AMERICAN JOURNALS
Open Access, Peer Reviewed Journals

American Journal of Research in Humanities and Social Sciences
ISSN (E): 2832-8019 Volume 1, | June, 2022

STATES' SOVEREIGNTY AND THE ENFORCEMENT OF CORE LABOUR RIGHTS OF MIGRANT WORKERS: AN AVOIDABLE CONTRADICTION IN SOME SELECTED MEMBER STATES OF THE ILO AND UN

Irene Fokum Sama-Lang
Akamin Asonga Patrick

ABSTRACT

This paper examines the protection of the core labour rights of migrant workers in some selected Members States of the ILO and UN, and opines that it is only through the protection of the core labour rights of migrant workers that their other work related rights can be conserved. In so doing, it conceptualized the terms 'core labour rights' and 'migrant workers,' and analyzed their protection under relevant UN and ILO instruments. It examines the notion of States' sovereignty and the conservation of core labour rights of migrant workers under international law vis- a- vis the practice in some Member States of the UN and the ILO, and argues that though most Member States have committed themselves to the protection of core labour rights of migrant workers by ratifying relevant international instruments, practice shows that they continue to subject the enforcement of core labour rights of migrant workers to their sovereignty. In this light, these researchers generally argue that subjecting the enforcement of core labour rights of migrant workers to the ambit of States' sovereignty is an avoidable contradiction that can be curbed. To this effect, Member States must review their commitment to the enforcement of the rights of migrant workers, and stand by their obligations in international law or decides whether to subject the enforcement of the rights of migrant workers to their sovereignty by denouncing the relevant international instruments on this subject.

KEYWORDS

States' Sovereignty, Enforcement, Labour Rights, Migrant workers

INTRODUCTION

In recent years the world has witnessed an increase in migration and displacement occurring due to conflicts and human rights violations,[1] poverty as a result of unemployment or underemployment,

[1] Like the present socio-political crisis in Cameroon that has led to the movement of many Cameroonian to other states such as Nigeria, Ghana, USA, Belgium among others. See generally V. Chetail., *Code of International Migration Law*,

the widening economic and social inequalities between industrialized and developing countries, amongst others. In this connection, there were about 244 million international migrants in the world in 2015, with more than 90 per cent of them constituting migrant workers,[2] and it is estimated that the number will go up to 405 million international migrants globally by 2050.[3] In its 2005 report, the World Commission on International Migration established that the number of migrants worldwide has doubled since 1980.[4]

The popular destinations for these migrants generally and migrant workers, in particular, is the USA and Europe, and recently the success story in the economic performance of some Southeast Asian countries such as Malaysia, Singapore and Thailand[5] and some Arabic Gulf countries such as Saudi

Brussels, Bruylant, 2008, in C. Papinot., 'International protection of migrant workers' PhD thesis *Paris West University* Nanterre, 2014, P14.

[2] See ILO ., *International Labour Migration and Development: The ILO Perspective*, Geneva, International Labour Office, 2007, P.1, See also International Organisation for Migration (IOM) 'World Migration Report', 2018, P. 3. The IOM is not an entity within the United Nations system, but is an inter-governmental organisation (IGO) whose members are bound by a constitution, under which membership is confined to States with a demonstrated interest in the principle of free movement of persons, together with States that were previously members of the Intergovernmental Committee for European Migration. There are currently 157 Member States, and numerous other entities have observer status (including ten States as of 2015). See generally International Organization for Migration (IOM), at http://www.iom.int/cms/en/sites/iom/home/about-iom-1/members-and-observers.html accessed on 29-4-2019.

[3] The main statistics of international migration are offered by the United Nations, Department of Economic and Social Affairs (UN DESA) , the United Nations High Commissioner for Refugees—The UN Refugee Agency (UNCHR), the Organization for Economic Cooperation and Development (OECD), and the International Organization for Migration (IOM),. Based on these migration databases, statistics show that, globally, the total number of migrants has increased from 94 million in 1970, to 153 million in 1990, reaching around 244 million in 2015 as seen above, from the total world population of about 7.3 billion people (meaning 1 person in every 30 people). Still, as a share of the world's population, the migration flow is relatively steady, representing 2.3% in 1970, and 3.3 in 2015. Around 75% of international migrants in 2015 (almost 157 million) targeted the "high-income economies . . . compared with 77 million foreign-born who resided in middle-income countries (about one-third of the total migrant stock) and almost 9 million in low-income countries in the same year." Out of 244 million migrants in 2015, the largest share was for Europe (over 31%), Asia (almost 31%), and North America (over 22%). In Europe, the highest migrants' allocation was for Western Europe (36%) and Eastern Europe (26%) with a total of 76 million migrants in 2015 .The most preferred European countries by migrants in 2015 were: Germany (12 million migrants), the United Kingdom (8.5 million), France (7.8 million), Spain (5.9 million), Italy (5.8 million), Sweden (1.6 million), Austria (1.5 million), Belgium (1.4 million), Denmark (572 thousand), and Finland (315 thousand) . The main origin countries of migrants into European regions were the Russian Federation (over 6 million), Poland (3.6 million), Romania (almost 3 million), and Morocco (2.5 million). For 2016 compared to 2015, the migration flows increased by 30% in Germany, 4% in France, 7% in Belgium, 18% in Spain, 26% in Sweden, and decreased by 6% in the UK (mainly due to the BREXIT vote in June 2016), and by 5% in Denmark . See generally G. Noja *et al.*, 'Migrants' Role in Enhancing the Economic Development of Host Countries: Empirical Evidence from Europe', *Journal of environmental, cultural, economic, and social sustainability of human beings (Sustainability), 2018, P. 2.*

[4] See World Commission on International Migration (WCIM), 'Migration in an Interconnected World: New Perspectives for Action', Geneva, 2005, P. 1.

[5] According to Mauro and others, Malaysia, Singapore, and Thailand constitute immigration hubs in the South East Asia with most migrants coming from Cambodia, Myanmar, Indonesia, The Philippines and Vietnam. See generally T. Mauro *et al*., *Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia,* 2017.Available at https://doi.org/10.1596/978-1-4648-1106-7-ch1. Accessed on 30-4-2019.

Arabia, Qatar, Bahrain, United Arab Emirates[6] amongst others have attracted migrant workers mostly from South East Asia and Africa to settle and work in these countries.[7]

Amidst the Spread of xenophobic and racist movements against foreigners, the mounting of social and ethnic tension especially in some Western European countries and the persistence forced labour perpetrated on foreign domestic workers in most Arabian Gulf countries; it becomes incumbent on us to ascertain the extent to which core labour rights of migrant workers can be enforced amidst the tight principle of states' sovereignty.

The overall purpose of this paper is to examine the extent to which the principle of states' sovereignty can hinder the enforcement of core labour rights of migrant workers. These researchers generally argue that the subjection of the enforcement of core labour rights of migrant workers to the sovereign right of States is a contradiction that can be avoided when States stand by their obligations in international law, when they ratify relevant international treaties on the subject. In particular, this article conceptualizes core labour rights of migrant workers and the term 'migrant workers' in international law, it examines the notion of States' sovereignty and the conservation of core labour rights of migrant workers under international law vis- a- vis the practice in some Member States. Finally the paper attempt to draw some conclusions on the enforcement of core labour rights of migrant workers, and argue that Member States should observe their obligations in international law on the enforcement of core labour rights rather than submitting same to their sovereignty.

THE CONCEPTUALIZATION OF CORE LABOUR RIGHTS OF MIGRANT WORKERS UNDER INTERNATIONAL LAW

According to the ILO Declaration on Principles and Fundamental Rights at Work 1998, the right to freedom of association, collective bargaining, freedom from forced labour, freedom from employment and occupational discrimination and freedom from child labour are recognized as core labour rights which are equally attributed to migrant workers, from which derogation is not allowed by virtue of membership of the ILO. Core labour rights are generally considered as jus cogens[8] in the field of International Labour Law. As such all Member States of the ILO irrespective of whether they

[6] These workers travel mainly to the countries of the Arabian Gulf and also to Jordan and Lebanon. The six states of the Gulf Cooperation Council (GCC), Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the United Arab Emirates (UAE), host approximately 10 million foreign workers, with the largest number (8.8 million) in Saudi Arabia. In several cases, the number of foreign workers in the country exceeds the native population substantially. See generally G. S. Manseau 'Contractual Solutions for Migrant Labourers: The Case of Domestic Workers in the Middle East', 2006, P.26. Available at http:// beta. nottingham. ac.uk/ hrlc/ documents/ publications/ hrl commentary 2006 /migrantlabourers.pdf. Accessed on 30-4-2019.

[7] Since the 1970s, migrant labourers, especially those who perform domestic work, have been in high demand in the Middle East. Currently, approximately 10 million migrant workers, primarily from Southeast Asia, South Asia or Africa, live and work in these countries. Their native countries benefit greatly from these workers' remittances and encourage migration; the host countries also benefit from cheap labour but provide almost no protection against abuse of workers by the private sector that hires them. The workers themselves flock to the region for the promise of high salaries, but as temporary workers tied to their employers, they are frequently placed in positions of extreme vulnerability with little recourse to justice. It is contended in this study that one solution to the problem of abuse of migrant workers generally and domestic workers, particularly in most of these Middle East countries, is to establish and enforce a standard working contract for all migrant workers in various domains. See generally Manseau *ibid* at P. 27.

[8] See the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

have ratified the relevant conventions[9] must respect,[10] protect[11] and fulfill[12] these rights. Though freedom from child labour is considered as a core labour right as seen in the above Declaration, it is excluded from the scope of this paper since as it is a discipline on its own in the broad human rights context(children rights), and it an ill not work as conceptualized by the ILO.

THE CONCEPTUALISATION OF MIGRATION FOR WORK UNDER INTERNATIONAL LAW

Migration is a term that encompasses a wide variety of movements and situations involving people of all walks of life and backgrounds. More than ever before, migration touches all States and people in an era of deepening globalization. Migration has helped improve people's lives in both origin and destination countries and has offered opportunities for millions of people worldwide to forge safe and meaningful lives abroad.[13]

Though there is no universally acceptable definition of the term 'migrant worker,' it is impossible to draw a sharp line between 'migration for work' and 'migration.' In this light, Chetail argues that 'migration,' all types of migrations combined, is commonly perceived as 'a movement of people leaving or leaving a State, to enter another State in order to reside on a permanent or temporary basis.'[14] This definition, therefore, covers emigration (departure or travel), immigration (arrival in the host country), and residence and possibly return.

Article 2 (1) of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPRMWMF) 1990, defines a 'migrant worker' in general terms. The definition includes any person who is to be engaged, is engaged or has already been engaged in a remunerated activity in a State of which he or she is not a national.[15] The first limb of this definition (a person who is to be engaged) does not hold sway in this paper since as a person who is to be engaged is a prospective worker, and not a worker in itself.

THE INTERNATIONAL CONSERVATION OF CORE LABOUR RIGHTS OF MIGRANT WORKERS

[9] Such as the ILO Convention 87 on Freedom of association, ILO Convention98 on Collective bargaining, ILO Convention 100 on Equal Remuneration, ILO Convention 111 on Employment and Occupational non-discrimination, amongst others.
[10] The duty to respect core labour rights includes the duty by member states not to infringe directly on these rights.
[11] The duty to protect requires member states to take measures in order to ensure that other entities such as corporations/enterprises employing workers generally and migrant workers specifically, do not infringe on their rights
[12] And the duty to fulfill requires member states to take positive steps to realize labour rights. These triple-pronged obligations of states in international human rights law was developed by Henry Shue. See generally H. Shue., Basic Rights: Subsistence, Affluence and US Foreign Policy, Princeton, Princeton University Press, 1980, P. 65.
[13]See G. D. Lieto., 'International Legal Realities of Migrant Labour Rights,' *Journal of Identity and Migration Studies*, Vol. 9, No. 2, 2015, PP. 86-109.
[14] See V. Chetail., *Code of International Migration Law*, Brussels, Bruylant, 2008, in C. Papinot., 'International protection of migrant workers,' PhD thesis *Paris West University* Nanterre, 2014, P. 19.
[15] Excluded from the above definition are personnel of international organizations, persons who are employed by a State outside its territory, investors, refugees and stateless persons, students, trainees, seafarers and workers on an offshore installation provided that they have not been admitted to take up residence and engage in a remunerated activity in the State of employment. See article 3 of the ICPRMWMF. Article 11(1) of ILO Convention 97 defines a migrant worker 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 migrant worker.' Article 1 of the European Convention on the Legal Status of Migrant Workers,1997, define a migrant worker as 'a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment.'

The right to join trade unions and take part in their work is one of the top priorities of workers in most countries, and no one is in greater need of the exercise of this right than the migrant worker.[16] Migrant workers indeed are in dire need of this right because their status as non-nationals often than not, usually exposed them to discrimination, harassment, forced labour, amongst others which can only be adequately addressed if they are affiliated to trade unions. In this regards, Turner et al argued that unionised immigrants are twice as likely as non-unionised immigrants to earn above the median hourly earnings and have greater pension coverage.[17]

It is against this backdrop that article 26(1) (a) of ICPRMWMF[18] provide for the right of migrant workers to unionise by stating that 'State parties recognize the right of migrant workers and members of their families to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view of protecting their economic, social, cultural and other interests subject only to the rules of the organization concerned.'

It is clear from this provision that migrant workers are authorized within the context of this provision to join only existing trade unions. Though migrant workers are free to take part in the activities of the said existing trade unions, they must do so in associations established in accordance with the law. The term 'in accordance with the law' is what has caught our interest. Is it the domestic laws of the host countries or international laws? Though by way of implication one can argue that it is the domestic laws of the host countries, this too does not hold sway with the classical concept of freedom of association for trade union purposes which upholds the right of workers to form and join trade unions of their own choosing without seeking and obtaining any prior authorization.

It is in this connection that these researchers argue that subjecting migrant workers to enjoy their right to unionize only in existing trade unions that are established in accordance with the law, is tantamount to subjecting migrant workers to only prior authorized trade unions which is an affront to the enjoyment of the right to freedom of association as conceptualized by the ILO. This is more true as article 26(1)(b) of same convention further provides that 'no restrictions may be placed on the exercise of this right other than those that are prescribed by law…'

---

[16] H. Dunning ., *Trade unions and migrant workers: A workers' education guide*, Geneva, ILO, 1985, P.15.

[17] See T. Turner *et al*, ' Does union membership benefit immigrant workers in 'hard times'?', *Journal of Industrial Relations*, 2014, PP. 134-147.

[18] This international convention is the lone UN instrument dedicated to migrant workers and members of their families. It was adopted in 1990 and came in force in 2003. It is equally the world's only comprehensive document for the protection of migrant workers. The United Nations' Migrant Workers Convention was initiated by countries of emigration that were not satisfied with how the ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) had addressed illegal immigration and employment, focusing on the suppression of such practices. Receiver States of migrant workers feared that the ILO Convention might discourage temporary migration. The emigration countries wished to ensure more substantively the protection of their nationals working in countries where they were often abused and exploited due to their migrant status, and they hoped that the change of venue from the ILO to the UN would prove fruitful to those aims. Three factors have been held to explain sender States' choice of the UN as the new arena for protecting migrant workers to wit: the dissatisfaction with the focus on trafficking and illegal employment in the 1975 ILO Convention, risking to render less remittances to developing countries, the tripartism of the ILO with the strong influence of employers' and workers' organisation, which might be less considerate of migrant workers' needs, and the higher chances for developing countries to gain majority in negotiations. There was also the recognition of the ILO as confined to addressing the economic dimensions of migrant workers' situation, while a UN instrument was believed more apt to address their human rights from a broad perspective, and possibly to attract more ratifications than the ILO Conventions. See generally R. Böhning, 'The ILO and the New UN Convention on Migrant Workers: The Past and Future', *International Migration Review*, Vol. 25, 1991, P. 700 and S. Hune and J. Niessen, 'The First UN Convention on Migrant Workers', *Netherlands Quarterly of Human Rights*, Vol. 9, 1991 PP. 132-133.

Article 20 of the UDHR safeguards the rights of everyone to freedom of association. Article 23(4) of same further provides that 'everyone has the right to form and join trade unions for the protection of his interests.' The term 'everyone' in the context of these provisions as per these researchers, covers both national and migrant workers. This is further supported by article 2 of same legislation which entitles to everyone, all the rights and freedoms outlined in this declaration.[19]

In line with the position in the UDHR, article 22(1) of the ICCPR provides that 'everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.' The implications of the term 'everyone' as contained in this article is to the effect that both nationals and migrant workers have the right to freedom of association for trade union purposes.

The ICESCR equally provides for the right of 'everyone' to form and join trade union of their choosing, subject only to the rules of the organization concerned, for the promotion and protection of their economic and social interests.[20] Just like the ICPRMWMF, the ICESCR provides for the kind of workers interests to be protected by workers unions, and deviate from the ICPRMWMF in that, in tandem with the UDHR and the ICCPR, the ICESCR provides for the right to unionise for everyone irrespective of whether one is national or a migrant worker, documented or undocumented workers.

Article 6(1) (a) (ii) of the ILO Migration for Employment Convention 97[21] provides that 'each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality…to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matter…membership of trade unions and enjoyment of the benefits of collective bargaining.' In this way article 6(1) (a) (ii) ILO Convention 97 resembles article 36 of the UN CPRMWMF in that they both accord only documented migrant workers the right to unionized.

The ILO contends that all international labour standards cover all workers irrespective of their nationality or immigration status.[22] The basis of this argument rest on article 2 of ILO Convention 87 which states that 'Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.' This statutory provision is self-explanatory as it makes no distinction between national and migrant workers or their status for the enjoyment of their trade union rights.[23] In this light, we submit that the denial of migrant workers the right to unionise underpins an

[19] The term 'everyone here covers both national and migrant workers. Article 1 of same declaration states that all human beings are equal in dignity and rights. The generic term 'all' use in this article equally covers both national and migrant workers.

[20] See article 8(1) (d) of ICESCR,1966.

[21] This convention was adopted on the 1st of July 1949 and entered into force on the 22nd Jan 1952. This is the first ILO Convention focusing exclusively on migrant workers.

[22] See ILO, 'the Dignity and Rights of Migrant Workers in an Irregular Situation,' 1999, *op cit.,* at P. 1.

[23] The ILO argument that the respect for fundamental rights and principles at work is not limited by a worker's nationality or immigration status as seen above is reinforced by Article 1 of Convention No. 143 (Migrant Workers (Supplementary Provisions) *Convention,* 1975) which requires States Parties "to respect the basic human rights of all migrant workers." The ILO Committee of Experts on the Application of Conventions and Recommendations views this provision as referring to "the fundamental human rights contained in the international instruments adopted by the UN in this domain, which include some of the fundamental rights of workers". This interpretation is particularly important because it reflects the interdependence between international labour standards and human rights law. See generally International Labour Conference, 87th Session, 1999, Report III (1B), 'Migrant Workers: General Survey on the Reports of the Migration for

exploitative labour market which leaves migrant workers open to systematic abuse by private individuals.

Article 1 of the ICPRMWMF prohibits discrimination irrespective of the legal status of the migrant worker and members of their family. Though article 36 of same empowers only documented migrant workers to form and join trade unions whereas undocumented migrant workers are not accorded this right, this scholars argue that the rationale behind this statutory provision is to encourage documented or regularized migration. Article 6(1) of the ILO Migration for Employment Convention 97, upholds the principle of non-discrimination and equal treatment, without discrimination in respect of nationality.

ILO Convention No. 143 (Migrant Workers (Supplementary Provisions) Convention on its part does not only reaffirms that Member States have a general obligation to respect the basic human rights of all migrant workers irrespective of their status[24] with regards to equal treatment, it also prescribes more specifically the protection of equality of opportunity, which entails access to employment, trade union and cultural rights, and individual and collective freedoms.

With regards to migrant workers right to freedom from forced labour, Section 11(2) of the ICPRMWMF provides that 'No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.'[25] The UDHR prohibits slavery and servitude which are usually not considered to comprise forced labour. However, scholars have argued that the definition of slavery as captioned in the 1926 Slavery Convention covers amongst others forced labour and sexual exploitation.[26] It follows from this view that though the UDHR does not define and specifically provides for forced labour, it is contemplated in its article 4 since as forced labour is held to constitute a modern form of slavery as seen above.

THE PRACTICE IN SOME SELECTED MEMBER STATES OF THE UN AND ILO

Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975,' Geneva , 1999, P. 108. Indeed, regularization of migrant workers in general and those in an irregular situation in particular has been and continues to be viewed by the ILO as an important step to officially recognize their presence in the labour market and protect their human and labour rights as well as prevent their marginalization, thus increasing the prospects for improved social cohesion. In this light, the ILO has argued that the human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up. See generally ILO., *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, ILO, 2006, P. 55.

[24] See article 9(4).

[25] However according to sub-section 3 of the above mentioned provision, this provision shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned. See section 4 of the ICPRMWMF.

[26] See Allain *op cit.*, at P. 242. As seen above Ireland contends that forced labour is 'an elusive form of modern slavery'. See Ireland *op cit.*, at P.123.

The principle of States' sovereignty[27] affects the enforcement of human rights generally and the core labour rights of migrant workers particularly. States' sovereignty is an important principle of international law. It upholds the equality of States, and empowers them to manage and control their internal affairs (including the entry, residence, access to employment and expulsion of aliens) without any interference.

Though this principle is a universally acceptable one, its enjoyment is however not absolute.[28] This view is supported by the provisions of Chapter VII of the UN Charter which provides for the organization's competence to interfere drastically with the sovereign Member States' policies if these endanger international peace and security. This is in line with the Charter's provision on the obligation of the Member States to promote the respect for human rights without discrimination based on race, sex, or nationality.[29] This obligation, elaborated and improved by the numerous human rights instruments, has been continuously interpreted as not to constitute an illegal and illegitimate inroad on national sovereignty. This view is supported in this study in that when States constitutes themselves into the world's assembly of States and adopts and ratify recommendations and conventions, it is an indication of their willingness to limit the exercise of their sovereign rights, since as international law mandates them to stand by what they have agreed in these ratified conventions and treaties.[30] As such when Member states treat the enforcement of core labour rights of migrant workers in a cavalier fashion, it is a contradiction to their obligations in international law.

---

[27] Sovereignty of States is –understood as their supreme authority and independence. State sovereignty is the notion that all states are equal and independent, a notion that traditionally has been considered the foundation of international law. According to Brownlie, the principle of States sovereignty is hinged on three fold features, to wits; "(1) a jurisdiction, prima facie exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor". Thus, at the core of State sovereignty is the control over State territory, and States' sovereign right to control the entry and stay of aliens in their territory is well established. See generally I. Brownlie, *Principles of Public International Law*, Oxford, Oxford University Press, 2003, PP. 530-531. See also *Hilal v. The United Kingdom*, 6 June 2001, ECHR, no. 45276/99, para. 59, one of the many instances where the ECtHR has reiterated that States have the right to control the entry, stay and expulsion of aliens.

[28] The concept of sovereignty is often associated with the notion of absolute power or authority of governments and states. The Bodin formula, which defines sovereignty as the *potestas legibus soluta* or which describes the monarch as being *legibus solutus* (as not bound by law), often is invoked to corroborate the understanding of sovereignty as absolute power. From this understanding, it is inferred that a state which is sovereign in this sense by definition could not be envisaged as subject to any higher (international) norms such as human rights norms, unless it has consented to them and remains in control of their application and non-application." This understanding does not hold sway in modern day's international relations. In this light Emerique de Vattel, argues that applying the concept of sovereignty to the external status of the newly established territorial states, naturally found the right to sovereignty to be limited by the same right of other states' - a limitation in part based on the natural law principle of
neminem laedere (not to do damage to someone else). The basic idea of the recognition of the principle of sovereignty was to provide for a legal concept and a structural element of the international system that gave the actors in the system the necessary competence and power to act as stable partners in international relations, that is, the competence and power to enforce the law internally and externally. Sovereignty was not a synonym for
limitless, absolute power. See J. Bodin., *The First Book of A Commonweale*, in J.Delbruck., 'International Protection of Human Rights and State Sovereignty', Indiana Law Journal, Vol. 57, Issue 4, 1982, PP. 568-578, see also E. De Vattel., ' The Law of Nature, Applied to the Conduct and Affaires of Nations and Sovereigns', 1980, in Delbruck *op cit.*, at P. 570.

[29] See article 1 of the UN Charter.

[30] States are generally mandated to stand by what they have agreed in a treaty/convention. It is a rule in international law that once States ratifies international treaties, they must respect and enforced the obligation contained in these treaties (*pacta sunt servanda*). See article 26 of the Vienna Convention on the Law of Treaties, 1976 which provides that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

Unfortunately, despite the fact that Member States of the UN and the ILO have adopted and ratified several conventions[31] on the protection of the rights of migrants generally and migrant workers in particular, these States still hold tight to their sovereign right to determine the enforcement of migrant workers' rights to freedom of association, employment and occupational non-discrimination and freedom from forced labour in their territories. In this light, these researchers questioned whether the principle of States Sovereignty is applied absolutely or its application is subjected to certain limitations? The answer to the former is in the negative, and that of the latter is in the affirmative. It is incumbent on States while enjoying their sovereignty, to respect the sovereign rights of other States,[32] and most importantly to respect the rights and dignity of those found in their territories,[33] irrespective of whether they are nationals, irregular or documented migrant workers.[34]

[31] Such as the ICPRMWMF adopted in 1990, ILO Convention 97, adopted in 1949 and ILO Convention 143, adopted in 1975.

[32] The concept of sovereignty is limited by the right of other states. This limitation is premise on the natural law principle of *neminem laedere* (meaning not to do damage to someone else). See generally Delbruck *op cit.*, at P. 570.

[33] As early as 1947, the United Nations General Assembly took issue with the violation of human rights in Bulgaria, Hungary, and Rumania. The Franco regime in Spain was next on the agenda and so was the question of the treatment of the colored population of South Africa, which then became the notorious struggle of the United Nations against apartheid. France was also indicted for human rights violations in Algeria. In all these cases the General Assembly would not yield to claims of the member states concerned that the questions raised were those subject to their exclusive national jurisdiction. These states claimed that the international treatment of the problems violated their sovereign rights. It is established United Nations law that the principle of nonintervention does not apply to questions of human rights violations. See Delbruck *op cit.*, at P. 572.

[34] See article 10(4) of ILO Convention 143.

In some Member States of the UN and ILO, migrant workers are prohibited from enjoying their trade union rights,[35] are subjected to forced labour,[36] are discriminated upon.[37] Though on this view,

[35] For instance. Qatar Labour Law, 2004. The law prevents foreign workers from joining workers' committees or the 'General Union of the Workers of Qatar' by stipulating that 'membership … shall be confined to the Qatari workers.' Workers who wish to strike are able to do so only after 'amicable settlement between the workers and employer by conciliation or arbitration … becomes impossible.' From this statutory provision, it visible that migrant workers in Qatar don't have a right to freedom of association, collective bargaining and the right to strike. In fact, as per the above law, these rights solely belong to national workers and not migrant workers. See generally article 120 of this law. However, Arif argues that the justification of this violation is centred on the fact that Qatar has not ratified core human rights instruments and as such has no obligation in international law. This researcher deviates from this line of reasoning in that core labour rights are considered as *jus cogens* in the field of international labour law from which derogation is not permitted by virtue of membership of the ILO. In this connection, Qatar joined the ILO in 1972 and as such is bound by the Core labour conventions of the ILO. From this view, Qatar therefore, has an obligation in international law to protect the right of migrant workers in her territory. It follows from this argument that all states which are member of the ILO, have an obligation to safeguard core labour rights of migrant workers irrespective of their status. See generally, A. Arif. , 'Improving labour standards for migrant domestic workers in Qatar: A return to labour rights', *Australian National University Undergraduate Research Journal*, Vol. 8, 2016, PP. 183-193. Also the Spanish Law of 2000 on the Rights and Freedoms of Foreigners makes the exercise of trade union rights by migrant workers dependent on authorization of their presence or residence in Spain. On this, the ILO Committee on Freedom of Association argues that the Spanish Foreigners' Law which makes the exercise of trade union rights by migrant workers dependent on authorization of their presence or residence in Spain is not in conformity with the broad scope of Article 2 of ILO Convention 87 on Freedom of Association and Protection of the Right to Organize, 1948. See generally Case No. 2121 on the complaint by the General Union of Workers of Spain (UGT);ILO, Committee on Freedom of Association, *Report No. 327*, Vol. LXXXV, 2002, SeriesB, No.1, paras. 561-562, available at http:// webfusion .ilo.org/ public/db/ standards/ normes/ libsynd/ index.cfm?hdroff=1. Accessed on the 2/7/2019. In the UAE, unionizing and striking on the part of migrant workers is deemed illegal throughout the country and punished by deportation. As such, the voices of migrant workers are practically nonexistent in legal narratives. In fact there are no organizations independent of the government to advocate for migrant workers' rights. There is also no mechanism to systematically report abuses of workers See A. M. Gardner. , *City of Strangers: Gulf Migration and the Indian Community in Bahrain*, Ithaca: Cornell University Press,2010, P.18 and A. M. Gardner., "Why Do They Keep Coming? Labour Migrants in the Gulf States", 2012 in M. Kamrava and Z. Babar., *Migrant Labor in the Persian Gulf*, New York, Columbia University Press, 2015, PP. 41-58.
in Lesotho and Mauritania, migrant workers can be elected to a trade union office only after five years of lawful residence. In Mauritania, a migrant is further required to have worked for five years in the sector which the respective trade union represents. See ILO ., ' Freedom of Association in Practice: Lessons Learned', Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference,97th Session, Geneva, 2008. P. 58. In Kuwait in addition to the five years' residence requirement, migrants need to obtain Certificates of Good Conduct and Moral Standing in order to be admitted to trade unions as non-voting members. They may not participate in the election of trade unions officers and cannot be elected to trade union offices. Also trade unions can be registered only if it include at least 15 Kuwaiti nationals (about 15 per cent of the mandatory initial membership), despite the fact that migrant workers constitute approximately 80 per cent of the workforce in Kuwait. See The International Trade Union Confederation(ITUC), ' Internationally Recognised Core Labour Standards in Kuwait',Report for the WTO General Council, review of the trade policies of Kuwait, 2011, available at http://www.ituc-csi.org/internationally recognised core,10577.html, accessed on the 117-8-2019. Section 10(2) of the Cameroon Labour Code limits the right of migrant workers to unionise only to those migrant workers who have been in the country for five years and above.

[36] For instance holders of the H2 Visa for the Guest Workers programme in the US or the holders of the Overseas Domestic Worker Visa in the UK are not permitted to change employers or to seek alternative employment. Breach of which will lead to deportation. This is tantamount to forced labour as these workers are compelled to stay with a particular employer, even when they no longer wish to. Migrant workers to countries like Bahrain, Qatar and the United Arab Emirates experience what to Sarah Leah Whitson (the executive director for the Middle East and North Africa Division of Human Rights Watch) calls a "triangle of oppression", the three sides of which are: heavy fees to labour brokers to secure a job, the confiscation of their passports by employers as soon as they arrive in their destination country, and the absence of legal protections and recourses if they face abuse. The practice of confiscating passports effectively places a travel ban on migrant workers. This procedure is justified by companies so that workers do not abscond and break their contracts. Confiscating passports creates a power structure between the employee and the employer, with the employer holding virtually all of the power. This dynamic allows companies to treat workers unjustly and makes it

Masabo[38] argues that most of these violating States have not ratified the relevant conventions on the protection of the rights of migrant workers, this researcher argues that the UN Charter enjoins even non-member States to act in accordance with the principles, so far as may be necessary for the maintenance of international peace and security. Although the Charter is a treaty instrument that holds a superior position among other treaties,[39] it is capable of binding non-parties at least so far as the rules of general international laws are concerned.

CONCLUSION

In all, despite the international protection of the core labour rights of migrant workers in relevant international instruments as seen above, the enforcement of these rights in some Member States of the UN and ILO is continuously place under the ambit of state sovereignty. Such States determines the modalities that must be fulfilled before migrant workers can enjoy their core labour rights.

Though it can be argued that some of these Member States have not committed themselves[40] to protecting the core labour rights of migrant workers through the ratification of the relevant ILO instruments, these researchers submits that arising from the very fact of membership of the ILO and

---

nearly impossible for workers to break free of their harsh living and working conditions. Because slavery is illegal, slave-holders often use contracts as a means to legitimate and disguise the practice. In order for a migrant to work in the UAE, he/she must first secure a visa through a method of sponsorship known as *kafala*, which legally binds the worker to her employer. Although both the sponsor and worker are capable of breaking contract, this ostensible equality is merely a ruse, because if the worker breaks her contract, she must pay the cost of her return ticket (a charge that would have otherwise been paid by the sponsor). She may also be fined or forced to pay debts to the recruitment agency. Through this system of sponsorship, the fate of the migrant worker is entirely dependent upon the goodwill of an employer who, at any time, can threaten her deportation if unsatisfied. Once in their host countries, these migrants are immediately required to surrender their passports to their employers. Thus, even before the worker steps foot in her host country, the systems of exploitation are already in place. This is further compounded as the employers hold the migrant's passport, changing jobs is a nearly impossible task. Thus, fearing the termination of their employment, domestic servants often endure continued exploitation and mistreatment rather than to complain and face deportation. In fact, in a survey carried out by the ILO on migrant workers' living and working conditions in the UAE in 2009-10, the ILO found that every single worker interviewed in a sample of 1,200 had his or her passport taken by the employer. In the majority of cases, it was established that workers were required to work, under threat and longer hours. According to Keane and McGeehan, the justification for the violation of the labour rights of migrant workers in the UAE is premised on the fact that the UAE has not ratified UN ICPRMWMF, 1990. This view is however not supported in this study. The UAE is a member of the ILO and as such it is incumbent on her to respect, protected and fulfill the core rights of workers, which according to the ILO and as contained in the ILO Declaration on Fundamental Principles Rights at Work, 1998 are *Jus Cogens* from which derogation is not allow from ILO Member States. See generally D. Keane and N McGeehan ., ' Enforcing Migrant Workers' Rights in the United Arab Emirates,' *International Journal on Minority and Group Rights*, Vol. 15, 2008, PP. 81–115, Human Rights Watch, 'Forced Labour: Panel Spotlights Migrant Worker Plight in Midleeast,' 2014 at https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/confronting-root-caus-4/. Accessed on 13.6.2019, B. Ehrenreich and A Hochschild., *Global Woman: Nannies, Maids, and Sex Workers in the New Economy*, New York: Metropolitan Books, 2003, P. 25 and C. Harzig., "Domestics of the World (Unite?): Labor Migration Systems and Personal Trajectories of Household Workers in Historical and Global Perspective."*Journal of American Ethnic History*, Vol. 25, No. 3, 2006, P. 48-73.

[36] Moreover, they may be unable to complain if employers withhold their pay and may have no access to remedies for unfair dismissal. In general, it is difficult for them to assert their rights or seek redress for abuses because they are in an irregular situation and usually afraid of detection and expulsion. See generally L. Haina ., "The personal application on the right to work in the age of migration", *Netherlands Quarterly of Human Rights*, vol. 26, No. 1, 2008, P. 68.

[37] Article 3 of the EU Foreign nationals Employment Act, 2016 prohibits the employment of migrant without a valid work permit in member States, and equally made the employment of migrants possible only when there is no competent EU national.

[38] See Masabo *op cit., at* P. 251.

[39] This Charter is generally considered as the constitution of international law.

[40] Such as Kuwait, Lesotho and Mauritania.

regardless of the ratification of specific conventions, all Member States[41] have the obligation to respect, protect and fulfill the core labour rights of migrant workers as contained in the ILO 1998 Declaration on the Fundamental Principles and Rights at Work. These fundamental principles and rights at work are universal and applicable to all people in all countries. It therefore applies to all migrant workers, regardless of their legal status.[42]

BIBLIOGRAPHY

1. Arif A. ,'Improving labour standards for migrant domestic workers in Qatar: A return to labour rights', Australian National University Undergraduate Research Journal, Vol. 8, 2016.
2. Al-Ajlani R., ' The Legal Aspects of International Labour Migration: A Study of National and International Legal Instruments Pertinent to Migrant Workers in Selected Western European Countries', PhD thesis University of Glasgow, 1993.
3. Brownlie I, Principles of Public International Law, Oxford, Oxford University Press, 2003.
4. Böhning R. , 'The ILO and the New UN Convention on Migrant Workers: The Past and Future', International Migration Review, Vol. 25, 1991.
5. L. Bosniak, 'Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention', International Migration Review, Vol. 25, Special Issue, 1991.
6. Chetail C., Code of International Migration Law, Brussels, Bruylant, 2008, in C. Papinot., 'International protection of migrant workers,' PhD thesis Paris West University Nanterre, 2014.
7. Cholewinski R., Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment, Oxford, Oxford University Press, 1997.
8. Cholewinski R, Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment, Oxford: Clarendon Press, 1997.
9. De Guchteniere P, A. Pécoud and R. Cholewinski ., Migration and Human Rights, The United Nations Convention on Migrant Workers' Rights, Cambridge: Cambridge University Press, 2009.
10. Delbruck J., 'International Protection of Human Rights and State Sovereignty', Indiana Law Journal, Vol. 57, Issue 4, 1982.
11. Eelens, Schampers and Speckmann., Labour Migration to the Middle East: From Sri Lanka to the Gulf, London, Routledge, 1992.
12. Gardne A.M. , City of Strangers: Gulf Migration and the Indian Community in Bahrain, Ithaca: Cornell University Press,2010.
13. Henkin L., The International Bill of Rights: The Covenant on Civil and Political Rights. New York: Columbia University Press, 1981.
14. Hune S and Niessen J, 'The First UN Convention on Migrant Workers', Netherlands Quarterly of Human Rights, Vol. 9, 1991.

[41] Kuwait became a member of the ILO in 1961, Mauritania, 1961 and Lesotho in 1966.

[42] The 1998 Declaration specifically refers to migrant workers as a group with special needs by providing that "Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation.' See the ILO Declaration on Fundamental Principles and Rights at Work, 1998.

15. ILO ., International Labour Migration and Development: The ILO Perspective, Geneva, International Labour Office, 2007, P.1, See also International Organisation for Migration (IOM) 'World Migration Report', 2018.
16. ILO., Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, ILO, 2006.
17. ILO, "ILO Study on International Labor Migration", Geneva, 2010.
18. ILO ., ' Freedom of Association in Practice: Lessons Learned', Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference,97th Session, Geneva, 2008.
19. Ida E., Human Rights as Indivisible Rights: The protection of socio-economic demands under the European Convention on Human Rights, Leiden, Martinus Nijhoff Publishers, 2009.
20. Keane D. and McGeehan N., 'Enforcing Migrant Workers' Rights in the United Arab Emirates', International Journal on Minority and Group Rights, Vol. 15, 2008.
21. Kamrava M and Babar Z., Migrant Labor in the Persian Gulf, New York, Columbia University Press, 2015.
22. Leyton J.A., 'The Right To Strike As A Fundamental Human Right: Recognition And Limitations In International Law', Revista Chilena de Derecho, Vol. 44, No.3, 2017.
23. Mantouvalou V., 'Are Labour Rights Human Rights?', European Labour Law Journal, 2012.
24. Molatlhegi B., 'Workers' Freedom of Association in Botswana', Journal of African Law, Vol. 42, No.1, 1998.
25. Noja G. et al., 'Migrants' Role in Enhancing the Economic Development of Host Countries: Empirical Evidence from Europe', Journal of environmental, cultural, economic, and social sustainability of human beings (Sustainability), 2018, P. 2.
26. Papinot C., 'International protection of migrant workers' PhD thesis Paris West University Nanterre, 2014.
27. Shepston L., 'Human Rights Law and Freedom of Association: Developments Through ILO Supervision', International Labour Review ,1998.
28. Sarah J. and Melissa C., The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary. New York: Oxford University Press. 2013.

WEBSITES

29. http://www.iom.int/cms/en/sites/iom/home/about-iom-1/members-and-observers.html accessed on 29-4-2019.
30. https://doi.org/10.1596/978-1-4648-1106-7-ch1. Accessed on 30-4-2019.
31. https://www.bbc.com/news/world africa-47800718, accessed on 4/9/2019.
32. http:// beta. nottingham. ac.uk/ hrlc/ documents/ publications/ hrl commentary 2006 /migrantlabourers.pdf. Accessed on 30-4-2019.
33. https://www2.ohchr.org/english/bodies/cmw/.../cholewinski.do. Visited on 27/5/2019.
34. http://www.ituc-csi.org/internationally recognised core,10577.html, accessed on the 10-8-2019.