

Committee on Migrant Workers General Discussion Day

Workplace exploitation of migrants

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A major pull factor for migration is the need for migrant labour in destination States. Many people see migration as the only way to improve their social and economic situation, and they sometimes see no other option but to migrate irregularly due to a lack of regular migration channels, particularly for low-skilled workers.

Migrants, and particularly irregular migrants or migrants with a precarious residence status, are often willing to do the “dirty, difficult and dangerous” jobs that nationals will not, at the exploitative wages that unscrupulous employers will offer. Migrants are sometimes accused, including in the public debate, of “stealing” jobs by accepting lower wages and poor working conditions. However, States seem to invest very few resources in trying to reduce the informal sector and sanction employers who profit from the exploitative conditions of work to boost their competitiveness.

Migrants are at heightened risk of exploitation and abuse in the workplace due to deceptive recruitment practices, both by employers and intermediaries; frequent lack of social support systems; unfamiliarity with the local culture, language, their rights at work and national labour and migration laws; limited or denied access to legal and administrative systems; dependence on the job and employer due to migration-related debt, legal status, or employers restricting their freedom to leave the workplace; and reliance by family members on remittances sent back home by the migrant. These factors are amplified by the

discrimination and xenophobia that migrants are increasingly facing everywhere. A key contributing factor of this exploitation is their general fear of being identified, arrested, detained and deported, and their consequent reluctance to risk complaining, protesting or publicly mobilizing, preferring very often to “move on”.

I have met with migrant workers during my country visits as Special Rapporteur. I also continuously receive complaints from migrants themselves, civil society organizations and other sources on their behalf. Based on this information I decided to focus my report to the Human Rights Council this year on the labour exploitation of migrants. The report is available on my mandate’s webpage¹, and will be presented to the Human Rights Council in June.

In my report, I provide a collection of some of the worst practices migrants face in different regions of the world, irrespective of their migration status. This includes discrimination by their employers on many grounds, such as nationality, race and sex, with regard to, inter alia, remuneration, excessive overtime, opportunities for promotion, access to health care and unfair dismissals. Migrants often lack a written employment contract, or experience that, upon arrival in the country of destination, the contract they signed in their home country is simply substituted by another one, frequently with a lower salary and a different job description. Frequent human rights violations experienced by migrants in relation to payment of wages include non-payment or excessive delays in the payment of wages, or receiving unfair wages, including unequal pay for the same work or work of equal value, based on discriminatory criteria such as nationality.

Confiscation of documents is another big problem. I have met with many migrants who have had their passports or other identity documents confiscated

¹ <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx>

by their employers. Even when the law strictly prohibits the confiscation of documents, I have seen this happen systematically, particularly in respect of workers considered “low-skilled”, including domestic workers and construction workers. Migrants who are tied to their employer through a “sponsorship” system and whose residence permit depends on the work contract are heavily dependent on their employer, and vulnerable to such abuse.

Lack of familiarity with local law and language difficulties frequently prevent migrants from being aware of specific hazards in their work. Occupational safety and health violations are a big concern, as migrants are often employed in high-risk hazardous sectors, including agriculture, construction, mining and different types of informal work. Some migrants find access to health services difficult, inter alia due to the distance and lack of transportation. If they are sick, they may still be required to work. Some cannot access subsidized health care because their employers do not provide them with identity cards. Many migrants live in housing which lacks basic infrastructure and services including sanitation, electricity, potable water and adequate health-care services. I have seen shocking living conditions of migrant workers I have encountered. Many migrants are not provided with social security benefits, particularly those in an irregular situation.

The right to organize and engage in collective bargaining is essential for migrants to express their needs and defend their rights, in particular through trade unions and labour organizations. However, some countries reserve the right to form and join associations and trade unions for their own nationals, and in some countries, irregular migrants are prohibited from joining trade unions.

Migrants are often deceived by their recruiters about their salaries, working hours, days off and the nature of the work, and experience exploitative working

conditions and non-payment of salaries. Such deception and exploitation can amount to trafficking.

Migrants often experience that their work contract does not make the terms and conditions for the termination of the employment relationship clear. They can thus be denied the freedom to terminate employment and find another employer. Migrants are also often victims of unfair dismissal.

Some groups of migrants are specifically at risk of exploitation. This includes temporary migrant workers, who often do not have the right to free choice of employment, which makes them become dependent on their employer and vulnerable to abuse. Additionally, temporary migrants usually do not have access to welfare benefits given to long-term residents, and may be excluded from wage protection and social security programmes, including health insurance and employment injury coverage.

Migrant domestic workers, the majority of whom are women and girls, are extremely vulnerable to violence and abuse. In many countries, domestic workers are not recognized as “workers”, and thus not protected by labour law. As a consequence, they have no labour rights, no annual leave, no established working hours and no minimum salary.

Migrant women risk being the victims of multiple discrimination, both as women and as migrants. They tend to be employed in the shadow economy and in less skilled work than men, even though some are better qualified. They are generally more dependent on their employers, which puts them at greater risk of abuse and exploitation.

Migrant children are more vulnerable to abuse and injuries than adult migrants. A high proportion of child labourers in agriculture, domestic and different types of informal work, as well as in commercial sexual exploitation, are migrants.

Irregular migrants are frequently victims of labour exploitation. Due to their precarious situation, they often accept working for lower wages than regular migrants and nationals, and in dirty, difficult and dangerous conditions. Additionally, they regularly have difficult access to social services and health care, and live in constant fear of being detected, detained and deported.

Lack of knowledge of the local language and legislation means that migrants too frequently do not have access to an effective remedy. Furthermore, migrants who report abuse by their employer may fear retaliation. Complaint mechanisms and courts are often not easily accessible for migrants, especially due to the frequent lack of interpreters and legal aid.

Labour inspections are an important tool to combat human rights violations committed against migrants in the workplace and can, if undertaken properly, prevent such violations from occurring. However, the criminalization of irregular entry and stay and the emphasis on immigration control has in some countries led to cooperation between labour inspection and immigration enforcement and/or imposition of immigration control duties on labour inspectors. The result impedes effective protection of all migrants under labour law, and also intimidates migrants from denouncing abusive working conditions and from cooperating with labour authorities.

Fighting labour exploitation of migrants by sanctioning exploitative employers would contribute greatly in reducing the pull factor of irregular migration and thereby diminish the power of exploitative smugglers over migrants, by reducing the attractiveness of irregular employment and thus reduce the size of the underground labour markets that are a key pull factor of irregular migration.

Implementing “firewalls” between immigration enforcement and public services would also greatly contribute to empowering migrants to fight for their rights,

through reducing the fear of being identified, arrested, detained or deported while interacting with public authorities.

I thank you for your kind attention.