulsory labour (Article 11), the prohibition against being subjected to unauthorised invasions of one's privacy (Article 14), the prohibition against being subjected to forced labour or other forms of forced labour (Article 16), the prohibition against being.

The other crucial aspects that are dealt with under the ICRMW are the rights of employment and health care of migrant workers. Art. 25 entitles the migrant workers to be treated equally with the nationals of the host countries. This covers the provision of remuneration, as well as few other conditions of work and terms of employment. Art. 25(1) provides:

"Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

- (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
- (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment."

In the context of health care, the national treatment must also be accorded the migrant workers, including the family members. Art. 28 states that: "Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment." While this is going on, Articles 43(1) (e) and 45(1)(c) guarantee that migrant workers and their relatives have the same access to social and health services as citizens of the country where they are employed, provided that they meet the standards of the relevant health plans. In addition to the aforementioned, the residing and working conditions of migrant workers and their families are assured. This is specifically stated under Art. 70, which reads: "States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity."

Under the ILO framework, several ILO conventions regulate for the non-discriminatory treatment from the perspective of the employment, which covers also migrant workers. The long list the ILO conventions include:

(a) *Migration for Employment Convention (Revised 1949) (C97)*

The guidelines governing employment and migration are provided by this Agreement. The Conference as a whole emphasises the necessity for Member States to uphold national emigration and immigration policies, laws, and regulatory requirements, as well as details on special provisions regarding emigration for jobs and the working and living circumstances of emigrants (Article 1(a) and (b)). According to Article 2 of the Convention, Member States must facilitate the arrival, travel, and departure of migrant workers from one country to another as well as give adequate assistance to them.

(Art. 4). The other crucial aspect imposed on the Member States is to render appropriate medical services to migrant workers and their authorised accompanied family members, at least at the time of departure, during the journey and on arrival (Art. 5).

The Convention also prescribed for the minimal treatment that Member States must accord to the migrant workers. In general, migrant workers that lawfully enter the territory of the host countries are entitled to non-discriminatory treatment, as well as to treatment that is no less favourable than the Member States' own nationals. This treatment covers several areas, including for remuneration, membership of trade

unions, accommodation, social security subject to certain limitations, employment taxes and legal proceedings. This is provided for under Art. 6(1), which reads:

“Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

- (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities:-
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
- (c) employment taxes, dues or contributions payable in respect of the person employed; and
- (d) legal proceedings relating to the matters referred to in this Convention.”

(b) *The 1975 Convention Concerning Migrant Workers' Treatment and the Prevention of Migrations in Abusive Conditions*

According to Art. 1, Member States undertake to respect the basic human rights of all migrant workers. In meeting this end, Member Countries shall, *inter alia*, adopt necessary measures for the prevention and elimination of abusive treatment against migrant workers (Article 3) and develop national policies to encourage and provide equality of opportunity and respect for migrant workers and family members who lawfully enter their territory in regard to employment and employment, social welfare, trade union rights, and rights. (Art. 10). Specifically, the Convention requires for appropriate treatment to be accorded to migrant workers that legally enter the countries but had lost their employment. In this context, Art. 8 provides:

“(1) On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

(2) Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

(b) *Discrimination (Employment and Occupation) Convention 1958 (C111)*

By virtue of Art. 2, this Convention requires Member States to declare and pursue appropriate policies at the national level to promote equality of opportunity and treatment in respect of employment and occupation, which include also access to vocational training, access to employment and to particular occupations, as well as terms and conditions of employment. The aim from this imposition is to eliminate any form of discrimination in respect of employment and occupation. According to Art. 1(1), the term discrimination used in the context of this Convention covers: “(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; [and] (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.”

Nonetheless, the Convention makes exceptions to the meaning of discrimination by allowing the adoption of certain measures or actions, albeit its discriminatory nature. For instance, Art. 1(2) permits any distinction, exclusion or preference to be made in respect of a particular job if they were formed solely on

the inherent requirements of the particular job. Art. 4 excluded measures taken against an individual who is reasonably suspected of

of, or engaged in, activities prejudicial to the security of the State from the definition of discrimination. Likewise, Art. 5(1) makes exception to any special measures of protection or assistance adopted by the ILO from the meaning of discrimination.

Further, by virtue of Art. 3, Member States are required to take necessary and appropriate domestic measures to give full effect to the policies designed to promote equality of opportunity and treatment in respect of employment and occupation in compliance with this Convention. First, each Member shall seek cooperation from the employers' and workers' organisations and other relevant bodies to reassures their observance of the relevant policies. Second, each Member shall enact appropriate legislations and promote related educational programmes to ensure compliance of the relevant policies. Third, each Member shall repeal any statutory provisions and make necessary modification to any administrative instructions or practices that are inconsistent with the relevant policies. Fourth, each Member shall pursue the policies in respect of employment under the direct control of a national authority. Fifth, each Member shall ensure observance of the policies in the activities of vocational guidance, vocational training and placement services under the direction of a national authority.

Overall, human rights form an integral part of the international law. The UNC, being the most important international document, lays down the foundation for the universal recognition and respect for human rights. The promotion and protection of human rights are extensively regulated under various other international instruments that follow the UNC. For the most part, these documents adhere to principles of equality and non-discriminatory treatment among all individuals. From the context of employment, the same standard of treatment is required to be accorded to the migrant workers, as enumerated under the UN's human rights treaties as well as international conventions devised under the framework of the ILO. In this regard, the law imposes a duty on the host States to treat migrant workers no less favourable than their nationals.

Reassessing Malaysia's Obligation In Treating Migrant Workers

Malaysia is a member of the UN, having admitted to the organization in September 1957. As a Member State to the UN, Malaysia is bound to observe the obligations enshrined under the UNC including recognizing and promoting the fundamental human rights without distinction. This could be inferred from the word "pledge" used in Article 56, which denotes a legal commitment to advance the complete recognition of and adherence to fundamental human rights for all individuals without discrimination on the basis of race, gender, dialect, or belief. However, the definition of human rights as stated in the UNC is rather vague because it does not clearly state the fundamental human rights that the States must uphold and advance (Hamid, A. G. (2019).

Unlike the UNC, the international conventions on human rights extensively specify the concept of human rights and the obligation imposed on the Member States for the protection and raise of important social rights. As discussed previously they include the ICCPR, ICESCR and the ICERD. However, these conventions must be read with caution since they do not create absolute protection of human rights. For instance, the ICCPR requires Member States to accord fundamental civil and political rights on all persons within their territories and jurisdictions without any distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, Member States may be allowed to depart from their obligation, in particular in time of public emergency. In comparison with the ICCPR, the obligations enshrined under the ICESCR is limited, to the extent that Art. 2 merely imposed on the Member States to take steps towards recognizing, vis-a-vis obligation to observe the economic, social and cultural rights of the peoples. Likewise, the scope and application of ICERD are limited, in the sense that distinction and preference made on the grounds of religion and nationality are excluded from the meaning of racial discrimination. These limitations showcase the weaknesses and flaws of the international instruments in regulating the recognition and protection of the human rights.

On top of that, there are no general obligation, either under the UNC or customary practices requiring States to participate in human rights treaties. As far as Malaysia is concern, albeit the presence of wide-ranging human rights treaties, regrettably the number of human rights treaties participated by Malaysia is relatively low. Malaysia is neither a member to the ICCPR, nor does it participate in the ICESCR. As a result, Malaysia is not subject to any legally binding obligations as a result of the obligations set forth in both treaties for the promotion and protection of human rights. Malaysia is also not required to abide by the ICERD's highlighted clauses because the country has not ratified the agreement. When Pakatan Harapan was in power, the administration declared a desire to join the ICERD, but it was met with strong opposition from the locals, especially the Malay *Bumiputera* (Minister: In Q1 2019, the government will ratify the Convention on Racial Discrimination and five other treaties.) ICERD was rejected by the majority of Malays because it threatens their religious beliefs, their special status as Malays and bumiputeras, and their privileges as Malay Rulers (Govt Not Ratifying ICERD, 2018; Malaysia Govt Says It Won't Ratify UN Rights Pact after Facing Anger from Malays and Muslims, 2018).

Besides not being part of the general treaties dealing with human rights, Malaysia had also abstained from acceding and signing to specific treaties that deal with employment and migrant workers. For example, Malaysia has not participated in the ICRMW that provides and guarantees the protection of migrant workers and their family members. In fact, the ICRMW could be seen as a relatively weak agreement, in the sense that it has not reach to the majority of the States.

Under the framework of the ILO, there are also gaps in the application of the ILO's conventions on Malaysia. Malaysia has become a member to the ILO since November 1957, i.e. in less than three months after attaining independence. However, after more than 60 years of joining the ILO, there is only a small number of the ILO's conventions (i.e. 18 conventions, to be exact) that were participated or ratified by the Malaysian government (International Labour Organization, n.d.). Most importantly, the government did not take into account the treaties that protect the integrity of migrant workers. They include the ILO conventions that have already been mentioned, especially the Discrimination (Employment and Occupation) Convention of 1958 and the Agreement Concerning Waves of migration in Violent Conditions and the Advancement of Equal Opportunity and Dignity of Migrant Workers (1975) (C143) (C111).

Therefore, based on the above reasons, it is could be seen that the abstinence from signing various international treaties on human rights and several key ILO's conventions relating to migrant workers has left a vacuum of international law on Malaysia, in so far as the regulation and the treatment of migrant workers in concerned. In the absence of such laws, there can be no legal force at the international level that can dictate or determine how Malaysia treat migrant workers. Nevertheless, by reason of being a Member of the UN, Malaysia is under general obligation to recognize and pay respect for human rights. The UDHR which underlines the general recognition of fundamental human rights, fall short of being a legally binding treaty. It is merely a declaration adopted by the UN General Assembly Resolution. By virtue of Art. 10, UNC, any decision or resolution passed by the UN General Assembly are recommendatory in nature and hence has no legal binding effect on Member States.

Likewise, at the regional level, especially under the framework of the Association of Southeast Asian Nations (ASEAN), there are no specific agreement concluded between Member States so as to confer international standards for treating migrant workers. One of the declaration that were adopted by the ASEAN Members on the subject-matter was the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. The Declaration fall short of creating a legally binding obligation on ASEAN Countries, including Malaysia. Rather it incorporates the aspiration of the ASEAN leaders to protect and promote the full dignity and rights of migrant workers and their family members through national laws, regulations and policies, as well as through joint cooperation of Member States. Among others, the Declaration specifically grants migrant workers with right to fair treatment at the workplace (e.g. working conditions and safety) (Article 15), the right to a suitable or acceptable accommodation (Article 16), and the right to just and reasonable benefits and compensation (Article 17). (Art. 17). However, the rights guaranteed by this Declaration may be exercised by migrant workers in accordance with the national laws, regulations, and policies of the host nation, in recognition of the sovereignty of the ASEAN Member States.

Following the outbreak of COVID-19, the ASEAN Labour Ministers had come together in solidarity to and issued the Joint Declaration of ASEAN Employment Ministries on Response to the Effects of Coronavirus Infection 2019 (COVID-19) On Youth employment. The ASEAN's urgency is expressed in the Joint Declaration. Countries to handle the COVID-19's effects on ministry of labour in a prompt and efficient way while appreciating the proactive measures taken by Asean Nations to aid employees and companies impacted by the COVID-19. The Joint Statement also took into consideration the welfare of the migrant workers. The Labour Ministers endeavor to ensure that migrant workers that are put to lay inedible or furlough Pandemic-affected employees are fairly rewarded by their employers, according to employers (Para. 2). They also believed that migrant workers who have been laid off are eligible for government assistance programmes or unemployment payments. But subject to the prevalent host countries' local laws, regulations and policies (Para. 2). According to Para. 4, the Labor Ministers jointly agreed to provide necessary help and relief to migrant workers from ASEAN who are impacted by the epidemic, wherever they are located, either in the ASEAN countries or in third countries. The Joint Statement also covers cooperation in term of providing health services to all workers without discrimination. In this context, Para. 3 reads that the Ministers will "[f]acilitate access for all COVID-19-infected employees to needed medical care and other necessary medical support, and prevent discrimination against infected employees." The aforementioned Collaborative Statement does not, however, impose any obligations on Member States regarding how they should treat migrant workers, unlike many other joint initiatives under the Concept.

The 'absence' of international conventions that create legal obligation on Malaysia does not imply permission for the government to treat migrant workers as they wish. As a member of the UN, Malaysia is under obligation to promote the universal respect and observance of fundamental human rights for all individuals without distinction. At the domestic level, the fundamental liberties of individuals are guaranteed under the Federal Constitution, being the supreme law of the land, and must be respected, especially by the government.

In general, the Federal Constitution recognizes the equality of all persons regardless of whether he is a citizen or not. Art. 8(1) reads: "All persons are equal before the law and entitled to the equal protection of the law." The word 'persons', as opposed to 'citizens' used in Art. 8(1) denotes that all people, including migrant workers, must be equally treated before the law and are equally protected under the law. Likewise, the Federal Constitution imposed that all persons are protected from slavery and forced labour. Art. 6 (1) and (2) respectively states that no individuals can be held in slavery, and all forms of forced labour shall be outlawed. According to this clause, neither local nor migrant workers may be subjected to slavery or other forms of servitude.

Besides the Federal Constitution, other local employment statutes also regulate for the migrant workers. For instances, they include the Employment Act 1955, the Employment Provident Fund Act 1991, the Employees' Social Security Act 1969, the Labour Relations Act 1967, the Organized Labor Act 1959 (Revised 1982), the Factory and Machinery 1967, the Occupational Safety and Health Act 1994, and the Workmen's Compensation Act 1952. These significantly to migrant workers, subject to specific specified restrictions, and they offer fundamental constitutional immunity to workers against all types of extortion, victimization, torture, and labor practices (Pappusamy, 2014). Similar to their local counterparts, migrant workers are likewise given the opportunity to access their local Labor Courts and Industrial Courts.

The rights for equal treatment of migrant workers were addressed in the case of *Chong Wah Plastics Sdn. Bhd. & Ors. v Idris Ali & Ors* [2001] 1 ILR 598. According to the Industrial Court, among other things, "if the country has to employ foreign workers, both the law and equity, and good conscience necessitates that they are given their legal rights, and this includes the payment of comparable wages as local workers." According to this ruling, all employees are entitled to the same employee rights regardless of their country, locality, or status as a migrant. In other words, the law mandates that migrant workers be treated equally, with fairness, and dignity (Pappusamy, 2014).

Conclusion

The widespread of COVID-19 in Malaysia had adversely impacted the migrant workers. The action and response adopted by the government in handling the pandemic have drawn criticism, especially in relation to the treatment accorded to the migrant workers. Reports show that migrant workers were discriminately treated and were excluded from the government's policy in combating the widespread of COVID-19. For example, different conditions apply to migrant workers for the testing and treatment of COVID-19, where they are required to undergo the COVID-19 screening process, and to bear the cost for the test and related treatment. The welfare of the migrant workers affected by the COVID-19 also were not properly taken care of, unlike its local counterparts. Reports showed that the migrant workers were excluded from receiving the various stimulus measures announced by the government to reduce the negative impacts brought by COVID-19. Likewise, the mistreatment against the migrant workers could also be seen in relation to the adoption of the national vaccination programme, which excluded the migrant workers from the list of priorities for vaccination. These had further marginalized the migrant workers.

Despite the allegation of different treatment accorded by government in handling the widespread of COVID-19 among the migrant workers, there are equally evidences suggesting firm action by the government that care for the welfare of the migrant workers. For instance, following the widespread of COVID-19 among the migrant workers at the Top Glove, the government had announced its decision to immediately enforce new worker housing rules and impose fines on the employer for failure to provide proper accommodation to the migrant workers (Peter, 2020). In an announcement by the Senior Minister for Defence, he elaborated the fine imposed on the employers would be around RM12,300.00 for every employee that is provided with substandard accommodation. At the same time, these employers face the risk of legal charges. As at 1 December 2020, the Human Resource Minister announced that 19 investigations have already been carried out against six Top Glove subsidiaries for failure to provide proper housing for their migrant workers.

In essence, discriminatory treatment against migrant works are prohibited, both under international instruments and national laws. The general recognition and promotion of human rights, and in particular on the principle of non-discrimination, is spelt out under the UNC and various other social rights treaties like the ICCPR, ICESCR and ICERD. However, with exclusion the UNC, Malaysia has not ratified to any of the above treaties. Likewise, Malaysia reserves itself from signing to other specific conventions regulating the migrant workers (e.g. the ICRMW) and few other workers' conventions under the framework of the ILO that regulate for the non-discriminatory treatment in the employment, including migrant workers. The 'absence' of international conventions that create legal obligation on Malaysia have created further gaps on the regulation of social truths on the state.

Nonetheless, in handling the pandemic COVID-19, the issues of migrant workers are crucial and cannot be tolerated. The rise of COVID-19 among migrant workers may lead to serious impacts to the country, both health and economy. Although the government is not under specific obligation to treat the refugee labours, but certain policy events should be accepted to address the needs and welfare of migrant workers in time of the pandemic. At the same time, the fight against COVID-19 should not be placed on the government alone, rather the employers must cooperate with the Ministry of Health, at least to combat the widespread of COVID-19 at their workplace. This can be done through several means, such as constantly reminding the migrant workers to observe the SOP issued by the government at all time, either at the workplace or their residential premises, and providing conducive accommodations for the migrant workers. Likewise, employers and the migrant workers should adopt to the new norms at their workplace to curb the widespread of the COVID-19. This includes carrying out temperature screening before entering the workplace, providing hand sanitizer, constantly sanitizing the common areas (e.g. pantry, toilets, etc.), practicing social distancing at the workplace, avoiding close conversation and preventing large number of workers from working in confined spaces (Ministry of Health. (23 January 2021).

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