

ADVANCE UNEDITED VERSION

**COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES**

**RESPECTING THE RIGHTS OF ALL MIGRANT WORKERS
AS A TOOL TO ENHANCE DEVELOPMENT**

**A CONTRIBUTION BY THE COMMITTEE ON MIGRANT
WORKERS TO THE GENERAL ASSEMBLY'S HIGH
LEVEL DIALOGUE ON MIGRATION AND DEVELOPMENT**

Background

1. On 15 December 2005, the Committee on Migrant Workers held a Day of General Discussion on the theme “Protecting the rights of all migrant workers as a tool to enhance development”. The discussion was attended by representatives from member States, intergovernmental organisations, United Nations departments and agencies as well as non governmental organisations and academic institutions. The written and oral contributions by participants informed the Committee’s reflection on this subject (see CMW/C/SR.25 and 26) and inspired it to prepare this statement as the Committee’s contribution to the High Level Dialogue of the General Assembly on Migration and Development. The Committee especially acknowledges the work of the ILO, IOM, OHCHR and UNESCO which contribute greatly to a better understanding of a human rights based approach to migration.

Introduction

2. The Committee recalls that the human being is the central subject of development and should be the active participant and beneficiary of the right to development (Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986). Migrants are above all human beings with rights, but also active agents of development. The question of migration should thus be approached from a human rights perspective, in conformity with the Universal Declaration on Human Rights and state obligations under core international human rights treaties, bearing in mind that development is not just economic development, but also entails cultural, social and political development. In this context, the Committee observes that migration stimulates cultural and economic exchanges among nations, which in turn promote peace and understanding in keeping with the goals of the United Nations.

3. The Committee observes that there is an information deficit on many aspects of the linkage between migration and development. In countries of employment, migrants are often seen as an economic and social burden, and sometimes also as a religious, social or political threat, whereas the reality shows to the contrary that migrant workers are an essential positive factor in the economy of most developed countries, inter alia by filling gaps in the labour market and rejuvenating populations. In countries of origin, migration most of the time relieves the pressure on the labour market, remittances often amount to a significant percentage of GDP, and returning migrant workers bring acquired skills back to their country of origin. However, migration often has prejudicial consequences on the countries of origin, especially with regard to the fragmentation of families and communities and brain drain. In order to understand better the dynamics of the relationship between migration and development and maximize the benefits of migration, the Committee recommends to the international community that further research be conducted focusing on the question of how migration influences the development of both countries of origin and countries of employment, and in particular the role of human rights in that process.

Promotion and protection of the rights of migrant workers and members of their families

4. The Committee believes that respect of the rights of all migrant workers and members of their families will strengthen the beneficial effects that migration has on development, both in countries of origin and in countries of destination. Protection of human rights and prevention of discrimination in the country of employment are essential factors to enhance the integration of migrant workers and members of their families, thus enabling them to better contribute to the socio-economic welfare in the country of employment. Adequately upholding economic and social rights in countries of origin will prevent migration from being a compelled decision and will enhance the beneficial effects of migration on the development in the country of origin. The Committee is concerned with the situation of irregular migration in the world and urges states to establish mechanisms that would allow the regulation of migration in an orderly manner. The Committee also urges states to increase their efforts to combat smuggling and trafficking of migrants.

5. The Committee wishes to highlight these observations and recommendations based on rights set forth in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:

Dissemination of reliable information

6. Access to reliable information is essential for proper preparation of migration, so as to enable migrants to make an assessment of the advantages and disadvantages involved in order to prevent encountering problems in the country of employment and to maximize the opportunities of migration. The availability of reliable information and awareness raising initiatives can have the effect of preventing or curbing the smuggling and trafficking of migrants, especially women and children.

7. Properly informing migrant workers before departure about the conditions in the country of employment is necessary for their preparation of the sojourn away from home. Such preparation will place them in a better position to perform their activity, contribute to the social and economic development of their country of employment, and facilitate their integration.

8. It is equally important to inform the public in the country of employment about the contributions of migrants to society, in order to counter racism, xenophobia and discrimination.

9. The Committee therefore recommends that

a) States should take an active role in disseminating reliable information about the conditions of migration. They should take effective measures to counter misconceptions, misleading information and promote knowledge of the human rights of migrants.

b) States of employment should encourage the media to counter tendencies of racism, xenophobia and discrimination by drawing attention to the positive contributions of migrant workers to the development of the host society.

Control over recruitment agencies

10. Absence of control over recruitment agents, agencies and intermediaries has led to many instances of abuse of migrant workers, who often have to pay exorbitant fees in order to be recruited resulting in heavy debts. In the worst cases, recruitment agencies are a front for trafficking, leading the migrant into forced labour. It is thus of utmost importance that recruitment agencies are effectively supervised in order to avoid abuse.

11. The Committee therefore recommends that States should regulate the activities of recruitment and placement agencies, for instance through a licensing system and take effective measures to ensure that these agencies respect migrant workers' fundamental rights and to ensure that migrant workers have clear and enforceable employment contracts.

Equality in remuneration and conditions of employment

12. Equality in remuneration and conditions of employment on the one hand protects migrant workers from abuse, and on the other hand removes the incentive for employers to resort to irregular recruitment or employment.

13. The Committee therefore recommends that

a) States of employment should take measures to ensure that labour and social standards cover all migrant workers, including those in the most disadvantaged position such as undocumented workers and domestic migrant workers. They should also take all possible measures to promote the full enjoyment by all migrants of all human rights, including their rights at work.

b) States of employment should ensure that labour legislation is effectively implemented, including through sanctions on employers and other persons, groups or entities that are found in breach of such legislation.

c) States of employment should consider taking measures to control the informal labour market, which is often a pull factor for irregular migration.

d) States of employment should take all adequate and effective measures to eliminate employment of migrant workers in an irregular situation, including, whenever appropriate, sanctions, including prosecution, on employers of such workers. However, the rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

Protection of migrants' rights and integration

14. Migrant workers, in particular those in an irregular situation, are among the most vulnerable groups in society, as they often find themselves with no access to social protection networks. They may face a heightened risk of exploitation, racism and discrimination as a result of their migration status, and may be unwilling or unable to make use of available legal remedies for the protection of their rights. Special attention should be given to protection of their rights, in order to facilitate their integration while respecting their cultural diversity and thus prevent their marginalisation and social exclusion and diminish their vulnerability. The presence in

society of large groups of people who have no prospect of integration seriously hampers social cohesion of the society and thus its development.

15. The Committee therefore recommends that

a) States of origin should take measures to provide effective assistance to their nationals abroad, *inter alia* through consular protection, whenever the human and labour rights of migrants are threatened or impaired.

b) States should ensure that their legislation prohibits the retention of identity documents by employers or recruitment agents; prohibits all systems of forced sponsorship of migrants, which are designed to ensure control over the migrant throughout the period of residence; and allows all migrant workers, including undocumented migrant workers, to join trade unions.

c) Special attention should be given to protect the rights of migrant women, in particular domestic migrant workers, in order to diminish their vulnerability.

d) States should avoid linking the residence permit of a migrant worker to a single employer in order to avoid vulnerability to exploitation and forced labour.

e) Government officials should receive training in the application of human rights norms to the situation of migrant workers and members of their families.

f) States should establish effective and accessible channels which would allow all migrant workers to lodge complaints for violations of their rights without retaliation against them on the ground that they may be in an irregular situation.

g) States of employment should facilitate the reunification of migrant workers with their spouses and their minor children and if reunification is not possible in certain circumstances, allow migrant workers to be temporarily absent without effect upon their authorization to stay or to work in order to visit their family in the country of origin.

h) Children of all migrant workers should have access to education.

Remedies

16. Many migrants face problems in seeking remedies for violations of their rights by employers because they are not entitled to stay in the country of employment once the employment relation has been terminated. As a result, migrants may return to the country of origin with less pay than they are due, with difficulties in seeking justice.

17. The Committee therefore recommends that

a) Migrant workers who leave the country of employment should be entitled to outstanding wages and benefits and consideration should be given to allow them to stay in the country for the necessary period of time in order for them to seek a remedy for unpaid wages and benefits.

b) States should consider entering into bilateral agreements in order to ensure that migrants who return to their country of origin have access to justice in the country of employment in order to claim unpaid wages and benefits.

c) States should consider offering legal services to migrant workers in legal proceedings related to employment and migration.

d) States of employment should allow documented migrant workers the right to transfer to another job during the period of their work permit and should not regard them as in an irregular situation when their employment is terminated prior to the expiration of their work permit.

Migrants' contact with the country of origin

18. In order to maximize the contribution migrants can make to their country of origin, it is important that migrants remain in close contact with their country of origin, maintain cultural links and remain abreast of the developments there, in particular through diaspora associations.

19. The Committee therefore recommends that

a) States of origin should consider providing the right to vote in elections to their nationals abroad.

b) States of origin should establish mechanisms that would take the needs of migrant workers into account.

20. Temporary migration schemes may in theory enhance the contribution of migrants to the development of both countries of origin and countries of employment. Nevertheless, it is crucial to remember that, in practice, temporary migrants often find themselves in precarious situations with the risk of having their rights curtailed.

21. The Committee therefore recommends that

a) In pursuing temporary migration projects, States should ensure that the human rights of migrants are protected, including in relation to equality of the conditions of work and remuneration.

b) Specific arrangements should be put in place to allow temporary migrants to visit their families on a regular basis, where family reunification in the host country is not permitted.

Returning migrants

22. In order to maximize the benefits from migrant workers' experience and acquired skills, it is important that returning migrants can take home with them their earnings and savings, that they are not unduly subjected to taxes, that they are assisted in reintegrating into their country of origin, and that they enjoy protection of their rights in the country of origin.

23. The Committee therefore recommends that

a) States should take measures to facilitate the transfer of migrants' earnings and savings, including the reduction of the costs of remittance transfers.

b) States should consider bilateral agreements in order to avoid double taxation of all earnings and savings of migrant workers and in order to exempt them from import and export duties in respect of their personal and household effects as well as their professional equipment.

c) States of origin should take adequate measures to facilitate the durable social and cultural reintegration of returning migrant workers.

d) States should consider entering into agreements allowing for the portability of pensions and social security entitlements.

Conclusion

24. Migration has an impact on the development of countries of origin, of transit and of employment. It is the shared responsibility of all States to guarantee the human rights of migrant workers and members of their families. The Committee therefore recommends that States shall as appropriate consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families. The Committee also calls upon all States parties to take effective measures to implement the rights contained in the Convention. It equally calls upon States that are not yet parties to the Convention, to consider adhering to the Convention without delay.