



**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-third session

Summary record (partial)* of the 468th meeting**

Held at the Palais des Nations, Geneva, on Wednesday, 6 October 2021, at 3 p.m.

Chair: Mr. Ünver

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

** No summary records were issued for the 466th and 467th meetings.

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The meeting was called to order at 3.10 p.m.

Promotion of the Convention *(continued)*

Informal meeting with States and other stakeholders

1. **The Chair**, welcoming the participants, said that the coronavirus disease (COVID-19) pandemic had had a devastating impact on migrant workers and their families. In an effort to ensure that the needs of migrants were taken into account by States in their response to the pandemic, the Committee, in partnership with other human rights mechanisms, had issued two joint guidance notes, in May 2020 and March 2021, respectively. The first note dealt with the impact of the pandemic on the human rights of migrants, while the second concerned equitable access to COVID-19 vaccines for all migrants. In addition, the Committee had been developing a global communication campaign on the challenges faced by migrants as a result of the pandemic with a view to ensuring that States responded to those challenges with due respect for the dignity, agency and human rights of migrants and host communities. While the pandemic had exacerbated the vulnerabilities of migrants, many had also been on the front line of the response as essential workers in fields such as health care, transportation and cleaning. Despite their positive contributions to society, they continued to face discrimination, xenophobia and human rights violations that threatened their very survival.

2. During its current session, the Committee had considered the second periodic report of Rwanda and the third periodic report of Azerbaijan. It was planning to launch its general comment No. 5 (2021) on migrants' rights to liberty, freedom from arbitrary detention and their connection with other human rights. The aim of the informal meeting with States and other stakeholders was to advocate for wider ratification of the Convention and to update the participants on issues of concern, such as the protection of the rights of migrants in the context of climate change and the link between the Convention and the Global Compact for Safe, Orderly and Regular Migration. The meeting would be moderated by Benjamin Lewis, a representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

3. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights), speaking via video link, said that he wished to congratulate the Committee on the finalization of general comment No. 5 (2021), a very important document that would help to strengthen the protection of migrants' rights worldwide. OHCHR viewed migration and the rights of migrants as a strategic priority in the context of its core work on non-discrimination and as a frontier issue that required targeted action by the international community and the United Nations system as a whole.

4. **Mr. Taghi-Zada** said that human beings were dependent on nature and their economic activity was determined by their immediate environment. When their environment changed significantly, whether as a result of human activity or natural events, they must either adapt to the new conditions or find another place to live in order to survive. An analysis of migration patterns showed that migrants tended to seek conditions similar to those to which they were accustomed. For example, in the past, British people had willingly migrated to countries with a temperate or even hot climate, provided that the land was suitable for raising sheep. The increase in environmental degradation and global warming over the previous fifty years had led to an increase in migration and the coining of the term "environmental refugee". In some countries, for example, the heavy rains resulting from global warming had led to the growth of fungi that destroyed crops. As a result of such changes, people were forced to seek refuge in countries with more favourable conditions, sometimes putting their own lives at risk in the process. Experts believed that climate change would be one of the main causes of migration in the years to come. Cristina Tirado, adjunct associate professor at the University of California, Los Angeles, in the United States of America, had estimated that there would be 50 million environmental refugees worldwide in 10 years' time. Projects undertaken by a particular country to bring about changes in the local environment, for example by creating new water resources, could have a significant negative impact on neighbouring countries. An example of a project that could have had unintended consequences if it had come to fruition was the Siberian river reversal project. OHCHR was taking numerous measures to protect the rights of migrants and had developed guidance for States on the subject. The Committee

believed that widespread ratification of the Convention was also essential, particularly given the rise in environmental migration.

5. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) said that he looked forward to hearing more about the Committee's exploration of the impact of climate change on migrant workers and their families, particularly in light of the Views adopted by the Human Rights Committee on communication No. 2728/2016 (*Teitiota v. New Zealand*), a case relating to the issue of environmental migration.

6. **Ms. Poussi** said that labour migration issues, including the reception, return and reintegration of migrants, their coexistence with host communities and their enjoyment of rights, concerned all countries and that managing such issues called for a holistic, rights-based approach at all stages of the migration cycle. Unfortunately, the COVID-19 pandemic had heightened the vulnerability of migrant workers and members of their families, even though many of them had been actively involved in the pandemic response. Indeed, many, including some carrying the virus, had been expelled or turned away, leading the United Nations Network on Migration to call on States to suspend forced returns during the pandemic, protect the health of migrants and host communities and uphold the fundamental rights of all migrants, regardless of status. The Committee and the Special Rapporteur on the human rights of migrants had issued joint guidance on the impact of the pandemic on the rights of migrants.

7. States, whether parties to the Convention or not, could protect the rights of migrant workers in various ways. For instance, expulsion and deportation decisions should be taken by the competent authorities in line with international human rights law and with due regard for the needs of the people who were most vulnerable, namely women and children. Migrants should not be forcibly returned to a country where their safety was not guaranteed, and returns – whether voluntary or forced – should be governed by readmission agreements between sending and receiving countries. Lastly, measures should be taken to ensure the successful reintegration of returnees, including by fostering their economic independence. Such measures included providing support to countries and communities receiving returnees, prioritizing access to decent jobs for returnees and granting them social security benefits, coordinating the efforts of government bodies and other stakeholders, establishing multidisciplinary mechanisms to follow-up on the situation of returnees and sharing best practices among States.

8. The challenges related to migration were being exacerbated by often inaccurate portrayals by politicians and the media of the experience of migrant workers and the reasons behind their decision to migrate. Nevertheless, some States had taken steps, including during the pandemic, to increase access to safe and legal migration channels and to regularize the status of migrants in their territories. Any denial of the right of return of migrant workers was incompatible with the goals of safe return and long-term reintegration and jeopardized peace and security in all States. Cooperation at all levels was indispensable if migration flows were to be managed in a manner that was universally beneficial and in keeping with the Sustainable Development Goals, the Global Compact for Migration, the Convention and other human rights treaties.

9. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) recalled that the Special Rapporteur on the human rights of migrants had recently presented a report ([A/HRC/47/30](#)) dealing with pushbacks at borders.

10. **Mr. Corzo Sosa**, providing an overview of the impacts of the COVID-19 pandemic on mental health, said that the pandemic's emotional toll only compounded the already vulnerable situation of migrants. Mental suffering was usually invisible and often masked by a physical injury. Thus, it was important to reflect on whether migration officials and medical practitioners at immigration facilities had the necessary skills to detect mental health problems. In those cases when psychological problems were detected, it was typically difficult for migrants to access appropriate care. In some cases, migrants, including children, had taken their own lives as a result. It was therefore critical to protect the right to mental health as a component of personal integrity, not only of migrants themselves but also of the members of their families, as the lack of information about their loved one's whereabouts and condition could cause tremendous anguish. Shortcomings in the protection of the right

to mental health in the context of migration were a matter to be addressed by States, but also by civil society, human rights bodies and the general public.

11. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights), recalling that the international community had recognized the centrality of mental health for the full realization of the right to health, said that it would be interesting to see the Committee revive the issue of mental health in the context of migration. OHCHR was working to shift away from seeing particular groups as inherently vulnerable, towards an understanding of vulnerability or risk as situational and constructed. In that connection, it was necessary to identify what policies and practices caused vulnerability to mental harm and how States could develop better laws and policies to safeguard the mental health of migrant workers and members of their families.

12. **Ms. Diallo** said that in its general comment No. 1 on migrant domestic workers, the Committee had recalled that the vulnerability of such workers did not begin and end at their workplace, but that they faced risks throughout the migration cycle. It had also urged States to close gaps in their legislation that excluded migrant domestic workers and limited their access to justice when their rights were violated.

13. The COVID-19 pandemic had served as a brutal reminder of the instability faced by domestic workers. Nearly one in six domestic workers in the world was a foreign migrant, and over 73 per cent were women. In Europe, where domestic help was costly due to taxes and social security contributions, the lack of government assistance for households to legally employ domestic workers led to growth in undeclared labour. In the Middle East, migrant domestic workers, chiefly from Africa and Asia, were often employed under the *kafalah* system, which had been described as modern slavery and linked workers' residence permits to a contractual agreement with their employer. In Africa, 35 per cent of domestic workers lived in rural areas, 87 per cent of them were women, 30 per cent were migrants and 85 per cent were heads of household whose labour accounted for almost all of their household income. During the pandemic, half of domestic workers in Africa had either been laid off or had seen their pay withheld, without receiving any compensation or unemployment benefits.

14. In addition, women migrant domestic workers faced intersectional discrimination and a lack of collective representation, thus aggravating their social and economic vulnerability. They tended to work especially long hours, in violation of article 25 of the Convention, which called for equal treatment of migrant workers and nationals of the State of employment.

15. Given the worrying overall situation, it was important for States to accede to and implement the various international norms protecting migrant domestic workers, including the Convention and the Domestic Workers Convention, 2011 (No. 189) and Domestic Workers Recommendation, 2011 (No. 201) of the International Labour Organization (ILO); to bring their domestic legislation governing labour, immigration, contracts and social security into line with those norms; and to establish robust enforcement mechanisms, despite the difficulty involved in monitoring working conditions in private homes. It was also important to conduct broad awareness-raising with the aim of reducing the marginalization of migrant domestic workers and to strengthen their professional skills. Lastly, in the specific context of the pandemic, Governments should include all migrant domestic workers in their pandemic assistance plans.

16. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) said that it might be worth reviewing general comment No. 1 in the light of changing trends that had manifested themselves in the 10 years since its adoption.

17. **Mr. Botero Navarro** said that the situation of disappeared or missing migrants and their families was one of the biggest humanitarian tragedies currently facing the world. Migrants failed to contact their families for a number of reasons. Some were unable to do so because they had been deprived of their liberty, while others were being criminally prosecuted, had no money, or had been kidnapped, murdered or disappeared, for instance by organized criminal gangs. In some cases, State officials collaborated with organized criminal groups to abduct migrants. When no information was provided on such cases, they were considered to be instances of enforced disappearance. The Working Group on Enforced or Involuntary Disappearances had identified a direct link between migration and enforced disappearance, but not all disappearances of migrants could be categorized as enforced.

18. It was troubling that State authorities often made little effort to locate disappeared migrants or identify the remains of those who had been killed. States had obligations in respect of disappearances, even when their officials bore no responsibility for them. They were required to address the structural causes of migration, prevent irregular migration, avoid adopting excessively harsh migration policies and promote safe, orderly and regular migration. Governments were also required to avoid expelling migrants to States where they might face a risk of enforced disappearance, to progressively abolish the practice of detaining migrants and to maintain up-to-date registers of all migrants deprived of their liberty. They must also document all returns of migrants and ensure that migrant detainees were allowed to communicate with their relatives and lawyers.

19. States were also obliged to search for disappeared migrants or their remains and to return remains to relatives and issue relatives with an appropriate death certificate. They also had the obligation to investigate whether bodies were buried or concealed on migration routes and to establish databases of disappeared persons, deceased migrants and unidentified remains. The information stored in such databases should be shared with the authorities in countries of origin, transit and destination. States should avoid cremating unidentified remains and should conduct thorough and impartial investigations into all cases of enforced disappearance. They should also investigate the deaths or disappearances of refugees and migrants, ensure access to justice for all refugees, migrants and their families, irrespective of their migration status, and exercise jurisdiction over the offence of enforced disappearance.

20. States must ensure that the family members of missing migrants learned the fate of their loved ones and must guarantee the safety of persons testifying in cases involving the enforced disappearances of migrants. Family members should be allowed to participate in investigations or legal proceedings related to their relative's disappearance, including remotely, if necessary, and should not be subjected to administrative detention or expulsion while such investigations or proceedings were taking place. Cooperation agreements on migrant disappearances should be established between States.

21. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) said that States were currently failing to cooperate with each other to identify migrants who went missing, for example in the central Mediterranean. United Nations agencies were counting deaths on the basis of publicly reported information, but States were making no efforts to locate the bodies of deceased migrants, return them to their families or prosecute the persons responsible for their disappearance or death.

22. **Mr. Charef** said that the COVID-19 pandemic had put international health regulations to the test and had drawn attention to the abuse and discrimination faced by migrants, refugees and asylum seekers and their families. The gravity of the health crisis demonstrated the importance of international cooperation, shared responsibility, multilateralism and solidarity. In that connection, States must ensure that all migrants and their families, irrespective of their migration status, were included in economic recovery policies and should guarantee migrants' access to information, assistance and employment and protect them against discrimination and stigmatization.

23. Both the Global Compact for Migration and the Convention were based on the principles of national sovereignty, international cooperation, gender mainstreaming, sustainable development and human rights. The 23 objectives set out in the Global Compact for Migration reflected international or regional commitments that had already been undertaken. Among those objectives were, for instance, providing foreign nationals with access to basic services, enhancing the availability and flexibility of pathways for regular migration, addressing and reducing vulnerabilities in migration, combating trafficking in persons and ensuring that immigration detention was used only as a measure of last resort.

24. Although the Global Compact for Migration was not legally binding and did not establish any numerical targets, it was intended to promote better cooperation and coordination on migration issues between all States, in the knowledge that no State could address migration alone. The Committee had set up a working group on the Convention and the Global Compact for Migration to highlight the points of convergence between the two instruments and to forge a holistic vision of migration based on the human rights of migrants. In the Committee's view, synergies should be developed between the Convention and the

Global Compact, as the two instruments were complementary. In that regard, the Committee was developing a draft general comment on the points of convergence between the two.

25. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) said that the Global Compact for Migration was not legally binding but was based on international human rights law and legally binding principles, such as the principle of non-regression.

26. **Ms. Martínez Liévano** (Mexico), speaking via video link, said that the COVID-19 pandemic had exacerbated the challenges faced by States in their efforts to manage migration flows and protect the rights of migrant workers and their families. As migrants were particularly vulnerable to the effects of the pandemic, it was essential for States to develop inclusive policies, based on human rights, that took their needs into account. The Government of Mexico called on the treaty bodies to avoid duplicating their efforts and to collaborate to address the various migration issues raised during the discussion.

27. States should avoid carrying out collective expulsions and should consider decisions relating to expulsion on a case-by-case basis. It was also essential to ensure that migrant workers and their families had access to mental health services during the pandemic. In order to develop synergies between the Global Compact for Migration and the Convention, it would be advisable to focus on specific points of convergence between the two instruments. The Government of Mexico would welcome some examples of good practices in the area of migration that had come to light during the Committee's recent constructive dialogues. The sharing of such practices would provide useful guidance to other States parties and might also encourage more States to ratify the Convention.

28. **Ms. Vakilova-Mardaliyeva** (Azerbaijan), speaking via video link, said that Azerbaijan had been one of the first States to ratify the Convention and had hosted an informal brainstorming meeting held by the Committee in Baku in 2019, at which various questions related to the implementation of the Convention had been discussed. Despite the constraints resulting from the COVID-19 pandemic, a delegation from Azerbaijan had recently participated in a constructive dialogue with the Committee to discuss the country's third periodic report, thus demonstrating the commitment of the Government of Azerbaijan to fulfilling its obligations under the Convention.

29. **Mr. Taghi-Zada** said that the effects of climate change, including sea level rise, could lead to changes in migration flows, as destination countries could become countries of origin. Such countries should prepare for that possibility and become involved in efforts to protect the rights of migrants and their families under the Convention.

30. **Ms. Poussi** said that, in the context of return, detention measures should be exceptional, proportional and tailored to the individual, and they should genuinely further a legitimate State purpose. The children and families of migrant workers should never be detained. States should ensure that all women in detention centres were protected from abuse and gender-based exploitation. During the COVID-19 pandemic, certain States had provided an example of a best practice by facilitating the return of migrants and even regularizing the status of migrants whose authorized stay had lapsed.

31. **Mr. Corzo Sosa** said that it was important for migrant workers and members of their families to have access to mental health services. The practice of some States to recognize all children born on their territory as their nationals, without requiring further documentation from the parents, was a best practice. Unfortunately, in other States, the parents were required to produce their birth certificates or other documents, which could be difficult to obtain without returning to their country of origin. It was important for the Committee and States to continue holding dialogues and exchanging ideas.

32. **Ms. Diallo** said that the Committee should work more closely with the International Labour Office, which was engaged in efforts to support domestic workers around the world. As domestic workers were often migrant workers, issues that affected them also fell within the Committee's area of expertise. Furthermore, the efforts of ILO to increase the number of States parties to the Domestic Workers Convention, 2011 (No. 189) could complement the Committee's efforts to increase the number of States parties to the Convention.

33. **Mr. Botero Navarro** said that the Committee should continue exploring how the thematic issues that it worked on intersected with the work of other bodies and with other

instruments. For example, there was a clear link between the Committee's general comment No. 5 (2021), which encouraged States to limit immigration detention and look for alternatives to it, and one of the main objectives of the Global Compact for Migration.

34. The Committee's monitoring work was extremely important. Because of recommendations that it had made, Argentina had repealed a decree that was inconsistent with its Convention obligations.

35. **Mr. Charef** said that the Global Compact for Migration was a step forward in terms of international cooperation on migration policy. It provided a framework for States to work together on migration-related initiatives, engage in dialogue and share best practices with a view to developing a humane approach to international migration.

36. **Mr. Lewis** (Office of the United Nations High Commissioner for Human Rights) said that the discussions on migration-related matters that were regularly held by States parties to the Convention and other States, and the cooperation agreements between them, could provide a framework for encouraging States to become parties to the Convention. The Global Compact for Migration could also serve a similar purpose. The commitment made by States under that instrument to uphold the rights of all migrants, regardless of their status, extended to migrant workers and members of their families. He invited States parties to work with the Committee, the Committee's secretariat and OHCHR to find ways to increase the number of ratifications and accessions.

37. He commended the Committee for its engagement with regional bodies such as the Council of Europe, the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights and with other entities within the United Nations system. Joint efforts with other treaty bodies, such as the general comment that the Committee had drafted with the Committee on the Rights of the Child, could make the Convention more visible to those States that were parties to other United Nations human rights instruments but that had not yet become parties to the Convention. Such efforts could also demonstrate to those States that some of the obligations that they would be assuming under the Convention already existed under instruments to which they were already a party. Lastly, he wished to congratulate the Committee on its adoption of general comment No. 5 (2021), which it had recently finalized.

38. **The Chair** said that there should be an analysis of the reasons why States were not becoming parties to the Convention. He wished to encourage States parties to promote the Convention and to make it more visible in their relations with other States. Ways had to be found to support the large numbers of people migrating all over the world and to protect their human rights. The Convention provided a tool for achieving those goals.

The discussion covered in the summary record ended at 5.20 p.m.