



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 Twelfth session

Summary record (partial)* of the 127th meeting

Held at the Palais Wilson, Geneva, on Monday, 26 April 2010, at 10 a.m.

Temporary Chairperson: Mr. Ndiaye (Representative of the Secretary-General)

Chairperson: Mr. El Jamri

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

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

Opening of the session

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

2. He said that the Committee was meeting for the first time with full membership, following the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families for the forty-first State party in 2009. The expansion of the Committee coincided with the celebration in 2010 of the twentieth anniversary of the Convention's adoption, an occasion that would be used to raise awareness about migrants' rights and to encourage more States to become parties to the Convention.

3. The effective protection of human rights in the context of migration was one of the strategic priorities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the biennium 2010–2011. OHCHR would focus in particular on four critical areas related to migration, namely: discrimination, xenophobia, racism and related intolerance against migrants; the economic, social and cultural rights of migrants; immigration detention and the criminalization of irregular migration; and the impact of the global economic crisis on the human rights of migrants. OHCHR also intended to promote and raise awareness of the Convention.

4. Various initiatives and events had been organized or planned for 2010, with the aim of achieving the universality of the Convention. They included the Global Campaign for Ratification of the Convention on the Rights of Migrants, meetings on migration-related issues organized by OHCHR, a legal colloquium in Brussels on the human rights framework for the protection of migrant domestic workers and a conference in Lisbon on human rights and migration. During the second half of 2010, OHCHR would assume the chairmanship of the Global Migration Group in the run-up to the Fourth Global Forum on Migration and Development, to be held in Mexico in November.

5. The issue of migrants' human rights had been raised repeatedly at the thirteenth session of the Human Rights Council, and in the recommendations issued in the context of the universal periodic review process. OHCHR would shortly be holding a one-day meeting in connection with the implementation of Human Rights Council resolution 12/6, and two country visits had been undertaken in 2009 by the Special Rapporteur on the human rights of migrants, one to the United Kingdom of Great Britain and Northern Ireland and one to Senegal.

6. Turning to the question of strengthening the treaty body system, he recalled that, at the twelfth session of the Human Rights Council, the High Commissioner had encouraged stakeholders to initiate a process of reflection on ways of improving coherence and effectiveness. In that connection, he drew attention to an informal meeting of former and current treaty body experts that had been organized by the University of Nottingham, United Kingdom, in November 2009 with the aim of proposing a framework for strengthening the system.

Solemn declaration by the newly elected members of the Committee under rule 11 of the provisional rules of procedure

7. **The Temporary Chairperson** welcomed Mr. Carrión-Mena, Ms. Dicko, Mr. Ibarra González, Ms. Miller-Stennett, and Mr. Tall as new members of the Committee and invited them to make the solemn declaration under rule 11 of the Committee's provisional rules of procedure.

8. *Mr. Carrión-Mena, Ms. Dicko, Mr. Ibarra González, Ms. Miller-Stennett and Mr. Tall made the solemn declaration provided for in rule 11 of the Committee's provisional rules of procedure.*

Election of officers, according to rules 12 and 13 of the provisional rules of procedure

9. **Ms. Cubias Medina** nominated Mr. El Jamri for the office of Chairperson.

10. **Mr. Alba** and **Ms. Konsimbo** seconded the nomination.

11. *Mr. El Jamri was elected Chairperson by acclamation.*

12. *Mr. El Jamri took the Chair.*

13. **The Chairperson** expressed his appreciation for the work of the United Nations High Commissioner for Human Rights in prioritizing the rights of migrants, and welcomed the various initiatives to promote and raise awareness of the Convention. As yet, only 43 States had ratified the Convention. The low number of ratifications presented a real challenge to the Committee, and it was important for all States that had not yet done so to become parties to the instrument.

14. He also appreciated efforts to raise awareness of the issue of migrant domestic workers, a subject on which the Committee planned to adopt a general comment at its current session.

15. There were over 200 million international migrants, 60 per cent of them in so-called “developed” countries. Undocumented migrant workers, and migrant workers in an irregular situation accounted for 10 to 15 per cent of the total. Strengthening the rights of migrants was the best way to combat illegal migration, trafficking in persons and smuggling of migrants. In addition, research had shown that the protection of migrant workers enhanced the positive effect of migration on national productivity and development. All stakeholders stood to gain if migrants’ rights were respected, be they host countries, countries of origin, employers or migrants themselves.

16. The fact that the Committee had expanded its membership testified to the vitality and strength of the Convention. The new members from Guatemala, Jamaica, Mali and Senegal had brought with them skills and experience that would help the Committee to rise to its various challenges.

17. The Committee shared the High Commissioner’s concern about the need to streamline the work of the treaty bodies, and stood ready to continue its discussions on such matters, in particular on how to avoid duplication of work between the inter-committee meetings and the meetings of treaty body chairpersons.

18. He wished to thank the Committee’s partners, in particular the International Labour Organization (ILO) and other United Nations agencies and NGOs, for the role they played in helping to attain the objectives of the Convention.

19. He said that it was his understanding that the Committee wished to renew the mandates of Mr. Brillantes and Mr. Taghizade as Vice-Chairpersons.

20. *It was so decided.*

21. **Mr. Alba** nominated Ms. Cubias Medina for the office of Vice-Chairperson.

22. **Mr. Sevim** seconded the nomination.

23. *Ms. Cubias Medina was elected Vice-Chairperson by acclamation.*

24. **Mr. Sevim** nominated Mr. El-Borai for the office of Rapporteur.

25. **Ms. Cubias Medina** seconded the nomination.

26. *Mr. El-Borai was elected Rapporteur by acclamation.*

Adoption of the agenda (CMW/C/12/1)

27. **The Chairperson** drew attention to the provisional programme of work for the twelfth session and said that additional tasks for the Committee not listed would be the drafting of the agenda for the thirteenth session, the appointment of representatives to the forthcoming inter-committee meeting and the appointment of country rapporteurs for Argentina, Chile, Guatemala and Mexico. He took it that the Committee wished to adopt the agenda and the provisional programme of work, on that understanding.

28. *It was so decided.*

Organizational and other matters

29. **The Chairperson** invited Committee members to report on events attended or activities undertaken since the eleventh session in connection with promotion of the Convention.

30. **Ms. Cubias Medina** said that she had given a presentation at the Central American Congress on HIV/AIDS and Sexually Transmitted Diseases, held in Costa Rica, where the focus had been on migrant populations. The Congress, which had attracted more than 5,000 participants, had touched on various topics relating to migration. A major concern expressed by NGOs had been the fact that, in many States, the legislation governing entry and residence discriminated against persons with HIV/AIDS. She suggested that the Committee should follow up on that aspect of legislation when considering State party reports in future.

31. **Mr. Brillantes** said that in terms of advocacy activities the Committee must endeavour to match the laudable efforts of the United Nations High Commissioner for Human Rights, whose office in Canada had been lobbying to improve the conditions of foreign caregivers. Appropriate amendments had been made to legislation to ensure that they bore no costs for their recruitment and travel. It was also worth noting that in the light of the Second Global Forum on Migration and Development, which had been held in Manila, all candidates in the presidential elections in the Philippines had included migration policies in their platforms.

32. **The Chairperson** said that he had attended the Third Global Forum on Migration and Development, held in Athens in November 2009, and would present its conclusions to the Committee in due course.

33. Other meetings he had attended included the first meeting of the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights, held in Cairo in December 2009, which had focused on migration in the Arab and African regions, and a conference organized by the Inter-Parliamentary Union in Paris in December 2009 on migration and violence against women.

34. He had celebrated International Migrants Day in Mauritania, where there had been a programme of events organized by ILO, and he had issued a joint statement with the Special Rapporteur on the human rights of migrants.

35. The lesson he had drawn from such events was that the Convention was open to different interpretations on a variety of key issues relating to migration. The Committee might wish to consider drafting explanatory notes on the instrument for the attention of States. In that connection, he would be presenting to members a compilation of the reasons States had given to the Human Rights Council for not ratifying the Convention. Basically, the reasons were political, although many States claimed that the rights of migrants were already protected by existing legislation.

36. Lastly, he said that he had attended the sixty-first session of the United Nations General Assembly, where he had made a statement on the Committee's work. He had also had the opportunity to meet various state governors, including the Governor of Florida, and a local migrant workers' association. Evidently, the situation of migrant workers was very difficult in the United States, not least because, since 11 September 2001, the immigration police and judges had been granted greater powers and migrants were now subjected to the indignity of wearing an electronic ankle bracelet, normally reserved for offenders.

37. **Mr. El-Borai** asked how the Committee would contribute towards discussions to be held during the forthcoming International Labour Conference on a new international instrument on domestic workers.

38. **The Chairperson** said that the Committee would discuss the matter in the coming days, taking into account comments made during the day of general discussion held during the eleventh session.

39. **Mr. Carrión Mena** said that, at a conference organized by the International Organization for Migration, he had urged States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to take a human rights-based approach to migration. At a conference on migration in Ecuador in March 2010, he had called on Spain, which currently held the European Union presidency, to set an example by ratifying the Convention. Latin American migrants with whom he had met in 2010 had expressed concern that the current Government of the United States of America had not taken a decision on the issue of migration. The position taken in April 2010 by the state of Arizona, which had criminalized Mexican migrants who had crossed the international border, caused them particular anxiety.

40. **The Chairperson** drew the Committee's attention to the fact that, while the Spanish Government currently declined to sign the Convention, it had stated that it would be willing to reconsider its position in future.

41. **Mr. Ibarra González** said that the United States appeared to be closing its borders to migrant workers and their families. He asked whether the time had not come for the Committee to make a public statement on the issue of migration reform in the United States.

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

Dialogue with national human rights institutions and non-governmental organizations on the initial report of Algeria

42. **Ms. Zolkiewska** (Amnesty International) said that Algeria had become a major country of transit for thousands of foreign nationals, most from sub-Saharan African countries, in their attempts to migrate to Europe. Migration by Algerian nationals had also increased. Hundreds of Algerian and foreign migrants were intercepted and, in some cases, died at sea. Thousands of foreign migrants in an irregular situation were reportedly deported each year from Algeria.

43. The Algerian authorities had introduced a number of legal measures to combat the smuggling of migrants and control irregular migration. Some of the measures, however, appeared not to comply with Algeria's international human rights obligations. Act No. 08-11, for example, established an appeals process against expulsion orders issued by the Ministry of the Interior. However, *walis* (governors) also had the authority to order the deportation of foreigners deemed to have entered Algeria or to be residing there illegally, and in those cases there seemed to be no right of appeal. The law therefore appeared to increase the risk of arbitrary and collective expulsion of migrants.

44. Act No. 08-11 also provided for the establishment of holding centres for migrants in an irregular situation, pending deportation to their countries of origin or to neighbouring countries from which they were considered to have entered Algeria. However, it failed to set any limit on the number of times a *wali* could extend a 30-day detention order.

45. Act No. 08-11 prescribed severe penalties for people smugglers or anyone assisting foreigners to enter, remain or travel in Algeria illegally. It provided for a prison term of up to five years and a heavy fine for anyone convicted of directly or indirectly facilitating or attempting to facilitate the illegal entry, movement, stay or exit of migrants. Amnesty International was concerned that the application of the law would increase the number of cases of third parties being criminalized for assisting migrants in an irregular situation.

46. In August 2008, the Criminal Code had been amended to make it a criminal offence, punishable by up to six months' imprisonment, to leave Algeria other than by officially recognized border crossings. The purpose was to criminalize and discourage the smuggling of migrants, but Amnesty International believed that the amendment was a disproportionately harsh immigration control measure that could lead to unnecessary detention and criminalize migration.

47. Thousands of migrants were apparently deported every year by the Algerian authorities, in what seemed in many cases to amount to collective expulsions, without adequate safeguards or right of appeal. Some of those deported were individuals in need of international protection, yet they were given no opportunity to challenge their expulsion on the basis of a review of their circumstances. Those deported as migrants in an irregular situation had included individuals recognized as refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Algeria.

48. Some migrants who had been deported had been left in remote and inhospitable desert areas without adequate food or water. Press and other sources had reported allegations of torture and other ill-treatment of migrants in an irregular situation by Algerian police, with some women migrants allegedly subjected to sexual abuse, including rape. None of the allegations were known to have been investigated.

49. Amnesty International recommended that Act No. 08-11 should be amended to guarantee the right to challenge expulsion orders in proceedings that met international standards. Furthermore, the law should ensure that no one providing legal, medical and humanitarian or other assistance to migrants in an irregular situation was criminalized.

50. Non-custodial measures should always be preferred to detention of migrants in an irregular situation, which should be used as a last resort and for the shortest possible time, and then only when the authorities could demonstrate that it was necessary and proportionate in each individual case. Amnesty International also recommended that provisions criminalizing illegal exit from Algerian territory should be immediately repealed. The arbitrary and collective expulsion of migrants should be halted in accordance with the principle of non-refoulement under international law.

51. Lastly, she said that independent and impartial investigations should be conducted into allegations of torture and ill-treatment of migrants and those responsible should be brought to justice in accordance with international standards for fair trial.

52. **Mr. El-Borai** requested further clarification of the provisions of Act No. 08-11.

53. **Mr. Sevim** asked whether Amnesty International had any statistics on documented and non-documented migrants who had been deported from European States to Algeria. Such data would be useful to the Committee, particularly as Algeria had readmission agreements with five European States.

54. **Ms. Poussi Konsimbo** asked whether official documents had been the source of the information provided by Amnesty International. Had Amnesty International made any attempt to discuss the issues raised with the Algerian authorities?

55. **Mr. Tall** requested that Committee members should be given copies of Act No. 08-11. He asked for additional information on expulsion orders issued by *walis* and on cases of detention in the holding camps. He wished to know whether there had been any cases of collective expulsion.

56. **Mr. Brillantes** asked whether attempting to leave Algeria illegally was considered a crime, or whether individuals had to have left illegally before they could be prosecuted. If it was the latter, he wondered whether they had to be taken back to Algeria in order to face the justice system there.

57. **Ms. Zolkiewska** (Amnesty International) said that Amnesty International did not have statistics on the number of migrants who had been deported, as it could not patrol all the border crossings or the vast desert areas that formed the Algerian border.

58. The *walis* had the power to order the deportation of individuals who were deemed to be residing in Algeria illegally, or to have entered the country without adequate documentation. With no formal appeal process, individuals could be removed extremely quickly and without procedural safeguards.

59. Persons caught in the act of leaving Algeria illegally were detained, charged and prosecuted. There had been reports of people being charged with that offence since the enactment of the amendments to the Criminal Code.

The discussion covered in the summary record ended at 12.10 p.m.