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“Public Services Welcoming Migrants: Strengthening the role of public service trade unions in the protection of human rights and delivery of public services to migrants, asylum seekers and refugees”

Brussels, 14-16 March 2016

Video Statement - UN Special Rapporteur on the Human Rights of Migrants, François Crépeau

All migrants have the right to have economic and social rights

Good afternoon,

I apologise for not being able to join you in person and thank the organisers for inviting me to contribute a few words to the important work you'll be accomplishing.

Human rights are not reserved for citizens. Human rights benefit everyone, everywhere, at any time. States must promote and protect the rights of whoever is on their territory or within their jurisdiction, without discrimination, whatever their administrative status or circumstances. While States have the power to admit, refuse to admit or return migrants, they equally have an obligation to respect the human rights of all migrants in the process.

I always encourage the ratification of CMW. However, all the other human rights treaties also apply to migrants, including those in an irregular situation. Migrants, like citizens, have, inter alia, the right to health, to education, to housing, to decent work and to access to justice.

Newly arrived migrants face a variety of challenges in accessing public services, such as health care or housing, given their limited command of the language of the host State, and their lack of knowledge of the laws and systems in the host countries. The enjoyment of these rights by migrants is effectively hampered in the absence of necessary support, such as the provision of language training, or free information on relevant laws and regulations. Connected to this concern is a lack of disaggregated indicators on the economic, social and cultural rights of all individuals, including migrants, that are useful for adequate policy-making, including on enhancing the accessibility of such services.

Access to public service providers, such as health care professionals, school personnel, labour inspectors, social workers, landlords or local police, must be facilitated for all migrants, including irregular migrants, who should not fear immigration sanctions simply for calling for help from public services. Such public services must be able to perform their important social missions without interference from anyone, and ‘firewalls’ must be established between public services and immigration enforcement.

As long as borders exist, States need a well-trained, competent, human-rights-sensitive, gender-sensitive immigration enforcement corps, able to accomplish its mission with efficiency and appropriate respect for the human rights of all involved. The “firewall” between immigration enforcement and public services means that public services should not be used as auxiliaries of immigration enforcement: irregular migrants should be able to access health care, education, police, social services, public housing, labour inspectors and other public service agents, without risking being reported to immigration authorities. Otherwise, they will never report human rights violations and the perpetrators will benefit from practical immunity. Human rights violations for anyone surely is a much greater concern than administrative immigration violations.

As far as labour rights are concerned, migrant workers, including those in an irregular situation, must be considered as workers first: all labour standards must be respected, and proper wages and adequate compensation must be paid, despite the migrant worker being in an irregular situation and susceptible to being deported: labour inspectors must be able to sanction employers upon receiving complaints from any worker, without the obligation to transfer any information to immigration enforcement.

Access to justice is also key, as courts, tribunals, national human rights institutions, ombudspersons and other quasi-judicial actors, who, unlike politicians, are not subject to

electoral pressure, will be in a position to defend the rights of migrants. Access to justice is particularly important for irregular migrants who are more vulnerable to exploitation and being victims of human rights violations but do not speak up, for fear of being detected, detained and deported.

There is a general lack of comprehensive policies and measures aimed at protecting and promoting the right of migrants to basic services in order to implement the realisation of all rights, and of economic and social rights in particular. This gives rise to violations by States of their obligation to take steps towards the full realisation of such rights.

In the interest of time, I shall only focus on the right to health as an example. Migrants may be more vulnerable to poor health by virtue of their often low socioeconomic status, the sometimes harrowing process of migration, and their vulnerability as non-nationals in the new country. The mental health of migrants is an issue of concern, as factors such as human rights violations before or during the migration process, social isolation caused by separation from family and social networks, job insecurity, difficult living conditions, detention, and exploitative treatment, could have very adverse effects.

Access to health care for migrants and the level of such care varies enormously, depending on the State in focus, as well as on immigration status. It ranges from migrants accessing only underground healthcare services, to them only being able to access emergency care, to expansive health coverage for all, including migrants in an irregular situation. At one end of the spectrum, regular migrants satisfying certain conditions have entitlements comparable to citizens of host States, although there may be differences between long-term and short-term residents. At the other end, non-nationals are not able to access life-saving medication, because facilities may deny treatment on the basis of nationality or immigration status.

Female migrant workers engaged in domestic services are one of the categories of migrant workers who are placed in the most precarious work and life environment. There appears to be a widespread pattern of physical, sexual and psychological abuse of migrant domestic workers, and they are also often exposed to health and safety threats without being provided with adequate information about risks and precautions. Migrant women and girls also often experience more problematic pregnancy and gynaecological health issues, when compared to the host population.

Regrettably, there are vast discrepancies between international human rights norms and their actual implementation in the field of health care for migrant children, whether these children are in a regular or irregular situation, accompanied or unaccompanied. Inadequate care has long-lasting consequences on a child's development. For this reason, and in the light of the State's duty to protect the most vulnerable, access to health care for all migrant children, whatever their status, must be an urgent priority. In general, the constraints on the rights of adult migrants immediately have an adverse impact on the rights of their children, and in the long term, inhibit the children's development.

We all know that migrants can play an active role in the social and economic development of host countries, particularly when their fundamental rights, such as the rights to health, education, adequate housing, and their labour rights, are fulfilled in a manner that ensures equal opportunities and gender equity.

We need to see them as partners in our collective development. We need to harness the agency, energy, imagination and resilience they have demonstrated throughout the migration process, and offer them a place in our societies that is devoid of legal, economic and social precariousness.

I wish you the best of success in your deliberations and am convinced that they'll contribute to a better understanding of the migrant's condition and of the way forward in terms of migration policies.

I thank you for your kind attention.