

Committee on Migrant Workers

Day of General Discussion

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

At its second session, held from 24 to 29 April 2005, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families decided that it will hold a Day of General Discussion focusing on the topic “Protecting the rights of all migrant workers as a tool to enhance development”. The discussion will take place on Thursday 15 December 2005 during the third session of the Committee at the United Nations Office at Geneva.

Discussing this topic will enable the Committee to make a contribution to the High Level Dialogue of the General Assembly in 2006 on the relationship between international migration and development (A/RES/58/208) and highlight the human rights approach in this respect. The Committee’s discussions will be public and Government representatives as well as United Nations bodies and specialized agencies, intergovernmental organisations and non-governmental organisations and individual experts will be invited to participate.

The context:

In resolution 58/208 of 23 December 2003, the General Assembly decided that in 2006 it would hold a high-level dialogue to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize the development benefits of international migration and minimize its negative impacts. The General Assembly recognized that among other factors, the widening gap between many countries and the marginalization of some countries in the global economy “have contributed to large flows of people between and among countries and to the intensification of the complex phenomenon of international migration” and that “there is a need to enhance international cooperation on migration issues and make further efforts ... to ensure that the human rights and dignity of all migrants and their families ... are respected and protected”.

As recognized by the Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986, “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”. The Vienna Declaration and Programme of Action emphasized that democracy, development and respect for human rights and fundamental freedoms are mutually reinforcing.

As highlighted by human rights treaty bodies and special procedures of the Commission on Human Rights, migrants, especially irregular migrants, are particularly vulnerable to human rights violations and abuses. The situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from the State of origin and to the difficulties they may encounter arising from their presence in the State of employment has been widely recognized. In addition, migrant workers are especially vulnerable to racism, xenophobia and discrimination and they are often the targets of suspicion and hostility in the communities where they live and work.

It is against this background that the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families should like to stress the positive contribution that the protection of migrant rights can make to the development of countries of origin and countries of employment alike.

The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families recognizes, in article 64, that:

“1.the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, *as well as to the consequences of such migration for the communities* concerned.” (emphasis added)

Accordingly, it is within the Committee’s mandate to consider the question of the impact on development stemming from the protection of the rights of all migrant workers and the promotion of sound, equitable and humane conditions of migration.

Approach and objectives

The Committee’s decision to organize a Day of General Discussion originates in its desire to emphasize the positive contribution that the protection of the human rights of migrant workers and members of their families can make to development, for the migrant worker and the economic and social order of the country of origin as well as the country of employment. In discussing this subject, the Convention’s guiding principle of non-discrimination should be taken into account. In this context, the Committee should also like to highlight part VI of the Convention on the promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families.

The Day of General Discussion will focus on the following questions:

- 1) How does the implementation of the provisions of the Convention protecting the rights of migrant workers contribute to development? In particular, in the context of globalization and increasing cross-border movements, how does the protection of human rights of migrant workers foster their capacity to obtain decent work and contribute to the economic and social development of both country of origin and employment?
- 2) How can Part VI of the Convention (on Promotion of Sound, Equitable Humane and Lawful Conditions) - which sets out parameters for inter-State cooperation on various issues related to migration, including prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation - be used as an instrument to enhance development? For instance, how can a better recognition and protection of the human rights of all migrant workers discourage irregular and clandestine

migration in abusive conditions and lead to increased benefits for both countries of origin and countries of destination?

Theme 1: Protection of the human rights of migrant workers and members of their families and its impact on development in the country of origin

The Convention requests States parties to guarantee the rights of migrant workers and members of their family also before their departure and after their return to the country of origin. In particular article 33 of the Convention stipulates that migrant workers and members of their families shall have the right to be informed concerning their rights arising out of the present Convention and the conditions of their admission, their rights and obligations under the law and practice of the State concerned. An analogous obligation, aimed at preventing the dissemination of misleading information relating to emigration and immigration, is included in article 68(a), which deals with the collaboration among States parties to prevent and eliminate illegal or clandestine movements of migrant workers. Article 67 of the Convention provides that States parties concerned shall co-operate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin and, concerning migrant workers and members of their families in a regular situation, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Questions arising out of these provisions that could be addressed by participants in the Day of General Discussion could, among other, be the following:

- a) How can compliance with the State's obligation to inform properly the migrant worker enhance the chances of successful migration and thus reinforce its positive effect on the development of the migrant worker and consequently of the communities of which he/she is a member?
- b) How can States facilitate the right of all migrant workers, as contained in article 32 of the Convention, to transfer their earnings and savings from the State of employment to their State of origin in order to improve their capacity to send remittances back home and so contribute to the development of their family and their community in the country of origin? How can the legal framework in the country of origin protect the rights of migrant workers and members of their family, including the right not to be arbitrarily deprived of their property (article 15)?
- c) How can the facilitation of the reintegration of returning migrant workers and members of their families maximize the benefits for society from their experience and acquired knowledge and skills?

Theme 2: Protection of the human rights of migrant workers and members of their families and its impact on development in the country of employment

The Convention reflects not only the generally accepted principle that basic human rights apply equally to non-citizens including migrant workers and members of their

families, but it also contains certain rights that are particularly relevant to their specific situation. All migrant workers, irrespective of their status, should enjoy *inter alia* treatment not less favourable than that which is accorded to nationals of the State of employment in respect of remuneration, conditions of work and other terms of employment (article 25), their right to take part in meetings and activities of trade unions and other associations (article 26), their right to the same treatment as granted to nationals in respect of social security (article 27), the right of a child of a migrant worker to have access to education (article 29), and respect for their cultural identity (article 31).

Questions, among other, that may be discussed under this theme would be:

- a) How will the respect for the rights enumerated in the Convention enhance the integration of migrant workers and members of their family in the State of employment and how as a consequence will the country of employment benefit from their increased contribution to society? For instance, how can the protection of the rights of migrant workers and members of their families facilitate the availability of migrant workers and skills needed by the country of employment also in light of the negative demographical trends in many of these countries?
- b) The Convention's preamble reads *inter alia*: "Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned". In the light of this, how does the equal treatment of all migrant workers in respect of remuneration and conditions of work a) discourage the employment of irregular workers and b) prevent the perceived negative consequences of migration, and consequently c) maximize the benefit of the contribution of migrant workers to the society of the country of employment?;
- c) In light of article 69 of the Convention, to what extent is the capacity of migrant workers to contribute to the benefit of society where he lives and works determined by the measures taken by States - including considering the possibility of regularising their situation - to ensure that their situation of irregularity does not persist?

Participation in the Day of General Discussion

The Day of General Discussion is a public meeting in which government representatives, United Nations bodies and specialized agencies, intergovernmental organisations, non-governmental organisations and individual experts are welcome to participate. The meeting will be held during the third session of the Committee, at the Office of the UN High Commissioner for Human Rights (Palais Wilson, Geneva) on Thursday 15 December 2005.

The format of the discussion day is designed to enable participants to exchange views in a frank and open dialogue. The Committee therefore asks participants to avoid presenting formal statements during the discussion day. Written contributions are invited on the issues and topics mentioned, within the framework outlined above. The Committee would also be interested in receiving information about best practices within the two afore mentioned sub-themes. Please refer to the guidelines for participants for information on how to register for participation in the discussion day and for submission of contributions.

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