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Globalization and interdependence: international migration and development

Protecting the rights of all migrant workers as a tool to enhance development

Note by the Secretary-General

During its third session, on 15 December 2005, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families held a day of general discussion on the theme “Protecting the rights of migrant workers as a tool to enhance development”.

In accordance with resolution 60/227, in which the General Assembly invited the Secretary-General to make available for the High-level Dialogue on International Migration and Development a summary of the discussion held by the Committee, the Secretary-General transmits herewith the written contribution on the subject adopted by the Committee at its fourth session.

* A/61/50 and Corr.1.



Contribution by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to the High-level Dialogue on Migration and Development of the General Assembly

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 organizations, United Nations departments and agencies as well as non-governmental organizations and academic institutions. The written and oral contributions by participants informed the Committee’s reflection on the subject (see CMW/C/SR.25 and 26) and inspired it to prepare the present statement as the Committee’s contribution to the High-level Dialogue on Migration and Development of the General Assembly. The Committee especially acknowledges the work of the International Labour Organization, the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights and the United Nations Educational, Scientific and Cultural Organization, 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, as set forth in the Declaration on the Right to Development (General Assembly resolution 41/128, annex). 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 of 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 that 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 in reality 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 pressure on the labour market, remittances often amount to a significant proportion of gross domestic product, and returning migrant workers bring acquired skills back to their country of origin. However, migration often has prejudicial consequences for the countries of origin, especially with regard to the fragmentation of families and communities, and to brain drain. To understand better the dynamics of the relationship between migration

and development and to maximize the benefits of migration, the Committee recommends that the international community conduct further research 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 for 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 employment. 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 of the country of employment. Adequately upholding economic and social rights in countries of origin will prevent migration from being a forced decision and will enhance the beneficial effects of migration on the development of 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 so it may proceed 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 the observations and recommendations set out below concerning the 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 migrants to be properly prepared, enabling them to assess the advantages and disadvantages involved and avoid problems in the country of employment, thereby maximizing the opportunities of migration. Reliable information and awareness-raising initiatives can prevent or curb 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 for the time away from home. Such information will help them to better 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 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 and misleading information and to promote knowledge of the human rights of migrants;

(b) States of employment should encourage the media to counter tendencies towards 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 recruitment fees, 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 be effectively supervised to avoid abuse.

11. The Committee 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 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 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 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 penalties for employers and other persons, groups or entities that are found to be in breach of such legislation;

(c) States of employment should consider taking measures to control the informal labour market, often a draw 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, penalties for the employers of such workers. However, the rights of migrant workers vis-à-vis their employer arising from employment should not be impaired by such 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 without 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 the protection of their rights, to facilitate their integration while respecting their cultural diversity, and thus prevent their marginalization and social exclusion and reduce their vulnerability. The presence of large groups of people who have no prospect of integration seriously hampers social cohesion and development.

15. The Committee 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 workers, to reduce their vulnerability;

(d) States should avoid linking the residence permit of a migrant worker to a single employer 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 of violations of their rights without fear of retaliation on the grounds 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 prejudice to their authorization to stay or to work, 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 contract has been terminated. As a result, migrants may return to the country of origin with less pay than they are due, and with few possibilities of seeking justice.

17. The Committee 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 allowing them to stay in the country for the time necessary for them to seek remedy for unpaid wages and benefits;

(b) States should consider entering into bilateral agreements to ensure that migrants who return to their country of origin have access to justice in the country of employment 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 being 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 they remain in close contact with their country of origin, maintain cultural links and remain abreast of developments there, in particular through diaspora associations.

19. The Committee 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 important to remember that, in practice, temporary migrants often find themselves in precarious situations with the risk of having their rights curtailed.

21. The Committee recommends that:

(a) In pursuing temporary migration projects, States should ensure that the human rights of migrants are protected, including equal 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. To maximize the benefits of 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 taxed, 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 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 to avoid double taxation of all earnings and savings of migrant workers and to exempt them from import and export duties on 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 or of employment. All States have a shared responsibility to guarantee the human rights of migrant workers and members of their families. The Committee recommends that States, as appropriate, consult and cooperate with a view to promoting sound, equitable and humane conditions for the 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 thereto without delay.
