



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 Thirtieth session

Summary record of the 414th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 3 April 2019, at 10 a.m.

Chair: Mr. Tall

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Second periodic report of Guatemala (continued) (CMW/C/GTM/2),

1. *At the invitation of the Chair, the delegation of Guatemala took places at the Committee table.*
2. **Mr. Borrayo Reyes** (Guatemala) said that the State of Guatemala did not discriminate against migrants and that it upheld human rights. Indeed, its Constitution enshrined the principle of equal rights and equality before the law.
3. With regard to the issue of evictions, the case of Laguna Larga had attracted international attention. The Inter-American Commission on Human Rights of the Organization of American States had introduced interim measures to protect the rural and indigenous communities involved. The President had ordered the purchase of land to provide an alternative, permanent settlement site. A delegation led by the Presidential Commission for the Coordination of Executive Policy on Human Rights was steering the project, with the aim of persuading the displaced communities to move voluntarily to the new site, with access to a range of utilities and services. Those measures demonstrated Government's efforts to tackle human rights crises, including evictions. Moreover, between 2018 and 2019, the Presidential Commission had organized training programmes on human rights and migration, including human trafficking, designed for public officials and police and army officers. Following a large wave of mass migration in 2018, a range of measures had been implemented to support migrants, including to assist those wishing to return home, and to protect the rights of migrants in transit.
4. **Mr. Morales Cancino** (Guatemala) said that efforts to manage unprecedented mass migration in an orderly manner that respected human rights involved all areas of the public administration in Guatemala and abroad, including in the fields of health, security, transport and politics. All government agencies had acted responsibly and meetings involving more than 30 State agencies had been organized to implement protocols on the management of migrants, according to the remit of each agency and the resources available.
5. At the international level, relevant agencies exchanged information with their counterparts in the "Northern Triangle", comprising Guatemala, Honduras and El Salvador, and in Mexico. There was an established tradition of close communication with partners in the region. For example, work on migration had been undertaken within the framework of the Central American Commission of Migration Directors, the Regional Conference on Migration, and the Central American Integration System, leading to the development of a regional migration policy and protocol for ensuring safe and orderly mass migration, as well as proposals for an early warning system for irregular mass migratory flows.
6. At the domestic level, the provisions of the Migration Code differentiated between migration control and migrant care services, leading to the establishment the National Council for Assistance to Guatemalan Migrants. Measures to provide comprehensive care involved coordination with the public sector, civil society, and international organizations. Training was provided on issues relating to refugees, asylum seekers and trafficking victims. Institutional strengthening measures included efforts to generate statistics to contribute to migration flow management.
7. Efforts relating to migrants in transit made by the Government and its regional partners concerned, inter alia, domestic security, road safety and care for vulnerable groups. Sovereign decisions were taken by each country, and depended on institutional capacity and the volume of migratory flows. In relation to the border at Tecún Umán, he noted that Mexico had provided for humanitarian visas to be issued through its consulates in El Salvador, Honduras and Guatemala, in order to prevent congestion at the border.
8. With regard to managing what was known as the "migrant caravan", the Guatemalan authorities worked in consultation with the National Institute of Migration of Mexico. During the transit process, only two applications for refugee status had been filed in Guatemala. A regulation on refugee status had been drafted by the National Commission

for Refugees, taking into account regional good practices. Joint action was taken to combat trafficking and to prosecute the perpetrators of those and other crimes. Moreover, regional strategy was being developed to enhance identification of migrants through a biometric system, in order to improve the protection of children and adolescents.

9. **Mr. García Saénz** (Guatemala) said that the zero-tolerance policy adopted by the Government of the United States had resulted in children being separated from their relatives and arriving as unaccompanied minors; nearly 6,500 minors had been placed in the care of consular services in the United States. Of those, 90 per cent had been reunited with their families there, five per cent had been reunited with relatives in Guatemala, while the remaining five per cent awaited a final decision on whether they would remain in the United States or return to Guatemala. Any final decision would take into account the best interests of the child.

10. Migration efforts were not concentrated only on national borders; measures were also taken at the domestic level by States in the region to prevent irregular migration and develop programmes to uphold migrants' rights. Coordinated work focused on identifying the multidimensional causes of migration, protecting migrants in transit and ensuring that their human rights were upheld, regularizing their status, promoting their integration and facilitating the reinsertion of returnees.

11. The Regional Conference on Migration brought together 11 countries with a view to developing a regional policy to support migrants, while a proposal had been put forward for a national migration policy that brought together all relevant agencies in Guatemala. Successful regional cooperation efforts included the Trimex programme, in which the governments of Guatemala, Honduras, El Salvador and Mexico participated. Under the programme, nationals of those countries could contact the consular services of the partner countries if they were unable to reach their own consulates. There were also plans to open more consulates for the Republic of Guatemala in the United States of America.

12. With regard to cuts to foreign aid programmes, while Guatemala participated in programmes such as the Alliance for Prosperity, each government had a national budget for projects embedded in those programmes. Therefore, cuts to foreign aid would have no impact on national projects funded through the State budget.

13. There had been several cases of migrant workers abroad successfully bringing labour-related claims with the assistance of Guatemalan consulates or embassies. For example, a company in Montreal had been successfully prosecuted for deceiving illegally recruited Guatemalan workers. A case had been brought by the workers, with consular support, resulting in a fine for the company concerned and a temporary ban on its further recruitment of foreign workers. Other successful cases had included a case of unfair treatment filed by migrant workers on a farm in Canada. Following an appeal to the authorities by the embassy of Guatemala and an inspection of the farm by a team that included representatives from the Ministry of Labour and the Ministry of Foreign Affairs, the workers' rights had been upheld and their contracts amended.

14. **Ms. Müller** (Guatemala) said that, pursuant to legislation on financial oversight, the banking supervisory authority monitored remittances processed via currency exchange centres and banks. The aim was to ensure that remittance activities – particularly those involving substantial transfers – complied with applicable provisions, including legislation on money laundering and on funding of terrorist activities, in line with international standards. Banks and other financial institutions must have internal regulations and monitoring to ensure compliance.

15. The volume of remittances sent back by Guatemalan migrant workers had increased dramatically since 2018, and was expected to reach a total of US\$ 9 billion in 2019. With a view to decreasing migration to the United States, and in order to foster development, sustainability and transparency, projects involving collective funding had been developed. Inspired by the Mexican model, the Two for One initiative sought to promote collective remittances by Guatemalan communities abroad, encouraging them to invest in their home communities so as to provide more opportunities in their country. The programme enabled groups to register with consulates, in order to contribute, through remittances matched by

the Government, to the development of their home communities. The Ministry of the Economy would be responsible for coordinating the project, with support from consulates.

16. **Ms. Contreras Mejía** (Guatemala) said that there was effective inter-institutional coordination in place to ensure the best interests of the child, and the Department of Social Welfare, in cooperation with the Public Prosecutor's Office, had developed guidelines on protecting the best interests of children and adolescents. In the case of migrant children, multidisciplinary and inter-institutional efforts sought to find long-term, case-by-case solutions for unaccompanied minors. Multidisciplinary teams worked to establish the identities and assess the needs of such children, including through enquires with the authorities in the country of origin, as well as their legal status, including requests for international protection measures. The resulting recommendations focused on the best interests of the child, and could include family reunification, application for refugee status or special protection measures, humanitarian assistance or, in certain cases, repatriation.

17. **Mr. García Morales** (Guatemala) said that the National Institute of Forensic Science had introduced a search mechanism for unidentified deceased migrants, which included genetic sampling procedures, and was working with the Ministry of Foreign Affairs to handle requests from foreign consulates regarding disappeared migrants in Guatemala. As a result, the number of unidentified deceased persons in Guatemala had dropped from 771 in 2011 to 186 in 2018. The Institute had developed a sizeable database of genetic samples from unidentified deceased foreign nationals and was working with United States Department of State to develop mechanisms for responding to foreign requests regarding disappeared persons and for submitting similar requests to forensic units in other countries regarding disappeared Guatemalan nationals.

18. **Mr. Borrayo Reyes** (Guatemala) said that the country would benefit from technical consultations and support to help strengthen the capacities of its national institutions responsible for migration issues.

19. **The Chair** said that he wished to know what steps had been taken to manage border regions with high concentrations of migrants and to provide appropriate assistance to those migrants, in particular abandoned children. He asked what measures were in place to identify victims of trafficking, distinguish them from migrants in an irregular situation and provide assistance to them.

20. **Ms. Landázuri de Mora** (Country Rapporteur) said that she would like to know what the status was of the secondary legislation implementing the Migration Code. She would appreciate greater information regarding the incidence of abuse, extortion and sexual exploitation by State authorities against lesbian, gay, bisexual, transgender and intersex migrants, including those of Guatemalan nationality.

21. As many indigenous migrants were exploited by traffickers and by employers in destination countries owing to their lack of education and inability to speak Spanish, she asked what the Government was doing to educate those communities about their rights as migrants, in their own languages and in a culturally sensitive manner.

22. Welcoming the positive steps taken to improve the identification of disappeared persons, she asked whether there was a protocol for notifying the victim's family once a body had been identified. She also enquired whether there were any legal experts trained in migration law and any special prosecution units to help obtain justice for migrants, including those that had left the country after filing a complaint.

23. **Mr. Botero Navarro** (Country Rapporteur) said that he wished to know what the driving factors were behind the dramatic increase in asylum applications made by Guatemalan nationals in neighbouring States, and what the Government was doing to tackle the underlying causes and ensure that such migrants were not prevented from gaining access to international protection.

24. He asked whether an investigation had been conducted into the death of Henry Adalid Díaz Reyes in October 2018, which had occurred during a confrontation at the Mexico-Guatemala border, and whether there were any protocols for police and other border control forces to ensure that force was used only as a last resort and always in a proportionate and non-discriminatory manner. He also asked how many disappeared

migrants had been identified in Guatemala. Expressing concern that the Migration Code did not provide sufficient guarantees that migrants would not be prosecuted for irregular entry, he asked what measures had been taken to prevent the sanctioning of migrants and uphold the principle of non-refoulement.

25. **Mr. Núñez-Melgar Maguiña** said that he would like to know whether the Two for One programme was similar in nature to the Mexican Three for One equivalent. He asked whether there were any programmes for the repatriation of Guatemalan migrants who needed emergency medical treatment and for the repatriation of deceased migrants' remains. He enquired whether the Government ran training courses on migration and human rights and on the application of the relevant international law for all public officials. It would also be interesting to know whether decisions regarding the relocation of indigenous communities for environmental reasons were based on a zoning or land planning programme. He asked when the regulations on labour mediation in the private sector would be finalized and implemented. He also wished to know what protocols Guatemalan consulates followed in the event that a Guatemalan migrant died of non-natural causes and whether they kept the family of the deceased informed regarding the investigation and the judicial proceedings.

26. **Mr. Soualem** asked whether civil society had been involved in the preparation of the State party's report. He wished to know how the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the concluding observations issued by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families were disseminated and what training was provided thereon for law enforcement and judicial officers who worked with migrants, as well as whether any training was given to the media to combat stereotypes about migrants. He asked whether Guatemala had signed any readmission agreements with other countries that covered both Guatemalan migrants abroad and foreign migrants in Guatemala. He would also appreciate clarification regarding the amount of remittances received from the Guatemalan diaspora.

27. **Mr. Kariyawasam** said that, while he welcomed the governing structures that recognized and facilitated the right to migration, he wished to know whether all sections of Guatemalan society, in particular indigenous groups, exercised that right and whether there was a system in place to educate migrants about their rights under the Convention.

28. **The Chair** asked whether Guatemala had concluded any agreements with Mexico on the management of migrants in transit and how any such agreements were implemented, in particular with regard to the provision of care for children and the protection of those migrants' rights.

The meeting was suspended at 11.15 a.m. and resumed at 11.35 a.m.

29. **Mr. Borrayo Reyes** (Guatemala) said that the eviction of communities from reserves did not constitute migration in the usual sense. The National Council for Protected Areas, having identified a number of areas of environmental concern pursuant to the international environmental conventions to which Guatemala had acceded, was obliged to report communities that had moved into those areas unlawfully. Cases were considered by the relevant court and judicial eviction warrants were issued where necessary. The judicial authorities had the ultimate jurisdiction over all such cases. Various State entities were involved in the process to ensure that the human rights of the persons being evicted were respected and the necessary services provided.

30. In the case of the Laguna Larga eviction, the Inter-American Commission on Human Rights had specified precautionary measures to be taken to protect the evicted persons, which Guatemala was implementing. The Government was working with the Mexican authorities to facilitate access to the area, which was particularly remote, so that the necessary assistance could be provided. It was currently trying to encourage the communities to resettle in other areas in the region. It had also made a request to the Environment Fund to provide financial support to countries in similar situations to enable them to meet both their environmental commitments and their social, humanitarian and economic responsibilities towards the communities involved.

31. The majority of Guatemalan migrants were from rural areas and migrated in search of better socioeconomic conditions rather than to escape persecution, which was no longer an issue in the country.

32. At the time of the construction of the Chixoy dam four decades earlier, 33 indigenous settlements had been either relocated or destroyed. Many of the families affected had subsequently migrated to the United States of America, Canada and Japan. Despite the passage of time, the Government was in the process of providing compensation to those individuals and their children.

33. **Mr. Samayoa Barrios** (Guatemala) said that the Council for Assistance and Protection was part of the Subdirectorate for Assistance and Protection. The regulations governing the national migration authorities and those governing visas, residency and refugee status had been approved and would take effect on 20 April 2019. The general regulations on the Guatemalan Institute of Migration were in the process of being reviewed. Other sets of regulations, including those governing the functions of the Institute's staff and those relating to its financial and human resources, were awaiting approval.

34. **Mr. Mazariegos Vásquez** (Guatemala) said that the Counsel General of the Nation and the Social Welfare Secretariat of the Office of the President had worked with the consular authorities of Honduras and El Salvador to provide comprehensive support to unaccompanied children in Ciudad Hidalgo, Mexico, and to repatriate and reintegrate them as appropriate.

35. The Government had dealt with more than 2,000 cases of persons entering the country in an irregular manner, the majority of whom were Cuban nationals. Such persons were granted a period of 10 days in which to regularize their presence in the country, but most chose to continue their journey on to Mexico or the United States. The authorities always respected the principle of non-refoulement and did not return individuals to their country of origin if their life might be at risk there.

36. **Mr. Romero García** (Guatemala) said that while migrants from other countries in their region often left their homes as a result of violence or persecution, the main driver of migration from Guatemala was the quest for better living conditions.

37. In 2018, in coordination with the Ministry of the Interior, representatives of non-governmental organizations had provided 60 law enforcement officials, including 32 middle- and high-ranking police officers, with 60 hours of instruction on how best to protect and support lesbian, gay, bisexual and transgender persons. The authorities intended to extend the training programme to more than 2,000 police officers, and were in the process of designing related protocols and legislation. A review of the curriculum of the National Civil Police Academy had been initiated with a view to including in it instruction on dealing with the lesbian, gay, bisexual and transgender community.

38. **Mr. García Saénz** (Guatemala) said that Henry Adalid Díaz Reyes had arrived in Guatemala in a serious condition and had died despite receiving medical attention. The events that had led to his death had not occurred in Guatemala, nor had any Guatemalan officials been involved.

39. The Ministry of Foreign Affairs and the Ministry of Labour were running campaigns to counteract misinformation spread by migrant smugglers, who tricked people by telling them they would automatically be granted residency in the United States if they travelled there with children.

40. The Government operated a fund to assist with the repatriation of the remains of Guatemalan nationals who died abroad, including those who had previously been declared missing and were subsequently found dead. Protocols were in place for the safe and dignified return of children and adolescents from Mexico and for Guatemalan nationals who had been expelled from another country. The lawyers employed in the 19 Guatemalan consulates in the United States had expertise in migration issues and worked with the relevant State authorities to provide support when complaints were made concerning ill-treatment of migrant workers from Guatemala.

41. **Mr. Aguilera Bolaños** (Guatemala) said that the regulations on the registration and operation of recruitment agencies had reached the final drafting stage and would be submitted to the authorities for approval in due course. One of the aims of the regulations was to strengthen the obligation of recruitment agencies to uphold the rights of migrant workers, including by providing their services free of charge and ensuring that their clients had insurance that was valid throughout the Americas and made provision for repatriation to Guatemala. Agencies that failed to fulfil their obligations faced fines.

42. Information booklets about working in Mexico had been produced in a number of Mayan languages and were distributed to indigenous persons crossing into Mexico. Two Labour Mobility Offices had been set up at the busiest border crossings. The Governments of Guatemala and Mexico were participating in the REFRAME project, operated by the International Labour Organization and funded by the European Union, under which the two countries sought to apply the principles of fair recruitment. They had also concluded an agreement on labour cooperation, and there were plans to design a road map that would include training for civil servants on migration issues and the content of the Convention. A number of State policies, including the National Policy on Decent Employment, had been developed with a view to reducing migration.

43. **Mr. Narez Noriega** (Guatemala) said that the National Council for Assistance to Guatemalan Migrants had offices in locations with the highest levels of migration and would open a further five offices in 2019. With the support of municipal authorities, the Council had begun to deliver training through municipal forums, with the aim of disincentivizing migration, particularly among school students. The training covered topics including the situation of Guatemalan migrants in other countries, the risks faced by unaccompanied minors and persons travelling without documentation, temporary work and remittances. The Government was eager to hear the Committee's ideas on how best to discourage migration.

44. **Ms. Müller Cabrera** (Guatemala) said that the Two for One programme, under which the authorities doubled the amount of money sent home by Guatemalan migrant workers for projects to generate employment in the country, had indeed been modelled on the Three for One programme operating in Mexico, but had been adapted to the socioeconomic context of Guatemala. According to projections by the Bank of Guatemala, Guatemalan nationals working abroad would be sending home more than US\$ 9.9 billion in 2019, an increase of 8 per cent compared to 2018.

45. **Mr. Borrayo Reyes** (Guatemala) said that the Government was in the process of developing an inter-agency system to monitor the implementation of recommendations issued by international bodies, including the United Nations human rights treaty bodies, and to ensure the participation of civil society organizations in the drafting of the reports submitted to those bodies.

46. **Ms. Landázuri de Mora** said that the State party was in the process of transforming the way it dealt with migration-related issues and that it was crucial that the right choices were made with respect to defining its approach moving forward. The ongoing reforms were an opportunity to bring the State closer to the citizens and thereby to win back the confidence of the Guatemalan people in its institutions. Citizens and civil society organizations would play a central role in ensuring the practical implementation of all legislation on migration, so the Government was advised to seek their participation and support at every step of the way. For example, the National Institute of Migration, which was at the heart of the reforms, needed to be an open and accessible structure, staffed with public officials who had experience in dealing with migrants and were motivated by the issues affecting them. In that way, it was hoped that the Institute would serve as the driving force behind a progression away from a security-based approach to migration in the State party.

47. It was important to clearly define the competencies of all the mechanisms and policies that were being developed to deal with the issue of migration. It should be clear – to public officials, Guatemalan citizens and migrants – which of the new structures had the power to respond to particular situations involving the different categories of migrants specified in part V of the Convention. The sooner the State party succeeded in developing

efficient coordination between the different mechanisms, the sooner it could set an example for the rest of the region to follow when it came to managing mass migration flows.

48. She welcomed the steps that had been taken to combat the issues of forced migration, violence against migrants and organized crime, and she urged the Government to step up those efforts over the coming years. The State party faced the dual challenge of resolving problematic domestic issues while protecting the rights of foreign migrants on its territory. But Guatemala was not alone in facing that challenge and she encouraged the Government to seek the cooperation of other countries in the region. The value of such cooperation had already been demonstrated in the context of regional efforts to search for and identify persons reported missing in the course of regular and irregular migration. The Committee recognized those efforts and reminded the State party of its duty to bring to justice those involved in the disappearances and deaths of missing persons.

49. The Committee welcomed the steps being taken by the Government to provide its citizens with better employment opportunities and public services, efforts that it hoped would result in fewer citizens choosing to emigrate. The remittances sent by Guatemalan migrant workers living abroad had a key role to play in that process. Every effort should be made to ensure that remittances were used to improve living conditions within the State party and to prevent that money falling into the hands of agents of organized crime. She welcomed the progress that the State party had made in reuniting Guatemalan children with family members in the United States of America and encouraged the Government to resolve the remaining cases as quickly as possible, in order to avoid children being forced to spend extended periods of time in the care of strangers.

50. **Mr. Botero Navarro** said that he welcomed the progress that the State party had made in establishing national policies and plans to manage mass migration flows. The Committee encouraged the Government to continue those efforts and to focus on addressing the causes of forced migration, providing humanitarian assistance to vulnerable persons in transit and ensuring that there were safe legal channels through which citizens could emigrate. In order to protect migrants, it was important to ensure that any person found to have committed criminal acts involving the excessive use of force, extortion or other crimes against migrants was brought to justice, particularly if any State security official was involved. In that regard, the Committee looked forward to receiving further written information from the delegation on the steps being taken to investigate the death of Henry Adalid Díaz Reyes. Owing to the nature of that case, any effective investigation would require cooperation with other States; it was important that the appropriate steps were taken to ensure justice for the victim, thereby demonstrating to migrants that the State party was committed to protecting their rights.

51. Similarly, it was imperative that the migrants themselves – including those in an irregular situation – enjoyed effective access to justice and felt that they could report violations without fear of repercussions, including in the reported cases where they had allegedly been subject to discrimination or hate speech. Although the rights of migrants were recognized under the Migration Code, the Committee urged the Government to adopt the necessary legislation to protect those rights, including by incorporating the principle of non-refoulement into national law. In turn, it would be necessary to develop ongoing training for public officials to ensure that the national policy on migration was interpreted and implemented from a human rights perspective, rather than as a means to maintain national security by controlling the migrant population.

52. The phenomenon of mass migration was affecting the whole of Central America and any solution to the challenges it presented would require the cooperation of all the countries in the region. He urged the State party to ensure that any agreements reached at the regional level did not restrict the free movement of people, particularly asylum seekers and refugees.

53. **The Chair** said that the current dialogue had provided valuable insight into the State party's efforts to manage mass migration flows. The Committee counted on the State party to continue promoting the rights of migrants domestically and, more importantly, to ensure that the Convention was invoked in any agreements signed at the regional level in response to the phenomenon of mass migration currently affecting Central America.

54. **Mr. Borrayo Reyes** (Guatemala) said that he wished to thank the Committee members for the constructive dialogue and that he welcomed the solidarity shown in recognition of his country's efforts to implement the provisions of the Convention. The Guatemalan territory constituted a natural point of transit for migrants travelling in search of better living conditions in North America, not just from Central and South America but also from Asia and Africa. The Guatemalan people were therefore accustomed to welcoming foreign visitors and always greeted them warmly. Although the spontaneous and unexpected mass arrival of migrants over the previous months had presented challenges, particularly in border regions, the Government had done everything in its power to continue to protect the rights of migrants on Guatemalan territory and no individuals had been sent back to their country against their will. That commitment to promoting migrants' rights could also be seen in the State party's active involvement in the work of the Central American Integration System, which had established regional mechanisms reflecting the aspiration of its members to create better living conditions for everyone in Central America, including migrants. Both domestically and in cooperation with its regional neighbours, the State party would continue to make every effort to meet its obligations under the Convention.

The meeting rose at 1 p.m.