



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 Fifteenth session

Summary record of the 166th meeting

Held at the Palais Wilson, Geneva, on Monday, 12 September 2011, at 10 a.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 10.15 a.m.

Opening of the session

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

Statement by Ms. Wan-Hea Lee, Chief of the Groups in Focus Section, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights

2. **Ms. Wan-Hea Lee** (Chief of the Groups in Focus Section, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that world events had again demonstrated the relevance of the Convention and she welcomed the decision to hold a day of general discussion on migrant workers in an irregular situation and members of their families.

3. The treaty bodies system had grown with the establishment of the Committee on Enforced Disappearances, which would be holding its first session in November 2011, and the adoption of two resolutions at the seventeenth session of the Human Rights Council; in the first, the Council had adopted the Optional Protocol to the Convention on the Rights of the Child establishing a procedure for the submission of communications (A/HRC/17/L.8), which would be submitted to the General Assembly at its sixty-sixth session; in the second, it had expressed its grave concern about acts of violence and discrimination committed against persons because of their sexual orientation and gender identity and had called on OHCHR to commission a global study of discriminatory laws and practices as well as acts of violence committed against persons because of their sexual orientation and gender identity (A/HRC/RES/17/19).

4. The consultation process launched in Dublin in November 2009 with a view to strengthening the treaty body system had continued in Marrakesh (June 2010), Poznan (September 2010), Seoul (April 2011), Sion (meeting with States' representatives in May 2011), and Pretoria (June 2011). Further consultations would be held in Lucerne in October 2011 with academics, United Nations bodies and some regional mechanisms, and a meeting on the procedure for submitting individual communications was also planned. At the end of the consultation phase, which would culminate in Dublin in November 2011, the High Commissioner for Human Rights would publish a report on the issue early in 2012.

5. One of the main requests to have emerged from the meetings had come from civil society organizations that wanted not only to strengthen the treaty body system but also to harmonize procedures relating to their involvement in the system. The States had underlined the need for austerity and self-discipline, particularly with regard to "non-mandated activities", such as follow-up procedures and the drafting of general comments. The Sion meeting had shown that, in the absence of a comprehensive solution, the treaty bodies would continue to request additional resources from the States parties on a case-by-case basis.

6. The inter-committee meeting, which had been held from 27 to 29 June 2011, had focused on improving the effectiveness of the treaty bodies and harmonizing their working methods. It had been followed, on 30 June and 1 July 2011, by the 23rd meeting of chairpersons, which the Chairperson of the Committee on Migrant Workers and Ms. Cubias Medina had attended and which had focused on harmonizing working methods, the criteria for selecting experts and their independence, and how to make better use of the meeting of chairpersons. In his opening address, the representative of OHCHR had stressed that it was important for the committees to show determination and unity on the two main issues of harmonization and resources. While it was incumbent on the treaty bodies to achieve harmonization, resources were clearly the States' responsibility, which, regardless of the

currently difficult economic and financial climate, they could not evade. It had been decided at the meeting to draft guidelines on the independence and expertise of treaty body members, which would draw in part on guidelines established in 1998 by the Committee on Migrant Workers. While noting that the autonomy and specificity of the treaty bodies must be respected, it had been recommended at the meeting that the chairpersons should be empowered to adopt measures related to working methods and procedural matters that were common to all treaty bodies.

7. Efforts made throughout the United Nations and by some committees to reduce the amount of paper documents produced were laudable. The situation in North Africa remained fluid and significant numbers of migrants continued to flee from Libya and other countries in the region. OHCHR estimated that more than 1,400 migrants had died at sea between North Africa and Europe since the beginning of 2011. Stricter border controls could heighten the risk of death or injury to migrants as they opted to use more dangerous means of transport or turned increasingly to traffickers in order to evade such controls. Mr. Kariyawasam had represented the Committee at a round table held by OHCHR and the Office of the United Nations High Commissioner for Refugees on alternatives to the detention of migrants.

8. The number of States parties to the Convention had increased to 45 since its ratification by Bangladesh, but only 2 States had recognized that the Committee was competent to receive and consider communications under article 77.

9. She outlined the work of the Committee at the current session, which would include consideration of the initial reports of Argentina (CMW/C/ARG/1), Chile (CMW/C/CHL/1) and Guatemala (CMW/C/GTM/1), preparation of the list of issues concerning Tajikistan (CMW/C/TJK/1) and Paraguay (CMW/C/PRY/1) and a day of general discussion on the rights of migrant workers in an irregular situation and members of their families, an issue whose importance had been underlined by the High Commissioner for Human Rights when she had chaired the Global Migration Group.

10. **The Chairperson**, noting the general concern at the growing risks facing migrants in North Africa, called on all stakeholders to take action and invited neighbouring countries to open their borders to migrant workers. States parties should recognize the Committee's competence to receive and consider communications presented by or on behalf of individuals. He welcomed the comments of the High Commissioner for Human Rights with regard to avoiding distinctions between regular and irregular migrants, as well as the Committee's involvement in the process of strengthening the treaty bodies and the establishment of the Committee on Enforced Disappearances. He underlined the importance of the role of independent human rights experts and the need for States to make sufficient contributions to ensure the proper functioning of the treaty body system.

11. **Mr. Kariyawasam** said that Ms. Barrita-Chagoya had done remarkable work as acting secretary of the Committee and he welcomed its new secretary, Mr. Schneider. He would like to know what OHCHR was doing to alleviate the plight of migrant workers in Libya, which was a State party to the Convention, and invited the Committee to make recommendations in that respect.

12. **Mr. Brillantes** said that he had attended the Sixth Ministerial Conference of the Community of Democracies, held in Vilnius (Lithuania) on 1 July 2011, and the meeting held to celebrate the sixtieth anniversary of the Non-Aligned Movement in Belgrade (Serbia) on 4–5 September 2011, during which he had urged States to ratify the Convention. He welcomed the adoption of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (C189).

13. **Mr. Tall** said that he had attended a national consultative meeting on the protection of migrant workers' rights, which had been organized in Dakar on 4 July 2011 by the

International Organization for Migration, with the help of GIP International (a public interest group working on the development of international technical assistance and cooperation). The meeting was part of a partnership project for the management of professional migration funded by the European Union and had provided an opportunity to assess the protection of migrants' rights in Senegal. He had addressed Senegal's efforts to follow up on the Committee's recommendations. The strong points and deficiencies in its implementation of the Convention had been highlighted and recommendations had been made.

14. **Ms. Cubias Medina** said that, in El Salvador, the provisions of the Convention had been incorporated in a bill on migration, following the Committee's recommendations to the Government. The country was making a considerable effort to ensure that the human rights of all migrant workers were respected. The Government was also carrying out awareness-raising campaigns and training in conjunction with trade unions, NGOs, the private sector, public institutions and other civil society organizations.

15. **Mr. Alba** said that Mexico's first Migration Act, which took into account the country's international obligations, had entered into force on 24 May 2011. The Act was partly modelled on the Convention and incorporated some of its provisions. In addition, Mexico, which had amended its Constitution to improve the protection of human rights, had hosted a visit by the High Commissioner for Human Rights in June.

16. **Mr. Taghizadet** said that an interesting meeting had been held in June in Baku (Azerbaijan) under the auspices of the International Social Security Association (ISSA), which was a worldwide federation of social security bodies. The issue of protecting the rights of migrant workers had been raised and organizations representing migrants had been grateful for the opportunity to come together with social welfare institutions at the event. The absence of discrimination against migrant workers in terms of wages and rights contributed to the stability of such institutions, particularly pension funds, in many countries where a great many jobs were done by migrant workers. The heads of European and Asian social security institutions ended the meeting with a commitment to develop common principles in order to ensure that such workers received social security coverage, and representatives of the association promised to draft recommendations as soon as possible to encourage States parties to ratify the Convention.

17. **The Chairperson** said that he had attended two meetings in New York on the matter of migrants' rights, one at United Nations Headquarters on xenophobia, and the other, at the invitation of the Swiss President of the General Assembly, on preparation for the high-level discussion on migration and development, which would be held in 2013. He had also taken part in several meetings with NGOs in Spain, Portugal and France on the issue of migrants' rights and the implementation of the Convention in countries that had not submitted a report or had not ratified the Convention. The Convention still served as a point of reference, even in countries that had not ratified it, but differences in States' approach to ratification were hampering coordination with transit and destination countries that had not ratified it. In Morocco, a new Constitution had been adopted on 1 July. It contained 186 articles, 4 of which addressed migration issues, and granted migrants more rights than were provided for in the Convention.

18. **Ms. Wan-Hea Lee** (Chief of the Groups in Focus Section, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights), addressing concerns expressed by Mr. Kariyawasam on how treaty bodies could deal with States parties in an equitable and non-discriminatory manner, without leaving the initiative on the submission of reports to them, said that the Committee had decided at its previous session to put together lists of issues for submission to States parties prior to reporting, allowing the States concerned to answer the questions raised therein. The details of the procedure would be finalized during the Committee's current session.

19. It had been proposed during the series of meetings held to deal with the issue that the treaty bodies could establish a comprehensive timetable that would provide all States parties that were due to submit several reports with a clear overview of forthcoming sessions. That procedure, which would be compatible with the list of issues, would include all States parties in a five-year cycle. For the 10 basic treaties, for example, each State would report to two treaty bodies a year, which would lead to proper, system-wide coordination. However, no thought had been given to procedures to adopt in emergency situations. A degree of flexibility and a more considered appraisal of the issue would therefore be necessary. The mechanism could be discussed at a future meeting of chairpersons.

Adoption of the agenda

The provisional agenda was adopted.

The meeting was suspended at 11.09 a.m. and resumed at 11.46 a.m.

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

Dialogue with NGOs, intergovernmental organizations and human rights institutions on the initial reports of Argentina (CMW/C/ARG/1), Chile (CMW/C/CHL/1) and Guatemala (CMW/C/GTM/1)

Report of Argentina

20. **Ms. Kletezel** (Centro de Estudios Legales y Sociales (Legal and Social Studies Centre, CELS), Comisión de Apoyo al Refugiado (Refugee Support Committee, CAREF) and Centro de Derechos Humanos de la Universidad Nacional de Lanús (Human Rights Centre of the National University of Lanús, CDHUNLa)) said that the implementation in Argentina of new legislation on migration, which was designed to regularize the situation of migrant workers and their family members, had been hindered by delays in the processing of files and the failure of many migrants to meet the requirements of the national regularization programme, which prevented them from obtaining permanent residence. More migrants were therefore in an irregular situation and were likely to be deported. Moreover, the act did not cover migrants from outside the MERCOSUR area, such as nationals of the Dominican Republic and Senegal, who were barred from applying for regularization. Nor did it apply to the self-employed or to persons working in the informal sector, who were nevertheless the most at risk. The requirements of the act, in particular with regard to proof of entry into the country, were at times impossible to meet and therefore led to immediate deportations without court rulings, leaving the persons concerned without sufficient time to regularize their situation. Similarly, criminal records were used as grounds for automatic deportation, leaving no room to consider family ties or other reasons that might justify regularization. Migrant workers who challenged court or administrative decisions that were unfavourable to them were not allowed to renew their temporary residence permits.

21. Moreover, although the act granted vulnerable persons the right to social security and a pension, the requirements in terms of the number of years of residence in the country were such that most foreigners did not qualify. The requirements were discriminatory and the Supreme Court of Argentina had ruled them unconstitutional, but they continued to be applied. Similar requirements applied to the payment of child subsidies and led to a distinction being drawn between Argentine and foreign children, which was contrary to the Convention. Argentina still had far to go to ensure recognition of migrant workers' rights.

22. **Mr. Chávez** (International Disability Alliance) supported the common position adopted by CELS, CAREF and CDHUNLa on Decree No. 432 of 1997, according to which at least 20 years of uninterrupted residence in the country was a prerequisite for receiving a disability pension, and Decree No. 1602 of 2009, according to which at least three years of legal residence were required in order to obtain the universal family allowance. According to the most recent census, conducted in 2010, 200,000 people might be affected by Decree No. 432.

23. **Ms. Cotardelle** (International Federation for Human Rights (FIDH)) said that the new Argentine migration act was the first to recognize the right to migrate as a human right and she underlined some of its positive aspects. However, challenges remained. In particular, the provisions relating to entry into the country by unauthorized points or routes ran counter to the principle of the presumption of innocence and placed on the migrant the burden of proving that he or she had arrived in the country legally. The authorities also committed irregularities in relation to the right of residence and deportations. As a result, FIDH and CELS were asking the Government of Argentina to apply the conditions and procedures connected with obtaining residence permits and deportation in a transparent and impartial manner. Given that irregular migrants were barred from engaging in moneymaking or other paid activities, they tended to take the most insecure jobs, without any right to welfare or protection against exploitation. Although there were regularization programmes for citizens of member and non-member States of MERCOSUR and associated countries, the numerous administrative obstacles had prevented many applicants from completing all the necessary formalities to obtain a residence permit. FIDH and CELS therefore called on the Argentine authorities to remove all barriers to the regularization of migrants from member and non-member countries of MERCOSUR. Migrants continued to be exposed to xenophobia, on occasion expressed by acts of violence. FIDH and CELS thus requested that the Argentine authorities adopt preventive measures by mounting information campaigns on migrants' rights and prosecuting the perpetrators of such acts.

Report of Chile

24. **Mr. Olibrice** (ACHE International) said that migration was a new challenge for Chile, where many immigrants lived in precarious conditions. That was especially true of women and particularly black women, who were often thought to be and portrayed as prostitutes, including by the media. Chile's legal system did not make it any easier for migrants; thus to enter the country legally, not only did they have to have a work contract but employers also had to cover the travel expenses of the migrants and the members of their families, which, given the high costs involved, was hardly feasible in the case of workers from Africa or Asia. The previous year, ACHE International, which considered education to be vital if migrants were to learn to assert their rights, had focused on scholarships for foreigners, taking advantage of the work done in that area by the Government of Ms. Bachelet, especially for persons of African origin. That did not alter the conditions of great hardship experienced by migrants already settled in Chile, such as the many very young Haitians, whose families had sold everything to pay for their journey and most of whom found themselves trapped in hopeless situations.

25. **Ms. Lagos** (Humanas – Centro Regional de Derechos Humanos y Justicia de Género) said that women increasingly made up the majority of migrants to Chile, with all the difficulties that implied. Women migrants were paid less, had even less access to welfare than their male counterparts, given the informal nature of the jobs that they did, and worked in conditions that were illegal. Chile should therefore ratify and fully implement ILO's Domestic Workers Convention (No. 189). The gulf between national migration standards, which dated back to the time of the military dictatorship and allowed the authorities broad discretionary powers, and international standards and obligations was another matter of concern. Legal reform and policy change were needed in order to ensure

that the rights of migrants, men and women alike, were respected and to foster equality between the sexes, in accordance with current international standards. Chile must act to ensure the right of migrant children to education, regardless of the immigration status of their parents. With regard to trafficking in persons, especially migrant women and girls, and Act No. 20507, which was designed to define, prevent and punish such offences, the Government of Chile should be urged to establish implementation regulations that focused on protecting victims rather than deporting them and, where possible, regularizing their situation. In order to address the problem of statelessness, the Chilean authorities should be persuaded to recognize the right to nationality of migrant children born in Chile, regardless of their parents' immigration status. Lastly, the Government should step up monitoring of migratory flows and publish data disaggregated by sex in order to identify with greater precision the areas in which migrants' rights were flouted most.

Report of Guatemala

26. **Mr. Caballero** (National Board on Migration in Guatemala), summarizing the main concerns of his organization and others in Guatemala working in the area of migration, underlined the fundamental importance of the bill to amend the Migration Act, which had been before Congress for two years and which the Government should be urged to promulgate. The bill would help to establish how much time must elapse before deportation could take place and which jobs could be taken up by migrants from other Central American countries, to ensure that impoverished migrants had access to free legal aid, to curtail the activities of the National Civil Police which was blamed for numerous abuses against Central American migrants, both men and women, and to improve conditions in accommodation centres. The new legislation would make it possible to review the terminology currently used in that area and to replace the adjective "illegal" by expressions such as "irregular migration" or "migrant workers", as well as to restructure the General Directorate of Migration, which was riddled with corruption.

27. The country was also badly in need of an integrated and comprehensive public migration policy, with a regional and international scope, which would tackle the root causes of the problem — poverty, low wages, and unemployment — and would take account of the specific characteristics of Guatemala, which was a country of origin, transit and destination for migrants. Under such a policy, the human rights of the around 300,000 people who passed through the country each year should be recognized. As a major destination country as well, with around 250,000 migrant workers, Guatemala must reform its labour laws, in particular with regard to unskilled foreign workers arriving in the country. It was in addition a country of returnee migrants and, in the previous three years, 60,000 Guatemalans had returned from the United States of America and Mexico. A programme to facilitate their resettlement was therefore needed. The Committee's recommendations were thus extremely important, with regard both to those issues and to the demand of Guatemalans living, for example, in the United States for the right to vote.

28. **Mr. Verzelletti** (Pastoral de Movilidad) said that Guatemala's report addressed the protection of migrant workers' rights in Guatemala, but that the State party should adopt a comprehensive approach to the matter by considering the human rights of both immigrant workers and those who emigrated, mostly to Mexico and the United States.

29. Guatemala had deeply entrenched problems: job opportunities for local and foreign workers were limited and the Ministry of Labour, immigration authorities and National Civil Police treated migration as a national security problem, which tended to fuel xenophobia, racism and discrimination against migrant workers.

30. The bill to amend the Migration Act would bring laws more closely into line with the Convention. Several civil society organizations had launched an initiative called "Migration, the State's Commitment, Guatemala 2012–2016" (Migraciones: un

compromiso de Estado, Guatemala 2012–2016), which would help the new Government to shape migration policy.

31. The Committee might wish to make recommendations designed to promote efforts to combat drug-trafficking and organized crime, which led to human trafficking as well as sexual and labour exploitation. Sluggish procedures hampered the repatriation of migrant workers whose rights had been violated and who were housed in migrant shelters, where they received humanitarian aid. In his view, the Migration Act penalized migrant workers in an irregular situation and did not allow them to regularize their situation.

32. **Ms. Cubias Medina** said that she would like to know whether international treaties were applied directly in the domestic legal systems of the countries under consideration. She would like information on living conditions in migrant shelters in Argentina, Chile and Guatemala, and more specifically in terms of differential treatment, food, hygiene, medical care and the right to make telephone calls. She asked whether victims of trafficking and witnesses in human-trafficking cases were also housed in such shelters and whether the police and army, in addition to immigration authorities, resorted to the use of detention. Noting that, under a regional Central American security plan, the armed forces had joined in efforts to combat drug-trafficking, smuggling and arms trafficking, she expressed concern that migration could be tarred with the same brush as those three offences.

33. The construction of a wall between Mexico and Guatemala on the river San Lorenzo designed to curb migration was a source of concern and inconsistent with Central American demands that the United States should not build a wall in Arizona. Guatemala should consider itself to be a country of both immigration and emigration and, in that respect, she wished to know more about the resettlement programme for emigrants who had returned.

34. **Mr. Alba** asked whether Argentina and Chile had signed bilateral treaties with each other or with other countries or regional treaties on migration, and invited the representatives of civil society organizations participating in the meeting to express their views on the subject. In particular, he asked Ms. Lagos whether the cases of migrant workers' children who had had difficulty obtaining Chilean nationality were isolated. He would also like to know whether Chile had amended the 1975 Aliens Act to bring it into line with the Convention and whether the children of migrant workers had easy access to education.

35. **Mr. Sevim** asked how NGOs had obtained data on migrant workers who held initial contracts and those without a contract, and whether such data were based on reliable statistics. He would also like to know whether Guatemala's reasons for not granting migrant workers the right to vote were of a technical or political nature.

36. **Mr. Brillantes** asked whether, at the time they had helped prepare the State parties' reports, the NGOs had been aware that the reports were due to be submitted, whether they had been involved in their preparation and whether they had passed on their comments to the bodies responsible for putting the reports together.

37. **Ms. Kletezel** (Centro de Estudios Legales y Sociales (Legal and Social Studies Centre, CELS)) said that, under Argentina's monist legal system, international treaties were directly applicable. CELS had worked hard with the Argentine Government to draft the Act on migration and corresponding implementation decree, but their implementation on the ground had posed a considerable number of problems. Thus, out of the 500,000 migrant workers who had applied under the programme to regularize their situation, at least 200,000 had been turned down in 2010. The Committee should therefore, in its concluding observations, urge Argentina to implement the Act on migration and its implementing decree more effectively.

38. The lack of specific procedures applicable to migrants from outside the MERCOSUR area, especially from the Dominican Republic and Senegal, was a source of concern. It was her understanding that a treaty with Senegal on cooperation and migration formalities was being worked on but that it had yet to be finalized. Deportation orders issued to citizens of that country should be suspended pending the signing of the instrument. Migrants in an irregular situation who were placed in administrative custody were held in prisons for lack of more appropriate facilities, despite existing legislation.

39. **Ms. Lagos** (Humanas, Centro Regional de Derechos Humanos y Justicia de Género) said that under article 5, paragraph 2, of the Constitution of Chile, international human rights treaties had constitutional status. However, officials in the Office of Migration did not apply the Convention directly and Chile ought to be encouraged to have them do so. Chile had concluded numerous bilateral, regional, and multilateral agreements on migration and they were listed on page 10 of the State party's initial report (CMW/C/CHL/1).

40. Under article 10 of the Constitution, children born in Chile were considered to be Chilean citizens, unless they were born to foreign nationals working in Chile in the service of their governments or in transit. The expression "foreign nationals in transit" had been interpreted as referring to migrants in an irregular situation, reflecting a ruling by the Supreme Court of Chile that advocated a restrictive interpretation of such terms. Children whose parents were nationals of a country that did not apply the principle of *jus sanguinis* were therefore faced with the prospect of being considered stateless. An agreement had been reached with the Ministry of Education to allow children of migrants in an irregular situation to enrol in school on a provisional basis. Their enrolment was, however, eventually cancelled if their situation was not regularized.

41. The only reliable statistics available in Chile related to migrant workers who held visas tied to a contract of employment. Chile should be encouraged to establish a system of data collection that covered all migrant workers.

42. Chile's alternative report and NGO reports had been available online for some time, but the State had not formally requested NGOs to submit comments.

43. **Mr. Verzelletti** (Pastoral de Movilidad) said that the situation of migrants in Guatemala was worrying because of the part played by the National Civil Police and armed forces in placing them in detention. Violations of migrants' rights and disappearances were reported frequently. Migrant workers suffered as walls were built between States and borders were militarized on the pretext of combating the drug trade. Some were forced by military or police personnel involved in trafficking to carry drugs between countries.

44. It was hard to obtain information on the situation of migrant workers who went abroad with a work contract because of the rivalry between the International Organization for Migration (IOM) and an NGO set up by a former IOM officer. The State party should state its position on that point.

45. **Mr. Caballero** (National Board on Migration in Guatemala) said that, although there had been some improvements, migrant shelters continued to be nothing more than detention centres for irregular migrants who had been in the country for some time and had been arrested by the National Civil Police. The shelters were often used to hold sex workers and victims of trafficking.

46. The State had prepared Guatemala's initial report and the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights had consulted NGOs prior to its publication. The once troubled relationship between NGOs and the commission had improved markedly since the visit of the Special Rapporteur on the human rights of migrants in 2008.

The meeting rose at 1.05 p.m.