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Journal Discussion II: NGO and Government Roles, and Responsibilities in Ensuring MDW Rights in Hong Kong, the Collaborations of Both Parties, and What area is still lacking and How to Improve It.

Introduction

Hong Kong is an administrative territory in East Asia that is controlled under the authority of People's Republic of China that has an area of 1,098 Km² (BBC.com, 2018) and the populations of 7,6 Million People (Worldometer, 2022). As an administrative area, Hong Kong has a good economic development. According to *Hong Kong Trade Development Council*, report in 2021 said that Hong Kong has 4% of economic development with the amount of GDP US\$346,59 Billion in total (The World Bank, 2022). This kind of good economic development of Hong Kong was align with the GDP per Capita that its people earn. In 2021, GDP per Capita in Hong Kong reached the amount of US\$ 46,324 in a year. Moreover, this amount of GDP per Capita is also aligned with the index of life expectancy among Hong Kong people that is reached the age of 85 year in 2022 (The World Bank, 2022).

The high level of economic development makes Hong Kong has its own attractiveness to make Migrant Domestic Workers around the world interested to get there, especially the Migrant Domestic Workers that coming from Southeast Asia. It started in 1949 when Hong Kong integrated its economy and social aspects with People's Republic of China. After the integration, the Incoming Migration Wave increased drastically till now. In 2001, there are 200.000 populations of Migrant Workers in Hong Kong that was scattered in 7-4 Million households within the area which means that it was the top of the migration wave to Hong Kong in their history as host country. In that time, 14% of the populations was employed in domestic sectors (Sim, 2003). As for now, the amount of Migrant Domestic Workers in Hong Kong has been increasing ever since. According to *Time* report, in 2019 there were 385.000 Migrant Domestic Workers in Hong Kong and that means almost 10% of Hong Kong people, particularly in Hong Kong City Area are Migrant Domestic Workers (Leung, 2019).

The correlation between high level of economic development in Hong Kong with the high wave of incoming migrant workers is existed in the aspect of the chance of the

improvements of life prosperity both for the locals and the Migrant Domestic Workers that coming to the region. With the high number of Migrant Domestic Workers incoming to their country, it makes Hong Kong people would prefer to employ them as their maids or childcare, rather than to hire a professional nurseries or private tutor that is more expensive than hiring Migrant Domestic Workers as their maid or child sitter. With cheaper cost, it could make Hong Kong household raising their financial well-being (Leung, 2019). As for the Migrant Domestic Workers, the chose Hong Kong as their destination due to the lures of high wages and the existence of highly adequate domestic legal framework about protection to them as migrant workers (Liang, 2016).

Based on those facts we can conclude that the role of Migrant Domestic Workers for the economy of Hong Kong is very crucial. Seeing the facts that the role of Migrant Domestic Workers is crucial to the economy of Hong Kong, in this Journal Discussion we would like to examine about the role of Non-Governmental Organizations and Hong Kong government on the protection of Migrant Domestic Workers and we also would like to give reviews on what has Non-Governmental Organizations and the government in Hong Kong has done to ensure the Migrant Domestic Workers have their rights, and what is it still lacking between them in the said context and how to improve it

Discussion

A. Profile and Problems of Migrant Domestic Workers in Hong Kong

In the earlier section of this paper, we have discussed about the high number of Migrant Domestic Workers in Hong Kong. In refers to a report that was released by *Hong Kong Immigration Department*, in 2021 there were 339,451 Migrant Domestic Workers in Hong Kong in which consisted by 191.783 Filipino, 140.057 Indonesian, and 7611 came from various countries such as Thailand, Sri Lanka, and Nepal (Cheung, 2017). Other statistics shows that most of them are female with only 1% part of them are male (Yeung, 2020).

The high rate of Migrant Domestic Workers in Hong Kong has been an advantage and challenges for domestic government especially in the aspect of Migrant Domestic Workers management and protection. From the advantage point, the high number of Migrant Domestic Workers has contributed a high number of incomes for Hong Kong's Domestic Economy. In 2020, *the diplomat* reported that Migrant Domestic Workers in Hong Kong contributed in total of HK\$12,6 billion in a year to Hong Kong's economy in a direct way, and contributed HK\$2,6 billion indirectly to the Hong Kong's Economy (Hung, 2020). Not only contribute to Hong

Kong Domestic Economy, but Migrant Domestic Workers also contribute to their nation of origin's economy. According to *Enrich* report, in 2018 Indonesians and Filipinos Migrant Domestic Workers contributed US\$2 Billion towards the economy of their nations of origin through the economy remittances that they have done (Marsh, 2019).

Those facts have shown us that the role of Migrant Domestic Workers is crucial enough both for Hong Kong's Domestic Economy as a *Host Country*, and for their nations of origin. Though they have big contribution towards Hong Kong's Domestic Economy, it doesn't mean that the Migrant Domestic Workers are free from some abuses, such as harassment, overcharging, and discrimination. Abuses such as overcharging, underpaid wages, illegal deployment, and inadequate accommodation are some problems that is common for Migrant Domestic Workers in Hong Kong. Survey that was taken by *Justice Center* in Hong Kong in 2017 showed that 95% of 1000 respondents were exploited and work under forces (Cheung, 2017). It is of course are a big concern since the role of Migrant Domestic Workers are very significant towards Hong Kong's Domestic Economy. Moreover, based on the report that was released by *Hong Kong Free Press*, during the lockdown application in Hong Kong, 40,000 Migrant Workers were not given any days off in which it was against domestic regulations that allow the employers to give at least 1 day off in a weekly base (Cheng, 2021).

Besides the said problems, other abuse that is commonly done to the Migrant Domestic Workers in Hong Kong is Sexual Abuses. According to the same report, Sexual Abuse rates during the lockdown application are increase thrice than usual. Moreover, physical abuse rate was increasing 2% as well in 2020 (Cheng, 2021). In addition, according to the survey that was done in 2017 by *Mission for Migrant Workers* showed that 25% of the Migrant Domestic Workers in Hong Kong were not given adequate consumption, whilst 9 out of 10 sample respondents were not given adequate break time, 2 out of 5 did not given adequate privacy, and 1 out of 5 were being mistreated (Mcque, 2020). Based on those stats, this issue is a big problem since the Migrant Domestic Workers has had contributed significantly towards Hong Kong's Domestic Economy.

B. The Role of Government and Non-Governmental Organizations in Hong Kong on The Protection of Migrant Domestic Workers

B.1 The Role and Responsibilities of Hong Kong's Government to Ensure the Protection of Migrant Domestic Workers

The high numbers of abuses and harassment towards the Migrant Domestic Workers in Hong Kong are actually violations towards the domestic regulations that is released by Hong Kong Government. Apart from the higher chance to improve their prosperity, another reason why there are so many Migrant Domestic Workers in Hong Kong is about the permission that is released by the government of Hong Kong. In 1970, they initiated the policy to giving Foreign Workers permission to work in the area. The regulation was released to help Hong Kong's problem in the lack of local domestic workers (Hong Kong Labour Department, 2021). As the time goes by, the government of Hong Kong keeps releasing and upgrading the existence of regulation, rules, and policy in regards to protect Migrant Domestic Workers in Hong Kong. Despite there are numerous regulations and policies that are applied to protect migrant workers, that doesn't change the fact that Migrant Workers are in the vulnerable position (Liang, 2016).

In regards to protect Migrant Domestic Workers interests, the government of Hong Kong has released some domestic regulations that are written in "*The Labor Law*" in which contains some constitutions about term and conditions that need to be required to ensure that Migrant Domestic Workers are protected (Shu-Ju & Cheng, 1996). In addition to the referred regulation, the government of Hong Kong also has another reference that need to be obeyed. The regulation refers to *Standard Employment Contract*, a regulation that is released by the government (Hong Kong Labour Department, 2020).

In reference to the guidance that was uploaded by Hong Kong National Labor Department, there are some regulations that must be fulfilled by Hong Kong people if they have intention to hire Migrant Domestic Workers to assist them. First of all, anyone who wants to hire Migrant Domestic Workers must have an income of HK\$15.000 per month or the same amount of assets to ensure the rights of the Migrant Domestic Workers during their working period. Secondly, in accordance with "*The Employment Ordinance (EO)*", and "*The Employee's Compensation Ordinance (ECO)*" there are some aspects that need to be fulfilled for anyone who wants to hire the service of Migrant Domestic Workers in Hong Kong. First, "*Labor Legislation*". In the EO, *Labor Legislation* regulates about the Payment of Wages Schemes, Rest Days, Statutory Holidays, Paid Annual Leave, Maternity

Protection, Paternity Leave, Severance Payment, and Long Service Payment. Whilst in the ECO Regulations it contains some rules regarding Employees' Compensation Insurance, Injuries or Death as The Results of Working Accidents, Occupational Safety, and Health (Hong Kong Labour Department, 2021).

In the aspect of the Payment of Wages within the *Labor Legislation* part, it needs to be paid once in a month and is prohibited to get it paid for more than 7 days deadline in any kind of methods depends on how both parties want it to be done, it's either with Bank Transfer, Check, or Cash. However, it is more suggested to be paid with Check or Bank Transfer to keep the record of the payment day. Moreover, according to this regulation, employers must save the payment receipt to avoid payment dispute between both parties (Hong Kong Labour Department, 2021).

Next, about the aspect of Rest Days, Statutory Holidays, and Paid Annual leave, there are regulations regarding the obligations for the Migrant Domestic Workers to have not less than 1 day in a week or 24 hours in average in a continuous period. For the Statutory Holidays, the employers must give at least 13 days holidays in a year. Whilst for the Paid Annual Leave, the employers need to pay the annual leave every 12 months since the Migrant Domestic Workers employed. The annual paid will increase progressively to a maximum 14 days depends on how long has the Migrant Domestic Workers been employed (Hong Kong Labour Department, 2021).

The next aspect is about the protection of Maternity Protection and Paternal Leave. In this aspect, this regulation obligated to the employers to give their Migrant Domestic Workers 14 Weeks of Maternity Leaves if the employers noticed that the Migrant Domestic Workers is pregnant. Moreover, the payment of Paid Maternity Leave is paid with the amount of four-fifths of the regular daily payment that is received by the Migrant Domestic Workers. The same thing is also applied to male Migrant Domestic Workers if they are required to take Paternal Leave (Hong Kong Labour Department, 2021).

The last aspects that are written in Labor Legislation is about Severance Payment and Long Service Payment. This regulation obligates the employers to pay the Severance Payment if their Migrant Domestic Workers has been working for them for not less than 24 months or when/if the Migrant Domestic Workers are dismissed. Moreover, this regulation also requires the employers to pay the Long Service Compensation if their Migrant Domestic Workers serves them for not less than 5 years of when/if their Migrant Domestic

Workers dismissed because of redundancy. However, referring to this regulation, the employers don't have to pay both compensation in the same period of time (Hong Kong Labour Department, 2021).

Moving on to “The Employees’ Compensation Ordinance” which regulated some aspects regarding Employees’ Compensation Insurance, Injuries or Death as a Result of Accidents at Work, and Occupational Safety and Health. In the aspect of Employees’ Compensation Insurance, the employers required to give their Migrant Domestic Workers adequate insurance to protect their safety. Second, in the aspect of Injuries or Death as a Result of Accidents at Work, if there are any case that leads into death or injuries due to working accidents, the employers have to pay the compensation, such as periodical payments, medical expenses, and lump sums compensation. Moreover, if any injuries are occurred to the Migrant Domestic Workers, the employers have to notify it to “the Commissioner of Labor” within 14 days after the accident occurred. The last aspect that is written in this regulation is Occupational Healthy and Safe. In this section, the employers are obligated to provide a safe working environment and giving an advice regarding Migrant Domestic Workers personal safety. In addition, this section also regulates that the employers need to provide basic first aid items, such as plasters, disinfectant, and any other first aid tools. They also have to inform their Migrant Domestic Workers about its storage and how to use it (Hong Kong Labour Department, 2021).

The second main reference is *Standard Employment Contract*. this section provides some regulations regarding contract standardization, such as Minimum Wage Allowances, Food and Accommodations, and Medical Treatment. About the Minimum Wage Allowance, the obligated amount is HK\$ 4.630 per month. This clause is activated to working contracts that has been signed on or after 28 September 2019. Based on this section, the employers are also forbidden to make private agreement with the Migrant Domestic Workers to give their Migrant Domestic Workers lower wages than the referred amount. Second, Food and Accommodations aspect. This regulation requires for the employers to give HK\$ 1.173 per year for food allowance. In addition, Migrant Domestic Workers are also obligated to live in their employers’ domicile in accordance with the contract during their working period, including during their rest days, statutory holidays, or paid annual leave. The next aspect is about Medical Treatment. This regulation obligated the employers to give their Migrant Domestic Workers free medical treatment, including medical consultation, maintenance in hospital, and emergency dental treatment. In regards to ease the employers for the said

expenses, this regulation suggests the employers to give their Migrant Domestic Workers Health Insurances apart from the employees' compensation to cover the said medical expenses (Hong Kong Labour Department, 2021).

The final aspect that is written in this section of regulation is about Completion or Premature Termination of Employees' Contract. In this regulation, the employers are required to provide their Migrant Domestic Workers with the return ticket to their origin, as well as the payable rights to the Migrant Domestic Workers. In addition, the employers are also required to give their Migrant Domestic Workers notification regarding the termination within one month before the termination activated (Hong Kong Labour Department, 2021).

Apart from the regulations towards the employer, the government of Hong Kong released some regulations toward Employment Agency as well. In accordance with the regulations that is released by the Hong Kong National Labor Department, the employment agencies are required to apply for license from the Employment Agencies Administration of the Labor Department before undertaking any job placement. Moreover, Migrant Domestic Workers are suggested to check the agency validation to the Employment Agencies Administration by online. Those two are the main policy that is released by the government of Hong Kong regarding Employment Agency Regulations (Hong Kong Labour Department, 2021).

With those said regulations, it can be seen that the government of Hong Kong has shown their commitment, are really concerned, and play a big role to ensure the prosperity and the protection Migrant Domestic Workers that works in their area.

B.2 The Role and Responsibilities of Non-Governmental Organizations in Hong Kong in Ensuring the Protection of Migrant Domestic Workers

Apart from the role and responsibilities of the government, the role of assurance on the protection of Migrant Domestic Workers also involves another party, particularly Non-Governmental Organizations. In Hong Kong the role and responsibilities of Non-Governmental Organizations to ensure the protection of Migrant Domestic Workers are very crucial due to a high number of Migrant Domestic Workers population in Hong Kong. Migrant Domestic Workers advocacy has started in Hong Kong since 1989 when *Asian Migrant Center* (AMC) was founded and they were the first Migrant Workers Protection NGO in Hong Kong. At first, they were founded to improve the social welfare and legal immigration support towards Filipino Migrant Domestic Workers that work in Hong Kong

(Sim, 2003). Then, this organization keeps growing later on and start to give services towards Migrant Domestic Workers from various origins, and they also started to give integration, and savings programs for every Migrant Domestic Workers in Hong Kong.

The presence of AMC then became the pioneer of the founding of others Migrant Domestic Workers Protection NGO in Hong Kong, such as *Asian Regional Exchange for New Alternatives*, *Indonesian Migrants Workers Union*, *Thai Women Association*, *Far East Overseas Nepalese Association*, *Association of Sri Lankans in Hong Kong* and *Tulay Ng Tagumpay*, who mainly running their aspect of protection in publication and research over Migrant Domestic Workers Rights in Hong Kong towards both the already-in MDWS in Hong Kong, and would-be Migrant Domestic Workers who wants to enter the area (Sim, 2003). Moreover, these organizations are also focusing on education, training, campaign, and advocacy on the Migrant Domestic Workers' Rights, in which also includes the elimination of Discriminative treatment (Sim, 2003). In addition, according to research that was held by *United Nations University of Macau*, these organizations are existed with the goals to giving legal supports, social, education, or medical support towards Migrant Domestic Workers in Hong Kong (United Nations University of Macau, 2021).

Besides of the said roles, Non-Governmental Organizations also could show their crucial role and responsibilities on the protection of migrant workers trough advocacy, legal assistance, medical support, and social welfare in national scale within Hong Kong area, other roles and responsibilities that are also held by these Non-Governmental Organizations are activism on transnational scale with the home countries of the Migrant Domestic Workers in Hong Kong. With the existence of these Non-Governmental Organizations, the government of the home countries could involve a third party who is able to assist them in regards of the assurance of the protection on the Migrant Domestic Workers from their own countries in particular (Amalia, 2020). In addition, with the presence of these Non-Governmental Organizations, the government of home countries are also able to do activism towards Hong Kong's Government as the Host Country to release some working standardizations for the Migrant Domestic Workers to make sure that they are fully protected and get decent working environment (Amalia, 2020).

The involvement of Non-Governmental Organizations could lead the activism that has been done manifested into something real, both in home countries and Hong Kong as the Host Country. The example of the involvement of Non-Governmental Organizations in

transnational activism is when the government of Indonesia passed Constitution No. 39 in 2004. In that time, there were so many Indonesians work overseas -particularly in Hong Kong- and becoming Migrant Domestic Workers with the lures of high wages. However, as the time went by there are so many reports about harassment, overcharging, physical violence, and any other form of violation towards Indonesian Migrant Domestic Workers in Hong Kong. This occasion made KOPBUMI (*Konsorsium Pembela Buruh Migran Indonesia/Consortium for the Defense of Indonesian Migrant Workers*) pressed the Indonesian Government to passed a constitution on the Protection of Indonesian Workers Overseas. By doing their activism, they were successfully pressed the Indonesian Government to pass the said constitution and formally released the Constitution No. 39 in 2004 in which would be amended in 2017 and changed to Constitution No. 18 of 2017 about The Protection of Indonesian Migrant Workers. In addition, their activism had also made Indonesian Government ratified the UN *International Convention on the Rights of Migrant Workers and Their Families* (ICRMW) in 2012 (Amalia, 2020).

Based on the explanation above, the role and responsibilities that Non-Governmental Organizations hold to ensure the Protection on Migrant Domestic Workers are very crucial. Knowing the facts that Hong Kong is the main destination for Filipinos and Indonesians Migrant Domestic Workers, the presence of Non-Governmental Organizations in both countries are very important for the transnational activism that involves Philippines and Indonesian Government as the home countries, and the government of Hong Kong as the Host Country.

C. Synergy and Collaboration between Government and Non-Governmental Organizations on the Protection of Migrant Domestic Workers in Hong Kong

In the two earlier parts, we have discussed about what kind of role and responsibilities that the government and Non-Governmental Organizations hold over the Protection of the Migrant Domestic Workers in Hong Kong. Whilst the government has a big role to provide legal frameworks to protect the Migrant Domestic Workers from any kind of violation and exploitations, the Non-Governmental Organizations have a big role in advocacy, activism, legal assistance, social welfare, medical support, etc. towards Migrant Domestic Workers. Both parties have a very big role form their respective ends to ensure that Migrant Domestic Workers in Hong Kong are protected. Therefore, in this section we would like to examine in how the Government and Non-Governmental Organizations in Hong Kong collaborate in order to ensure that Migrant Domestic Workers in Hong Kong are protected.

The collaboration between two parties have done is more in activism form in which through the Non-Governmental Organizations, the Migrant Domestic Workers in Hong Kong could make an approach towards the government to release some policies that assure the Migrant Domestic Workers are protected. This occasion has had already happened in 1998 when the Migrant Domestic Workers in Hong Kong under the shade of *United Filipinos in Hong Kong* (UNIFIL) -which was a united organizations consisted of 25 Non-Governmental Organizations within the organizations- doing some political movement regarding the 35% pay cut to the Minimum Wages of the Migrant Domestic Workers in Hong Kong as the impact of Economic Crisis. This advocacy has later on succeed by reducing the pay cut to just 5% (Sim, 2003). This occasion then became a concern within the Migrant Domestic Workers home countries, such as Thailand, Indonesia, and the Philippines to pressed the Government of Hong Kong to dropped any kind of pay cut proposals towards the Migrant Domestic Workers as the real manifestation of Migrant Domestic Workers protection in Hong Kong. Later on in 2002, the Government of Hong Kong dropped the said pay-cut proposal (Sim, 2003).

Another example of the collaboration and synergies between both parties is how Indonesian Government involved some Non-Governmental Organizations to join the amendment process over the law of Indonesian Migrant Workers Protection in 2017. In 2017, in accordance with the amendment of Constitution No. 39 in 2004, Indonesian Government invited some Non-Governmental Organizations, such as Migrant CARE, *Jaringan Buruh Migran* (JBM/Network of Indonesian Migrant Workers), and KABAR BUMI (*Keluarga Buruh Migran Indonesia*/Families of Indonesian Migrant Workers) to join the amendment process which resulted into the new law called Constitution No. 18 in 2017 (Amalia, 2020).

Based on the said examples, the collaboration and synergies between the Government and Non-Government Organizations are spotted in how the Non-Governmental Organizations as a coalition between Migrant Domestic Workers and the Government in the process of policies making regarding the protection of the Migrant Domestic Workers. In addition, the presence of the Non-Governmental Organizations also takes part as a coalition between Migrant Domestic Workers and the government so that the taken policies are sufficient for all parties involved (Sim, 2003)

D. Lacks of Area in the Collaboration and Synergies between Non-Governmental Organizations and Government to Ensure the Protection of Migrant Domestic Workers in Hong Kong

After we examine that the synergies and collaboration between Non-Governmental Organizations and Government is very crucial in accordance to ensuring that Migrant Domestic Workers in Hong Kong are fully protected, this section would examine the lacks of are in such context and how to improve it.

What it is still lacking in the collaboration and synergies between both parties is the different interpretation among the Non-Governmental Organizations and Government in what kind of particular aspect should be ensured about the Protection of Migrant Domestic Workers. Besides of different interpretation, another lacking area is the difference on the strategies among the parties involved in how to ensure that Migrant Domestic Workers are fully protected (Amalia, 2020). Whilst from the government ends, the area that is still lacking on the collaboration and synergies with the Non-Governmental Organizations is the government of Hong Kong are often to be failed in identifying the cases in which involved any kind of violence, overcharging, and harassment towards the Migrant Domestic Workers, though this aspect is very important for the collaboration and synergies between both parties (Liang, 2016).

In addition, the role of the Non-Governmental Organizations that is outside the economic and politic corridors makes Non-Governmental Organizations at some points are being underestimated and only taking part as the third party in the collaboration between both parties (Sim, 2003). Besides, there are still some Non-Governmental Organizations that are still lacking on the knowledge of legal advocacy experiences, which is very important aspect on the legal assistance for the Migrant Domestic Workers (Amalia, 2020).

Those lacks of area is of course need to be minimalized as soon as possible, considering that synergies and collaboration between the Government and Non-Governmental Organizations are very crucial in the assurance of Migrant Domestic Workers' Protection in Hong Kong due to their vulnerable position. There are some things that need to be done to improve the lacking area, such as discussion among the Non-Governmental Organizations to find the same interpretation regarding the aspects that need to be protected for Migrant Domestic Workers so that it could be synergized nicely with the government (Amalia, 2020). In addition, with the same interpretation it would be easier for the Non-

Governmental Organizations involved to making up the same strategies to discuss with the Government regarding the protection towards Migrant Domestic Workers (Amalia, 2020). The said improvements are a few things that could be done to improve the area that is still lacking in the collaboration and synergies between Non-Governmental Organizations and Government to ensure the Protection of Migrant Domestic Workers in Hong Kong.

Conclusion

As the most favored destination for MDWs around the world, particularly from Southeast Asia, Hong Kong has provided so many adequate regulations in regards of the Assurance of the Protection on Migrant Domestic Workers in their area. With the adequate amount of legal framework in which written in “*the labor law*” Hong Kong has already provided very adequate regulations over the protection of the MDWs.

The existence of the adequate amounts of legal frameworks regarding MDWs’ Protection are highly influenced with the role and responsibilities of the NGOs in Hong Kong that is actively doing activism, advocacy, support, and assistance towards the MDWs in Hong Kong so that they can assure the MDWs in Hong Kong are adequately and fully protected. However, collaboration and synergies between the NGOs and Hong Kong Government still have some aspects lacking so that at some point makes both parties differenced about the aspects of the protection and the strategies to ensure it. Nevertheless, it still could be improved and minimalized by doing some approaches such as, discussion about the collaboration and synergies between NGOs and the Government of Hong Kong so that they could provide way more adequate regulations over the protection of MDWs in the near future.

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