



MIGRANT WORKERS' RIGHTS TO SOCIAL  
SECURITY IN MALAYSIA: A REFORM ORIENTED  
ANALYSIS

BY

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## ABSTRACT

Social security is one of the vital human rights enunciated in the *Universal Declaration of Human Rights of 1948*. Despite having the principle of equality of treatment embodied in the Federal Constitution and become signatories to a few international social security related instruments, Malaysia who relies heavily on the migrant workers in various sectors, has yet to accord them the same level of social security protection enjoyed by the local workers. This can be seen from the fragmentation of employment injury schemes with different benefits under two different laws namely the *Employees' Social Security Act 1969* governing the local workers and the *Workmen's Compensation Act 1952* governing the migrant workers in which the latter is inferior to that of the former. Further, the non-mandatory contribution of the migrant workers for the old-age benefits in the *Employees Provident Fund 1991* is exacerbated by the low amount of contribution on the part of the employer. With the lack of coordination of social security benefit between Malaysia and the labour-sending countries, portability of these benefits across border could not be affected. Another concern is regarding the responsibilities of several ministries to handle the migrant workers' issues which could lead to unnecessary redundancy. Thus, this study will address these issues with the aim of reforming the current social security legislations by making new proposal to the laws and at the same time examines the proposals made by the government in respond to the ILO Committee observation. The method adopted in this study is by analysing the standards provided in the international legal framework and the legal provisions available in the local social security laws. Decided cases are also significant especially in analysing the *English Common Law* defences under tort system and the two concepts of claim available under the current employment injury compensation laws of fault-based principle under the *Civil Law Act 1956* and the more recent no-fault rule provided in the *Workmen's Compensation Act 1952*. Through a survey conducted amongst the migrant workers, it has been revealed that the level of awareness of the benefits available to them is below the satisfactory level. Based on the shortcomings identified, this study proposed to reform the present laws by revising the existing benefits for employment injury based on the methods adopted in the Singapore's *Work Injury Compensation Act 1975* and increasing the employer's contribution for the retirement saving. The proper coordination with the labour-sending countries through bilateral and multilateral agreements, restructuring of the current administrative systems concerning the migrant workers and ratification of the core ILO social security convention are highly recommended.

## ملخص البحث

الضمان الاجتماعي هو أحد حقوق الإنسان المهمة والمنصوص عليها في التصريح العالمي لحقوق الإنسان ١٩٤٨. على الرغم من أن مبدأ المساواة في المعاملة مجسد في الدستور الاتحادي الماليزي والذي وُقِّع على عدد من المستندات الدولية المتعلقة بالضمان الاجتماعي، فإن ماليزيا التي تعتمد بشكل كبير على العمال المهاجرين في مختلف القطاعات لم تمنح لهم بعد نفس المستوى من الحماية الاجتماعية التي يتمتع بها العمال المحليون. هذا الأمر ملحوظ من خلال تفكك الأنظمة المتعلقة بإصابات العمل التي لها فوائد مختلفة بموجب قانونين مختلفين في ماليزيا، وهما قانون الضمان الاجتماعي للموظفين لعام 1969 الذي يحكم العمال المحليين، وقانون تعويض العمال لعام 1952 الذي يحكم العمال المهاجرين والذي يعد أدنى درجة من القانون الخاص بالمحليين. علاوة على ذلك، تفاقمت حالة المساهمة الغير الإلزامية للعمال المهاجرين في فوائد كبر السن في صندوق ادخار الموظفين لعام 1991 بسبب قلة مساهمة أصحاب العمل. ونظرا لعدم وجود تنسيق لفوائد الضمان الاجتماعي بين ماليزيا والبلدان المصدرة للعمالة، فإن إمكانية نقل هذه المنافع عبر الحدود لا يمكن أن تتأثر. المشكلة الأخرى متعلقة بمسؤولية عدة وزارات في معالجة قضايا العمال المهاجرين التي يمكن أن تؤدي إلى التكرار الغير الضروري لها. وبالتالي، ستعالج الدراسة هذه القضايا بهدف إصلاح تشريعات الضمان الاجتماعي الحالية من خلال تقديم اقتراحات جديدة إلى التشريعات، وفي الوقت نفسه دراسة المقترحات التي قدمتها الحكومة استجابة لملاحظات لجنة المنظمة الدولية للعمالة. تتمثل الطريقة المعتمدة في هذه الدراسة في تحليل المعايير المنصوص عليها في الإطار القانوني الدولي والأحكام القانونية المتاحة في قوانين الضمان الاجتماعي المحلية. تعتبر الحالات المحددة ذات أهمية خاصة في تحليل دفاع القانون العام الإنكليزي في إطار نظام الأضرار ومفهوم المطالبة المتاحين بموجب القوانين الحالية للتعويض عن إصابات العمل والقائمة على مبدأ الخطأ بموجب القانون المدني لعام 1956، وفي قانون التعويض الغير قائم على مبدأ الخطأ المتاح في تعويض إصابات العمل لعام 1952. من خلال الاستبيان الذي أجري بين العمال المهاجرين، تبين أن مستوى الوعي بالفوائد المتاحة لهم قل عن المستوى المرضي. واستنادا إلى أوجه التقصير التي تم تحديدها، اقترحت هذه الدراسة إصلاح القوانين الحالية من خلال مراجعة الفوائد الحالية لإصابات العمل استنادا إلى الأساليب المعتمدة في قانون تعويض إصابات العمل لعام 1975 في سنغافورة، وزيادة مساهمة صاحب العمل في ادخارات التقاعد للعمالة. توصي الدراسة بشدة التنسيق السليم مع البلدان المرسله للعمالة من خلال اتفاقات ثنائية ومتعددة الأطراف، وإعادة هيكلة النظم الإدارية الحالية المتعلقة بالعمال المهاجرين، والتصديق على الاتفاقية الأساسية للضمان الاجتماعي للمنظمة الدولية للعمالة.

## **APPROVAL PAGE**

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## DECLARATION

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Noor Shuhadawati binti Mohamad Amin

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Date .....

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*Amiri* Ordinance no. 46 of 2006 (Kuwait)  
Children and Young Persons (Employment) Act 1966 (Act 350)  
Civil Law Act 1956 (Act 67)  
Civil Law Act (Cap 43) of 1987 (Singapore)  
Contracts Act 1950 (Act 136)  
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F.M Ordinance No. 85 of 1952  
Immigration Act 1959/63 (Act 155)  
Immigration Regulations 1963 L.N. 228/1963  
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Law Reform (Contributory Negligence) Act 1945 (U.K)



Law Reform (Personal Injuries) Act 1948 (U.K)  
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## LIST OF ABBREVIATIONS

AC	Appeal Cases (United Kingdom)
AMR	All Malaysia Reports
All ER	All England Reports
ASEAN	Association of Southeast Asian Nations
CCT	Constitutional Court (South Africa)
CJA	Court of Judicature Act 1964
CLA	Civil Law Act 1956 (Act 67)
CLJ	Current Law Journal
DLR	Dominion Law Reports (United Kingdom)
EA	Employment Act 1955 (Act 265)
ER	Ecclesiastical Reports (United Kingdom)
EPFA	Employees Provident Fund Act 1991(Act 452)
ESSA	Employees' Social Security Act 1969 (Act 4)
EU	European Union
FWCS	Foreign Worker Compensation Scheme
FWCMS	Foreign Workers Centralised Management System
FWHSS	Foreign Worker Hospitalisation and Surgical Insurance Scheme
H & N	Hurlstone & Norman's Exchequer Reports (United Kingdom)
ICR	Industrial Cases Reports
ILO	International Labour Organisation
ILR	International Law Reports
ILRL	Industrial Relations Law Reports (United Kingdom)
IR	Irish Reports (Ireland)
IRA	Industrial Relations Act 1967 (Act 177)
KB	King's Bench
KPAF	Kuwait Awqaf Public Foundation
KPSL	Kuwait Personal Status Law
Ky.	Kyshe's Reports
MLJ	Malayan Law Journal
MOH	Ministry of Health
MOHA	Ministry of Human Affairs
MOUs	Memorandum of Understandings
M & W	Meeson & Welsby's Exchequer Reports (United Kingdom)
NIHL	Noise-induced Hearing Loss
OLD	Occupational Lung Diseases
OSD	Occupational Skin Diseases
PAA	Probate and Administration Act 1959 (Act 97 of 1959)
p.b.u.h	peace be upon him (Prophet Muhammad)
QB	Queen's Bench
QBD	Queen's Bench Division
RTR	Road Traffic Reports (United Kingdom)
SIRC	State Islamic Religious Councils
SGHC	Singapore High Court
SLR	Singapore Law Review
SOCISO	Social Security Organisation

TLR	Times Law Report (United Kingdom)
TPPA	Trans Pacific Partnership Agreement
UDHR	Universal Declaration of Human Rights 1948
UIDHR	Universal Islamic Declaration of Human Rights 1981
UKHL	United Kingdom House of Lords
WCA	Workmen's Compensation Act 1952 (Act 273)
WICA	Work Injury Compensation Act (Cap 354) Act 25 of 1975
WLR	Wales Law Report

# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

To earn a living, every person must work. A person may go to the extent of searching for employment outside his or her home country. This is evident from the International Labour Organisation (hereinafter referred to as ILO) estimated the existence of approximately 105 million migrant workers worldwide. The number is inclusive of their families who make up approximately 90% of the total international migrants.<sup>1</sup> Migrant workers often receive a lukewarm perception from the local society of the country they migrated to and sometimes, they are treated differently than the locals mainly because of their discernible status. Migrant workers are normally excluded from enjoying various rights granted to the local society and to a certain extent; they suffer from abuse and exploitation.

A minority group in the society, migrant workers in most countries normally work in hazardous and dangerous environments that the locals prefer to shun. With such risky conditions these people have to face on a daily basis, certain types of protections are required to safeguard them from any inevitable events such as occupational accidents, diseases, or death. Retirement saving is also equally important to them to avoid poverty in their old age. Thus, apart from addressing the needs of the local employees, a social security system must also be able to respond to the needs of migrant workers.

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<sup>1</sup> Ibrahim Awad et al., "International Labour Migration: A rights-based approach," ILO, 2010. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/--migrant/documents/publication/wcms\\_208594.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_208594.pdf) viewed on 12 March 2015.