



# **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 Thirteenth session**

### **Summary record of the public parts\* of the 137th meeting**

Held at the Palais Wilson, Geneva, on Monday, 22 November 2010, at 10 a.m.

*Chairperson:* Mr. El Jamri

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\* No summary record was prepared for the closed parts of the meeting.

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*The meeting was called to order at 10.10 a.m.*

### **Opening of the session**

1. **The Chairperson** declared open the thirteenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### **Introductory statement by Mr. Craig Mokhiber, Officer in Charge, Development and Economic and Social Issues Branch (Office of the United Nations High Commissioner for Human Rights)**

2. **Mr. Mokhiber** (Officer in Charge, Development and Economic and Social Issues Branch (Office of the United Nations High Commissioner for Human Rights)) informed the Committee that the Chairpersons of the treaty bodies had issued a joint statement on the occasion of the Millennium Development Goal (MDG) Summit in which they had urged Member States to be guided by human rights in finalizing the Summit outcome document and had emphasized the inseparable and interdependent links between the realization of the MDGs and the full and effective realization of human rights.

3. The strengthening of the treaty body system was a major subject of debate. A meeting of treaty body experts on the topic had recently been held by the University of Poznan (Poland), at which the participants reflected, among other things, on the independence of committee members and the enhancement of the role of the Chairpersons. For its part, the Office of the United Nations High Commissioner for Human Rights was facilitating a series of consultations involving all treaty bodies — including the Committee on Migrant Workers, scheduled for April — to identify options for the future work of the system, notably in respect of working methods, in order to prepare inter-committee meetings and the meetings of Chairpersons. The twenty-second meeting of Chairpersons of the human rights treaty bodies had been held in Brussels in July 2010, the first such meeting organized outside of Geneva, in order to bring treaty bodies closer to the implementation level, to NGOs and to regional mechanisms, to raise awareness in Europe regarding their work and to strengthen synergies and improve coordination between international and regional human rights mechanisms.

4. The Office of the High Commissioner had taken note of the rightful concerns of the Committee about servicing levels. However, the demands on conference servicing had grown tremendously, not least due to the explosive growth of documentation needed by the Human Rights Council and the increase in the number of treaty bodies and their evolving procedures, without a corresponding increase in resources. The General Assembly had been informed of the problem. In that connection, the inter-committee meeting had formulated a recommendation, which the Secretariat had passed on to States, calling on all treaty bodies to enforce page limitations on reports submitted to them. A number of treaty bodies had begun to systematically refer to page limitations in their concluding observations. At the same time, the consideration of the working methods which the Committee had decided to undertake at the current session was useful, because it was difficult for States parties to condense their reports and their replies when the recommendations made or questions posed were themselves not as focused as they could be.

5. The Office of the High Commissioner had made the promotion of the human rights of all migrants one of its six thematic priorities for the current biennium. Currently chairing the Global Migration Group, the High Commissioner sought to promote and mainstream a human rights-based approach to migration within the United Nations system and beyond and to highlight key migration and human rights issues at the international level. The Group had recently adopted a landmark statement in promoting and protecting the human rights of the most vulnerable of all migrant groups — those in an irregular situation — and had

declared that universal human rights norms applied to all migrants, regardless of their immigration status.

6. At the fourth Global Forum on Migration and Development, held from 8 to 11 November in Mexico, the Office of the High Commissioner, with the support of the International Steering Committee for the Campaign for Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, had organized an event of the Global Migration Group to commemorate the twentieth anniversary of the Convention, at which it had invited all States to sign and ratify the Convention. Acceptance of the Convention continued to grow, the accession by Guyana and by Saint Vincent and the Grenadines having brought the number of States parties to 44. However, only two States parties had declared that they recognized the competence of the Committee to consider communications under article 77.

7. The Committee's first draft general comment, on migrant domestic workers, which would be considered at the current session, concerned a long neglected human rights issue. The text was very timely, given the large numbers of migrants involved and their particular vulnerability. It was to be hoped that the interest which the subject had generated in the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child would result in inter-committee support for a solid text.

8. In collaboration with the International Steering Committee for the Campaign for Ratification of the Convention, the twentieth anniversary of the Convention would be celebrated on 29 November on the theme of "Protecting Rights, Building Cooperation". The theme chosen for the 2010 Human Rights Day — "Speak Up: Stop Discrimination" — was equally important to the Committee.

9. **The Chairperson** said that he agreed with the point made by Mr. Mokhiber concerning the results of the Committee's activities and its objectives for the current session. Hardly a day passed without the question of human rights in the context of migration being the subject of debate somewhere in the world, and that led to two conclusions. First, the Convention was the main instrument specifically devoted to the protection of the rights of migrant workers, and second, non-respect for the elementary rights of migrant workers, and in particular the increasing difficulties which irregular migrants were experiencing in the current time of crisis, did not make for an optimistic assessment. Although actively involved in the economic development of the country in which they lived, migrant workers felt abandoned by their traditional defenders, the trade unions and organizations of civil society.

10. For the first time, the Global Forum on Migration and Development had given considerable attention to the Convention. The debate on migration and development seemed to begin and end with the question of the rights of migrants, there being a general awareness that development could not be achieved without those rights being respected. Many countries had emphasized the need to recognize the fundamental rights of all migrant workers, regardless of their status under immigration law, whereas those whose economic situation encouraged the immigration of undocumented workers only accepted legal migrants. The event organized to commemorate the twentieth anniversary of the Convention and the subsequent press conference had generated widespread interest. The celebration of the twentieth anniversary on 29 November would provide an opportunity to discuss the impact of the Convention with States which had ratified it and were implementing it.

### **Adoption of the agenda**

*The provisional agenda was adopted.*

*The public meeting was suspended at 10.35 a.m. to allow the members of the Committee to consult in closed session; it resumed at 11.40 a.m.*

### **Consideration of reports submitted by States parties under article 73 of the Convention**

#### *Dialogue with non-governmental organizations on the initial report of Senegal*

11. **Mr. Guissé** (Rencontre africaine pour la défense des droits de l'homme (RADDHO)) said that the shadow report which he was introducing, entitled *Les droits des travailleurs migrants au Sénégal* (The rights of migrant workers in Senegal), alternative report of civil society on compliance by the Government of Senegal with its obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, was the result of a collective effort by the group of organizations of Senegalese and African civil society as well as their partners, a dozen organizations whose names he read out. The report described the violations of the rights of migrant workers in Senegal, Senegalese nationals abroad and migrants in transit on account of stricter European migration policies and the externalization of European borders, the criminalization of immigration and the setting-up of a repressive and security-oriented political framework as well as the considerable increase in the number of placements in detention and expulsions. Issues of concern included ethnic and racial discrimination, religious and cultural intolerance, harassment, arbitrary detention, police raids on migrant workers and communities, inhuman detention conditions and other detention-related violations, such as physical violence, racial insults, etc. The State party was under a negative obligation to respect the rights enunciated in the Convention by refraining from any act violating those rights, for example the adoption of legislation or policies encouraging such violations, but it was also under a positive obligation to protect those rights against violations committed by others (such as trafficking networks, criminals, employers and private persons), and it must also take measures to ensure their full implementation.

12. In its initial report, the State party provided information on its judicial framework, but few details on violations of those rights, and it indicated that it had ratified both the Convention and the main international human rights treaties. It had also adopted Act No. 2005-06 of 10 May 2005 combating trafficking in persons and related practices and protection of victims, which had criminalized clandestine immigration (including attempts) but did not legally define the term “clandestine”; that posed problems of interpretation. Senegalese civil society denounced the lack of precision of the Act and its excessive implementation, which had resulted in numerous violations of the Convention. Moreover, Senegal had signed bilateral agreements on the management of its migration flows, for example in 2006 with France and Spain, and thus was collaborating in the European policy for the externalization of its borders in Africa. Many organizations of civil society considered those measures not only to be violations or infringements of the human rights set out in the Convention, notably the right to leave any State, including one's State of origin, the right to liberty of movement, the right to life and the right to security of person, but also to be violations of Senegal's commitments under the Protocol of the Economic Community of West African States (ECOWAS) on free movement of persons.

13. The Government of Senegal was also partly responsible for some of the violations committed against Senegalese nationals living abroad when it did not provide them with adequate consular assistance as required under the Convention. Moreover, it cooperated actively on the implementation of European policies, resulting in the violation of rights guaranteed by the Convention, when instead of protecting its nationals from arbitrary or collective expulsions, it signed readmission agreements and facilitated the expulsion of Senegalese nationals by accepting expulsion orders based on a semblance of evidence and

procedures without bothering to ascertain whether the rights of those persons would be protected during expulsion. Senegal had done little to promote access to justice for migrant workers; according to some reports, the Government had attempted to discourage a Senegalese national from initiating legal proceedings against Spanish immigration authorities for alleged inhuman and degrading treatment.

14. The group of organizations of Senegalese civil society recommended that the Government of Senegal should respect the rights of migrants as set out in the Convention by adopting legislation protecting those rights (in particular by abrogating or amending Act No. 2005-06, which criminalized irregular migration); by elaborating a coherent migration policy to ensure protection of those rights, thereby refusing to collaborate with European policies which resulted in their violation; by taking a firm stand against discrimination against migrant workers and adopting measures to reduce the risk of human rights violations; by strongly opposing detentions and expulsions; by actively protecting its nationals and providing them assistance abroad; by protecting asylum-seekers and refugees on its territory; and by working to ensure that justice was done when violations had occurred. It also recommended that the Committee on Migrant Workers should interpret the provisions of the Convention in the light of its object and purpose, namely to improve the protection of the rights of migrants, consistent with the gradual evolution of international law and human rights principles contained in the general comments of a number of United Nations committees, and that it should take into account the concerns and recommendations set out in the shadow report when considering Senegal's initial report. The shadow report also contained recommendations for African and European Governments and for the international community.

15. **Ms. Poussi Konsimbo** asked whether organizations of civil society had been consulted during the negotiations on the bilateral agreements which Senegal had signed with a number of countries and what provisions of Act No. 2005-06 might be in violation of the Convention.

16. **Mr. Carrion Mena** would like to know when the bilateral agreement with Spain had entered into force and how Senegalese workers benefited from it.

17. **The Chairperson**, speaking as a member of the Committee, enquired what form the expulsion order took which Senegal issued as country of origin of migrants. It would also be useful to know whether civil society had been consulted for the elaboration of Senegal's initial report, whether the international treaties which Senegal had ratified took precedence over national law and whether judges had cited the Convention in their decisions.

18. **Mr. Guissé** (Rencontre africaine pour la défense des droits de l'homme (RADDHO)) said that the Convention took precedence over national law. Civil society had not been consulted, hence the current problems with texts which were not consistent with the reality on the ground. The population concerned by the bilateral agreements did not know what they contained or what to expect from them, because no information campaign had been conducted. There was no expulsion order as such, but an implicit acceptance of the expulsions by the Senegalese authorities by the very fact that they collaborated with the countries concerned. Like many African countries, Senegal did not have a real migration policy which would enable it to have statistics on the number of immigrants or emigrants or to regulate migration flows.

19. **Mr. Diawara** (Rencontre africaine pour la défense des droits de l'homme (RADDHO)) said that pursuant to the bilateral agreement signed with Spain, the Spanish authorities had issued a number of visas to Senegalese nationals so that they could work in the agricultural sector. Those persons had encountered many integration difficulties, in particular because of cultural differences. At the end of their contracts, most of them had lacked legal status, because their employers had not wanted to renew their contracts and the

authorities had not wanted to issue them a residence permit. Initially, the agreement had been meant to allow Senegalese nationals to earn enough to be able to help their families financially, but that had rarely been the case. With regard to expulsions to Senegal, it should be noted that most African countries, under pressure from European countries or because they had signed agreements to that effect, agreed to readmit emigrants into their territory once their nationality had been determined in the country in which they had been illegally present. Together with other organizations, RADDHO had repeatedly denounced agreements allowing such readmissions.

20. **Mr. Bingham** (International Catholic Migration Commission (ICMC)) said that his organization, as the head of a group of eight non-governmental organizations working with boat people arriving in Spain and Greece from Senegal, was in a good position to know about the reception conditions of those persons. The Committee should address those bilateral agreements, which sometimes allowed States, regardless of whether they were parties to the Convention, to indirectly violate the provisions of that instrument, for example by readmitting their nationals or by failing to provide them with consular assistance.

*Dialogue with non-governmental organizations on the second periodic report of Ecuador*

21. **Mr. Arcentales** (Coalición por las Migraciones y el Refugio), introducing its second follow-up report, said that in recent years, migration flows had increased, and nearly 3 million Ecuadorians were living abroad, mainly in the United States, Spain and Italy. Many migrants were from Colombia, Peru and, since late 2007, from Cuba, Haiti, Nigeria, Afghanistan and Pakistan. The migration flows were not homogenous: they concerned not only migrant workers but also refugees, especially those fleeing the Colombian conflict.

22. The Constitution of Ecuador, which had been amended in 2008, now included such important principles as recognition of the right to migrate, regardless of the nationality of the person concerned, prohibition of discrimination against migrants, whether legal or illegal, and recognition of the principle of non-refoulement in conformity with the Inter-American Convention on Human Rights. However, practice was not in line with the provisions of the Convention on the Rights of Migrants, and obsolete laws from 1970 were still in force, for example the Aliens Act and the Migration Act, which made provision for refoulement in violation of human rights. In the course of the past 12 months, several cases of arbitrary detention had been reported. Controls targeting migrants, in particular persons of Colombian and Cuban origin, had been stepped up in Ecuador's biggest cities (Quito, Guayaquil and Cuenca). The controls had been carried out under the so-called "Plan Operativo Identidad", which aimed to identify, arrest and expel illegal aliens.

23. Although the Office of the Ombudsman, who played the role of mediator, had requested that a regularization process should be started without delay, the institutional fragmentation was such that sometimes there were jurisdictional conflicts. In Ecuador, the bodies with competence for migration were the National Secretariat for Migrants, responsible for Ecuadorians abroad and repatriated nationals, the Ministry of Foreign Affairs, responsible for international migration policy, and the Ministry of the Interior, responsible for issuing residence permits, conducting controls of migrants and deciding expulsions. The 30 habeas corpus appeals for arbitrary detention submitted by the Coalición por las Migraciones y el Refugio had been declared admissible by the courts. Moreover, the Constitutional Court would soon hand down an eagerly awaited decision on a regulation requiring aliens to provide a certificate indicating they did not have a criminal record, a measure which basically served to exclude Colombians from entry and which remained in force despite the recommendations made by the Committee following consideration of Ecuador's initial report.

24. The question of trafficking and its prevention was rarely addressed, and traffickers often had links to the immigration authorities. The victims of trafficking were expelled, they had no protection, and there was no reception centre for them. The Coalición por las Migraciones y el Refugio called on the Committee to urge Ecuador to regularize the situation of all aliens in Ecuador without delay, and not only that of Haitians, which had already been done, and rightly so, on account of the serious situation in their country of origin.

25. As the refugee protection system was the sole mechanism available for regularizing the status of such persons, it was overburdened, and those who really needed international protection were unable to obtain it. He drew the Committee's attention to the situation of Cubans, who could not return to their country if they had spent more than 11 months and 30 days abroad, and who were unable to obtain authorization for legal residence in Ecuador.

26. **Ms. Cubías Medina**, stressing that Ecuador must be regarded as a country of destination and could no longer be considered a country of origin, sought further clarification on the situation in detention centres; it was her understanding that they were temporary and did not provide any health-care services. She would also like to know whether the police raids had begun in 2010, why they had targeted certain nationalities and whether the Coalición por las Migraciones y el Refugio thought that the recommendation of the Office of the Ombudsman would have an impact.

27. **The Chairperson**, speaking as a member of the Committee, asked where and how controls of migrants took place.

28. **Mr. El-Borai** (Rapporteur) said that although the relevant legal provisions were obsolete, he failed to see how they were at variance with the Convention.

29. **Mr. Arcentales** (Coalición por las Migraciones y el Refugio), replying to the questions of the members of the Committee, said that the "Plan Operativo Identidad" had been in force since June 2010. Controls were carried out in public areas as well as at the exits of administration offices where migrants went to regularize their situation. Persons detained in Quito were placed in prison and did not have access to any basic services. Elsewhere, migrants were detained together with convicted persons, in violation of the provisions of the Convention.

30. The immigration authorities also conducted controls in cities; the controls were an indication of a growing xenophobia fanned by the media, which blamed the increase in crime on foreigners, although that had been disproved by the statistics of the Office of the Ombudsman.

31. He referred to several articles of the Migration Act, which specified that the status of persons with certain illnesses would not be regularized and which made provision for the prosecution of expelled persons who returned to Ecuador. In its spirit, the law tended to criminalize, because it punished anyone who exercised the right to migrate (article 40 of the Constitution).

32. **Mr. Ibarra González** asked whether the controls conducted had been in conformity with the law or whether the Coalición por las Migraciones y el Refugio had evidence that rights had been violated. He also enquired whether it recommended that the tourism visa should be restored in Ecuador in order to prevent any abuse.

33. **Mr. Arcentales** (Coalición por las Migraciones y el Refugio) said that the fact that 21 habeas corpus appeals against arbitrary detention had been declared admissible by the courts proved that the rights of those persons had not been respected. Moreover, the inspection report of the Coalición had been approved by the Office of the Ombudsman. It was not the discontinuation of the tourism visa that posed a problem but the absence of accompanying measures, in particular to combat trafficking. The restoration, one month

previously, of the tourism visa for the nationals of 14 African and Asian countries had been discriminatory.

*The public part of the meeting rose at 12.50 p.m. to allow the members of the Committee to continue their work in closed session.*