

DAY OF GENERAL DISCUSSION ON MIGRANT DOMESTIC WORKERS

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Application of other Human Rights Instruments to migrant domestic workers

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Mr. Chairperson,

Distinguished members of the Committee,

Ladies and gentlemen,

There is little doubt – even less since listening to this morning speakers – that migration issues are cross-cutting ones. A rapid look at the international human rights framework reinforces this reality.

When one looks at the application of human rights instruments to the issue of migrant domestic workers, in addition to the CMW, it is interesting to note that three main international mechanisms are focusing on migrant domestic workers. They are the Universal Periodic Review (UPR), the UN Special Procedures (both under the UN Human Rights Council) and the Human Rights Treaty Bodies.

The SR on Violence against Women is one among other special procedures (SP) mandate holders of the Human Rights Council working on the human rights of migrants. Special Procedures mandate holders are independent human rights experts who are able to monitor and rapidly respond to allegations of violations occurring anywhere in the world, and play a critical and often unique role in promoting and protecting human rights. Of relevance to the issue of migrant domestic workers are especially: the UN SR on Trafficking in Persons, especially Women and Children,¹ the UN SR on Violence against Women, who has, for instance examined the conditions of trafficking in South Asia², the SR on Contemporary Forms of Slavery and the Special Rapporteur on the human rights of migrants.

Throughout their work, human rights experts use the Universal Declaration of Human Rights and the International human rights instruments as a reference. This applies also to the relatively new Universal Periodic Review mechanism.

The UDHR stipulates the right to security of a person, freedom of movement, the right to free choice of employment, and the right to rest and leisure. All

¹ UN Special Rapporteur on Trafficking in Persons, especially Women and Children, report on the Mission to Lebanon, E/CN.4/2006/62/Add.3.

² Radika Coomaraswamy, UN Special Rapporteur on Violence against Women, 2001/73/Add.2, #20.

these are applicable to migrant workers and members of their families, and fall under the overriding principles of equality and non-discrimination.

With regard to the human rights treaty bodies, you have heard from Ms. Cubias' presentation on behalf of the Committee on Migrant Workers that the International Convention on the Protection of all Migrant Workers and Members of their Families is of immediate relevance for migrant domestic workers. That is why I strongly join her and the Committee in encouraging those States that are not yet party to the Convention to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families to ensure better protection for migrants and migrant workers.

In a moment, Ms. Violet Awori will elaborate on the jurisprudence on migrant domestic workers by the Committee on the Elimination of all forms of Discrimination against Women.

I will now expand upon how other existing human rights treaties and related bodies address the protection of the rights of migrant domestic workers and members of their families. Concerns related to migration have clearly increased in number and scope in recent years throughout treaty body conclusions and recommendations, reflecting the growing emphasis that migration receives from the different human rights committees. I would like to share with you the following treaty provisions and treaty bodies' observations, which are of particular relevance to domestic migrant workers:

CERD- stipulates the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in the enjoyment of civil rights and economic social and cultural rights. CERD also lists migrants as part of vulnerable groups and regularly asks States for additional data which may be associated with racial discrimination. In its concluding observations, the Committee has focused on discrimination against foreigners and the serious problems often faced by women domestic workers.³ It has repeatedly noted with concern the working conditions of women migrant domestic workers and lack of protection from national legislation. The Committee has also referred to measures taken or envisaged by certain States parties to provide foreign workers and their families equal access to certain social services.⁴

CCPR- The Committee has noted issues such as ill-treatment of non-nationals and difficulties to access adequate legal protection for domestic workers. The Committee has expressed concern at the particular situation and vulnerability of domestic workers, and their lack of or weak protection under the national labour laws.⁵

³ CERD/C/63/CO/9 (CERD, 2003) Republic of Korea - not a party to CMW; CERD/C/BHR/CO/7 (CERD, 2005) Bahrain - not a party to CMW

⁴ CERD/C/63/CO/9 (CERD, 2003) Republic of Korea - not a party to CMW

⁵ CCPR/CO/72/NET (CCPR, 2001) Netherlands - not a party to CMW

CESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work; and the right of everyone to social security, including social insurance. In its reporting guidelines, States parties are asked to provide information on the extent to which non-nationals benefit from non-contributory schemes for income support, access to health care and family support.⁶ The Committee has noted the unfair terms of employment and discrimination against migrant workers⁷ and has, on various occasions, recommended States parties to ensure equality before the law for domestic workers as for other employees. It has called on States parties to improve legal protection and benefits for foreign domestic workers so that they are in line with those afforded to local workers, in particular regarding wages and retirement benefits.⁸ It has noted that domestic workers, a majority of whom are immigrants, are in a vulnerable situation⁹ and has called for further combating discriminatory practices, exploitation and abuse of migrant domestic workers.¹⁰

CRC- recognizes the right of the child to be protected from economic exploitation and the Committee refers regularly to the status of migrant children, de facto discrimination, child labour and economic exploitation. The Committee has expressed its strong concern at the particular conditions and vulnerability of children of migrant domestic workers¹¹ and the difficulties these children face in accessing social and health services and education.¹² On several occasions, the Committee has noted discrimination suffered by children of migrant workers and the insufficient policies and practices to better protect their rights.¹³

CAT- has noted the difficulties faced by foreign workers, in particular women domestic workers, to obtain redress and adequate compensation.¹⁴ The Committee has also referred to the violence directed against migrant workers, which in particular affects women domestic migrant workers victims of violence and abuse.¹⁵

Moreover, certain committees have issued relevant interpretative general comments of relevance to the human rights of migrant workers such as CERD's General Comment No. 30 (2004) on discrimination against Non-Citizens and CEDAW General Recommendation (GR) No. 26 on Women Migrant Workers.¹⁶

⁶ General comment 19, para. 37

⁷ E/C.12/1/ADD.98 (CESCR, 2004) Kuwait- not a party to CMW

⁸ E/C.12/1/ADD.107 (CESCR, 2005) China- not a party to CMW

⁹ E/C.12/1/ADD.99 (CESCR, 2004) Spain- not a party to CMW

¹⁰ E/C.12/CAN/CO/4 E/C.12/CAN/CO/5 (CESCR, 2006) Canada- not a party to CMW

¹¹ CRC/C/LBN/CO/3 (CRC, 2006) Lebanon- not a party to CMW; CRC/C/MYS/CO/1 (CRC, 2007)

Malaysia- not a party to CMW

¹² CRC/C/OPSC/QAT/CO/1 (CRC, 2006) Qatar- not a party to CMW

¹³ CRC/C/SAU/CO/2 (CRC, 2006) Saudi Arabia- not a party to CMW

¹⁴ CAT/C/CR/34/BHR (CAT, 2005) Bahrain- not a party to CMW

¹⁵ CAT/C/QAT/CO/1 (CAT, 2006) Qatar - not a party to CMW

¹⁶ All relevant GC are: CCPR General Comment (GC) No. 15 (1986) on the Position of Aliens under the Covenant; CCPR GC No. 23 (1994) on the rights of minorities in the State party, including migrant workers; CCPR GC No. 32 (2007) on the Right to equality before courts and tribunals and to a fair trial to all individuals; CESCR GR No. 14 (2000) on the right to the Highest Attainable Standard of Health

The plight of migrant domestic workers merits special attention as, in practice, their human rights are least protected. The exclusion of domestic work from national labor laws is a major factor rendering migrant domestic workers vulnerable. Moreover, domestic work is characterized by inadequate legal protections and enforcement with regard to the scope of work, number of working hours, minimum wages, leave, access to social services and other entitlements. Treaty bodies continue to address the safeguarding of the rights of migrant workers and their families through the examination of States reports.

Although the treaty bodies have not encompassed all issues related to the rights of migrant workers, the span of issues that have been covered in this regard is wide. Repeatedly, they highlight the vulnerable situation of migrant workers and their families, the cases of exploitation and abuse of domestic workers, and the lack of adequate measures to protect, prevent and redress problems experienced by migrant domestic workers. Although rights of migrants are dealt with by all treaty bodies, the most relevant is of course the CMW.

When States do not ratify the Migrant Workers Convention, they are thus excluding the specific guidance it offers them on the application of international standards to migrant workers. This is especially the case since the rights contained in international instruments and domestic laws are often not recognized as applicable to migrants. In many situations there is a gap between the rights which migrants, both regular and irregular, enjoy under international law, and the difficulties they experience in the countries where they live, work, and across which they travel. This gap between the principles agreed by States, and the reality of individual lives, underscores the vulnerability of migrants in terms of dignity and human rights. The effectiveness of international standards protecting the rights of domestic migrant workers is only as good as the domestic legislation, policy and the practice of implementation, including the enforcement of labour standards.

It is clear that much remains to be done to ensure that the provisions of the international human rights standards apply to protect the human rights of domestic migrant workers and migrants in general. The heightened importance of migration in international and national context is and will continue to be reflected in the work of the UN human rights bodies and will continue to receive the attention that the issues at stake deserve, both for countries of origin and destination.

Thank you.

refraining from denying or limiting equal access to all persons of preventive, curative and palliative health services; • CESCR GR No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights; and CESCR GR (2008) No. 19 on the Right to Social Security.