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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Thirty-first session

Summary record (partial)* of the 430th meeting
Held at the Palais Wilson, Geneva, on Monday, 2 September 2019, at 10 a.m.

Chair: Mr. Tall

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Opening of the session

1. **The Chair** declared open the thirty-first session of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families.

Opening statement by the representative of the United Nations High Commissioner for Human Rights

2. **Ms. Gilmore** (Office of the United Nations High Commissioner for Human Rights) said that she wished to convey greetings to the Committee from the United Nations High Commissioner for Human Rights, Ms. Michelle Bachelet, who valued highly the work of the Committee and of the treaty body system at large. On behalf of the High Commissioner, she commended the members whose terms were due to end in December 2019 for their contribution to the Committee's work. She noted with concern, however, that, while both of the Committee's current female members were among those departing, the seven new members counted just one woman, leaving the Committee the least gender-balanced of all those in the treaty body system. The High Commissioner called on all States parties to fulfil their gender parity commitments by, at least, nominating more female candidates.

3. While migration was as old as human history, the current era was witnessing unprecedented human movement, and more than half of the 258 million migrants in the world were women and children, who came mostly from countries that had the youngest populations. The vast majority of migrants were motivated not by choice, but by fear. Precarious migration, both within and across borders, was more than a humanitarian concern; the many indignities inherent to the process created human rights crises, as refugees fled conflict and families fled gang violence. The unconscionable, but often unacknowledged, irony of many public migration policies was that the best of human impulses – to assume great personal risk for the benefit of loved ones – was treated as a criminal act. The xenophobic authors of such policies could not expect parents to choose not to protect their children, adults to ignore their aged parents' suffering, young men to accept the accident of their birth into extreme poverty or young women to submit to forced marriage and sexual violence. For migrants, embarking on perilous journeys was not a choice, but the only option.

4. The dehumanizing response of authorities to the drowning of 30,000 migrants in the Mediterranean over the previous three decades and the application of policies involving substandard detention facilities and the closing of land and sea borders were a source of shame for all. They had led to, inter alia, an increase in the unchecked activities of criminal militia, slavery and gender-based violence, which constituted violations of international human rights standards that, given their scale and gravity, might amount to crimes against humanity. While the High Commissioner welcomed the European Union's recent move towards more sound migration policies, she called on that body to prioritize the lives and safety of migrants crossing the Mediterranean, strengthen search and rescue measures, permit rescues by non-governmental organizations and coordinate swift and safe disembarkation, while at the same time tackling the root causes of that migration.

5. The adoption of the Global Compact for Safe, Orderly and Regular Migration demonstrated that the debate had moved on from whether human rights applied to migrants to how those migrants' rights could be upheld. Efforts in that regard must include a commitment to gender equality and the empowerment of women and girls, as well as to addressing issues affecting men and boys, such as their heightened risk of arbitrary detention. Critically, States must end the criminalization of irregular migration.

6. Implementation of the Global Compact presented an opportunity to increase the number of States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) encouraged the Committee's engagement with the United Nations Network on Migration to support the Compact's implementation, follow-up and review. As part of its contribution to the Compact, OHCHR had worked with UN-Women to develop guidance for States on translating their legal obligations into concrete migration policies and actions; it had also issued Recommended Principles and

Guidelines on Human Rights at International Borders. Both tools addressed the gender perspective.

7. In the run-up to the 2020 review of the treaty body system by the United Nations General Assembly, the budget allocated to the treaty body system was a problematic issue. Treaty bodies had been required to cut travel costs by 25 per cent, and cash flow problems imposed further restrictions on their work. Any weakening of the treaty body system risked undermining the human rights architecture as a whole, a concern that was exacerbated by a global context of decreasing commitment to multilateralism and universal norms. The Committee's engagement in the review process would be vital. Lastly, OHCHR welcomed the invitation extended to the Committee by the Government of Azerbaijan to an informal meeting in Baku which would provide a forum for engagement with the Azerbaijani Government, civil society and national human rights institutions.

8. **The Chair**, thanking Ms. Gilmore for her statement, said that the Committee's lack of gender parity was extremely regrettable. Its female members, both past and present, had played a vital role in its work. He too would be leaving the Committee at the end of 2019, and he would make every effort to ensure that his successor was a woman. In the light of the increasing criminalization of migration, the Committee should consider the relationship between human rights and criminal law. On the budgetary issues, Committee members must propose innovative solutions so as to adapt to the constraints placed on the treaty body system, thus ensuring that human rights in general, and the rights of migrants in particular, were protected. He would welcome the opportunity for the Committee, or at least the Bureau, to meet with the High Commissioner during its session in April 2020.

Adoption of the agenda (CMW/C/31/1)

9. *The agenda was adopted subject to amendments to the programme of work.*

Promotion of the Convention

Informal meeting with non-governmental organizations and national human rights institutions

10. **Ms. Cetra** (Centre for Legal and Social Studies) said that the serious decline in migrants' rights seen in Argentina, both in law and in practice, was giving rise to violations of their human rights. The provisions of Emergency Decree No. 70/2017 included the summary expulsion of migrants who had served prison sentences and decreased resources for appeals against the expulsion orders. The authorities did not take into account whether the sentence had been served, the seriousness of the crime or the person's links to Argentina. Neither the authorities nor the judiciary analysed the impact of such expulsions on the right to family life and the best interests of the children; that analysis was increasingly seen as discretionary, rather than an obligation of the State. She urged the Committee to remind the State party of its obligation in that regard.

11. According to the Chief Public Defender's Office, the Committee on Migrants had received 125 appeals against expulsion orders issued against women with minor children or grandchildren. Of those, 107 related to women with Argentine children and 109 to women with criminal convictions. The Children's Ombudsman had not intervened in any of those cases, and the children involved had not been heard. An amendment to the Migration Act made pursuant to the Emergency Decree meant that the National Migration Directorate had not referred any cases to the Chief Public Defender's Office. Although the State party's delegation to the Committee comprised mainly representatives of the National Migration Directorate, the issue also fell within the scope of the National Secretariat for Human Rights, which had failed to prevent – indeed, had endorsed – the erosion of migrants' rights. Furthermore, judicial review had become a mere formality. She urged the Committee to demand that both the National Secretariat for Human Rights and the judiciary should act to curb the human rights violations suffered by migrants.

12. **Ms. Montero** (Centre for Legal and Social Studies) said that the sole objective of Emergency Decree No. 70/2017 was to reverse the rights granted to migrant workers under Migration Act No. 25871, the Constitution and the Convention. Although Division V of the Federal Administrative Appeal Court had ruled the Decree void, the expulsion of migrants

continued, in many cases separating families and causing untold psychological and emotional stress among parents and children alike. The imposition of sanctions on migrants who had already served their sentences was unjust, particularly given the failure to consider their links to Argentina, including their children. The many cases of migrants who had been separated, or who faced separation, from their children as a result of expulsion from Argentina attested to the unconstitutionality of the Decree, its xenophobic and discriminatory nature, its violation of the right to a defence and to due process, and the absence of judicial review. Her organization demanded the repeal of the Decree, the return of those migrants who had been expelled and the full entry into force of the Migration Act.

13. **Ms. Rivadeneyra** (Centre for Legal and Social Studies) said that, since President Macri's Government had come to power in December 2015, migrants in Argentina had been persecuted and criminalized. The country's migration policy, which had once served as a model for other countries when it came to respecting migrants' rights, had regressed to a policy of criminalization and repression, focused on security concerns. The President and some senior officials, bolstered by the mass media, had made discriminatory and criminalizing remarks about migrants, accusing them of being responsible for public insecurity. They had fabricated and manipulated the official statistics in order to promote widespread discrimination, xenophobia and racism. One of the most worrying consequences was the re-emergence of police violence and persecutory procedures that harked back to the dictatorship period. Some Argentine children had no access to health care because their parents were refused national identity cards. For the same reason, migrant women in vulnerable social and economic situations, who were their family's sole breadwinners, had no access to State-run programmes. Migrants – who were portrayed as "delinquents" – were frequently detained by police simply because of who they were, which created an atmosphere of fear in the migrant community.

14. Senegalese and Haitian street vendors were constantly persecuted and physically attacked by police officials, who would seize their merchandise and lock them up for "resisting authority" if they dared to complain. In the four years it had been in power, the Government had given no indication that it intended to resolve that situation; in addition, it had suspended the humanitarian "migration amnesties" that had allowed migrants from States not belonging to the Southern Common Market (MERCOSUR) to regularize their migration situation, obtain a national identity card and enter the official labour market. At the same time, migration checks and searches carried out in textile workshops resulted in the detention, criminalization and assault of the victims allegedly being protected, while the business owners who exploited them walked free.

15. The Government, which in 2016 had announced the creation of a prison for migrants and in 2017 had promulgated Emergency Decree No. 70/2017 – declared to be unconstitutional by various national and international bodies – should explain before the Committee, without delay, in what way those measures were compatible with its international commitment to respect the rights of migrant workers and their families.

16. **Ms. Galoppo** (Centre for Legal and Social Studies), recalling the progress that had followed the adoption of the Migration Act (2004) and its implementing decree (2010), not least the simplification of criteria for the regularization of migrants from MERCOSUR member States, said that those policies had shown that the vast majority of migrants intended to regularize their situation, and did so when the relevant mechanisms were quick and accessible. The new obstacles to regularization, especially of migrants in situations of social vulnerability, should be seen in that context. One such obstacle was the introduction in 2018 of a complex online system for regularization, which was available only in Spanish and required access to information technology devices. Another was the increase in migration flows in recent years by 400 to 600 per cent. Problems also persisted with the regularization of migrants from non-MERCOSUR countries, the criteria for which posed bureaucratic challenges. The special regularization programmes that had been introduced following the Committee's recommendations had afforded access for the nationalities most affected, but those programmes had been discontinued and the problem persisted. In addition, the visa requirement imposed for some nationalities only deepened those migrants' marginalization and vulnerability.

17. The recent adoption of Act No. 6.116, under which migrants in transit had to pay fees to access health care in the province of Jujuy, was shocking. The Committee should urge the Government to repeal the Act and not to introduce similar legislation in other provinces. Furthermore, the requirements for migrants' access to social security were unreasonable. Against the backdrop of the socioeconomic crisis, xenophobic discourse, acts and measures were on the rise. Measures such as the persecution of and systematic violence against African nationals and persons of African descent, the separation of families following the recent changes to migration legislation and obstacles to the regularization of migrants gave serious cause for concern and constituted a huge step backwards for human rights policies in Argentina; it was necessary to put a stop to them.

18. **Ms. Landázuri de Mora** said that the Committee was very grateful for the information provided by the Centre for Legal and Social Studies, whose input to the interactive dialogue with the State party was extremely valuable. The written information submitted on the harrowing issue of separation of children from migrant mothers had been particularly striking. The Centre was doing a vital job in defending human rights in Argentina, in the context of the State's harmful criminalization of and disparaging comments about migrants.

19. **Mr. Botero Navarro** said that the Centre had provided important information on the detrimental impact of the regressive measures and policies on migrant workers and their families in Argentina, particularly in the area of the separation of children from their families. He would welcome details of the number of cases that had resulted from the implementation of Emergency Decree No. 70/2017. He would also be grateful for more information on the context in which the rise in discriminatory and stigmatizing remarks about migrants, relayed by the media, was taking place, especially given that, in 2004, Argentina had been considered to have model migratory policies. He wished to know what monitoring and preventive action was being taken in that regard at federal, state or local level.

20. **Mr. Kariyawasam** said that the media could play an important role in the promotion of rights, just as it could in the spread of xenophobia. He wished to know to what extent the conduct of the media in Argentina had contributed to the rise in discriminatory and stigmatizing remarks and the regressive measures being implemented against migrants.

21. **The Chair** said that he would be grateful for information on what role the justice system in Argentina played in the protection of migrants' rights, and whether the Convention was invoked in the courts. He also wished to know whether the representatives of the Centre for Legal and Social Studies believed that there had been an improvement in the situation of West African migrants, including Senegalese nationals, since the Committee's previous review of Argentina.

22. **Ms. Cetra** (Centre for Legal and Social Studies) said that, in the period 2014–2015, the average annual number of expulsion orders issued was approximately 1,800, with about 70 implemented each year; since 2016, the average annual figure had increased to 4,500, with around 600 persons expelled each year. There were no official figures available on cases of family separation. One of the Centre's main concerns was the way in which the expulsions were carried out in practice. For example, migrants were often not told clearly of their imminent deportation and had no chance to contact a defence lawyer or contest the procedure. The Centre was disappointed that the justice system generally treated deportation decisions as an administrative matter, meaning that they were not properly assessed and it was difficult to have them revoked.

23. **Ms. Montero** (Centre for Legal and Social Studies) said that the courts were not familiar with the Convention and did not invoke it. Compounding the unfair procedures governing the treatment – under Emergency Decree No. 70/2017 – of migrants with a previous criminal conviction, judges issued deportation orders immediately if requested to do so by the National Migration Directorate, without considering the merits of the case. The migrants had only three days to appeal the order and, in habeas corpus (*amparo*) cases, the higher courts tended simply to uphold the deportation decisions handed down by first-instance courts.

24. **Ms. Rivadeneyra** (Centre for Legal and Social Studies) said that the hate speech came from the highest authorities of the State, including the President himself. Given that the media essentially supported the Government, there was very little that civil society could do to combat the practice. There was no political will at all on the part of the Government to take any measures to facilitate the regularization of migrants from non-MERCOSUR countries.

25. **Ms. Galoppo** (Centre for Legal and Social Studies) said it was difficult to understand how Argentina's migration policy had deteriorated so markedly. She would send the Committee recent documentation monitoring the media's portrayal of migrants, together with the recommendations in that area that the Centre had helped to draw up. While, in the past, the courts had taken relevant human rights conventions into account in the rulings they handed down, that was no longer the case.

The discussion covered in the summary record ended at 11.30 a.m.