



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
22 June 2012
English
Original: French

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Sixteenth session

Summary record of the 185th meeting

Held at the Palais Wilson, Geneva, on Monday, 16 April 2012, at 10 a.m.

Temporary Chairperson: Mr. Salama (Director of the Human Rights Treaties Division)

Chairperson: Mr. El Jamri

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The meeting was called to order at 10 a.m.

Opening of the session

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

Statement by the High Commissioner for Human Rights

2. **Ms. Pillay** (High Commissioner for Human Rights) said that she regretted that the efforts made to promote the Convention had not prompted more States to ratify it. Since the fifteenth session of the Committee, only the Bolivarian Republic of Venezuela and Mozambique had signed the Convention, on 4 October 2011 and 15 March 2012, respectively, which brought the number of States that had signed but not yet ratified the Convention to 17, while the number of States parties remained at 45. She trusted that the Committee's efforts to define the scope of the rights of migrant workers in an irregular situation in its draft general comment No. 2 would have a positive impact and encourage more States to ratify the Convention. The Office of the United Nations High Commissioner for Human Rights (OHCHR) would continue to work towards that goal.

3. The issue of human rights in the context of migration was one of the six thematic priorities of OHCHR for 2010–2011 and would stay at the top of its agenda in future. OHCHR envisaged strategic interventions to promote the ratification and implementation of the Convention. There was a need to respond to the requests for guidance from interested and potentially interested States on the concrete implications of acceding to the Convention. For instance, to address the situation at international borders, where violations of the Convention were commonplace, OHCHR had organized an expert consultation on 22 and 23 March 2012 to explore gaps in human rights policy and practice at international borders. Participants in the meeting had recognized that migrants were increasingly subject to violence, discrimination and other human rights violations at international borders and concluded that migration and border management policies worldwide were forcing many migrants to use dangerous modes of travel. They had called on OHCHR to offer practical guidance for the protection of human rights at borders.

4. OHCHR had also been active in advocating the protection of migrants' rights through the regional systems. She had submitted an amicus brief in the case of *Hirsi Jamaa and Others v. Italy* before the European Court of Human Rights, concerning 13 Eritrean and 11 Somali migrants who had been intercepted in 2009 by Italian coastguard vessels on the high seas and taken back to Tripoli, where they had been handed over to the Libyan authorities. She had argued in the brief that there was a prohibition against collective expulsion in international law and that that applied when a State intercepted migrants outside its own territorial waters. The European Court had confirmed that position in its ruling of 23 February 2012, namely that the transfer of the applicants to Libya had constituted a violation of the prohibition of torture and the collective expulsion of foreign nationals.

5. Turning to the treaty body strengthening process, she said that a meeting had been held in November 2011 in Dublin, where the conveners of all the consultations on the process since 2009 had brought together the recommendations made to date into a coherent whole. The contributions of the Chairperson of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families had been highly valued. The Committee on the Rights of the Child and the Human Rights Committee had endorsed the outcome document of the meeting, referred to as "Dublin II", and many treaty body members had endorsed it in their personal capacity. The Human Rights Treaties Division stood ready to help the Committee to determine whether it also wished to support the document.

6. She was pleased to note that the Committee had already implemented some of the recommendations of the outcome document and particularly welcomed the fact that as from 2014 the Committee would be examining reports according to a comprehensive reporting calendar, under which all States parties to the Convention would be considered in a five-year reporting cycle. She also noted that at the current session the Committee would start adopting lists of issues to be transmitted to States parties prior to the submission of their periodic reports and would discuss the possibility of considering the situation of States parties in the absence of a report.

7. Since States had the authority to act on some of the recommendations of the outcome document, she had held consultations with them in Geneva, in February 2012, and in New York, in April 2012. These had been the last briefings with States parties before the forthcoming publication of her compilation report, in June 2012, incorporating the recommendations made to stakeholders. The rapid expansion of the treaty body system had reached its limits in terms of both coherence and viability. The Committee on Enforced Disappearances had held its first session in November 2011 and the General Assembly had adopted the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, signed by 20 States at the signing ceremony on 28 February 2012. Funding for the treaty body system lagged behind its expansion and increasing workload, which had a direct impact on the meeting time, documentation and staffing needs of the treaty bodies.

8. The increased engagement of States was further reflected by General Assembly resolution 66/254, which had launched an open-ended intergovernmental process to strengthen and enhance the effective functioning of the human rights treaty body system. She believed that a forum needed to be convened for States parties to reflect on concrete solutions to meet the challenges faced by the treaty bodies, particularly regarding the financial requirements of a fully functional system. The treaty body strengthening process could be constructive if it respected the independence of the treaty bodies and their powers to decide on their own working methods and rules of procedure.

9. She appreciated the efforts of the Committee to reduce the number of hard copy documents, which set an example to be followed by other treaty bodies. She noted that during the current session, the Committee would consider the initial reports of Paraguay (CMW/C/PRY/1) and Tajikistan (CMW/C/TJK/1), adopt lists of issues concerning the reports of Azerbaijan, Bosnia-Herzegovina, Bolivia, Colombia and Rwanda, the list of issues prior to reporting for El Salvador, Mali and the Philippines and its annual report and would discuss draft general comment No. 2 on the rights of migrant workers in an irregular situation. In addition, it would carry out other work, including electing a new Bureau and meeting with international organizations, United Nations entities and civil society.

10. **Mr. Taghizade** said that the situation of migrant workers was deteriorating because of the economic crisis, including in Europe, and many countries would like to review their bilateral migration agreements in order to tighten controls.

11. **Mr. Kariyawasam** noted with regret that few host States had ratified the Convention and asked about the position of the new Government of Libya concerning the instrument, which it had ratified in 2004, as Libya was at once a country of destination, transit and departure.

12. **Mr. Brillantes** said that he commended the work of the OHCHR representation in Phnom Penh and reported that the process of ratification of the Convention was well under way in Cambodia and Indonesia.

13. **Ms. Pillay** (High Commissioner for Human Rights) said that she regretted that the number of ratifications in Europe was at a standstill and that European countries remained opposed to ratifying the Convention out of a fear that migrant workers in an irregular

situation would assert their rights. Draft general comment No. 2 of the Committee would highlight principles that could convince those countries to ratify the Convention. She also regretted that two draft directives of the European Union very similar to the Convention had been suspended. Libya had not yet expressed a position on the Convention and would take up the issue of ratification at the United Nations Conference on Sustainable Development in Rio de Janeiro. She emphasized the importance of the treaty bodies' jurisprudence, which helped to raise awareness of human rights instruments.

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

14. *Mr. Carrión Mena, Mr. El-Borai, Mr. El Jamri, Ms. Ladjel, Mr. Nuñez-Melgar Maguiña, Ms. Poussi and Mr. Taghizade 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

15. **The Temporary Chairperson** invited the Committee members to nominate candidates for Chairperson.

16. **Mr. Taghizade** nominated Mr. El Jamri for re-election to the office of Chairperson.

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

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

19. *Mr. Carrión Mena, Ms. Poussi and Mr. Taghizade were elected Vice-Chairpersons by acclamation and Mr. Tall was elected Rapporteur also by acclamation.*

20. **The Chairperson** recalled that the Committee was entering its ninth year. Over those years it had focused on three main issues. First, the consideration of periodic reports had enabled the Committee to engage in a very constructive dialogue with States parties. Second, the days of general discussion had given the Committee the opportunity to discuss and provide its views on issues relating to the Convention that deserved wider attention. Third, the Committee welcomed the partnership that it had forged with other institutions of the United Nations and civil society to promote the Convention.

21. Despite the low number of ratifications, the Convention was currently recognized as the main instrument for the rights of all migrant workers and members of their families and constituted a universal benchmark, including for States that had not yet ratified. It was also worth noting that the rate of ratification had accelerated since the entry into force of the Convention.

22. He welcomed the spirit of friendship that prevailed in the Committee, whose decisions had always been taken by consensus, and the Committee's involvement in the treaty body strengthening process. The Committee had recently taken a number of innovative decisions, including the decision to adopt lists of issues for consideration prior to reporting, to adopt a comprehensive reporting calendar that would help it to plan ahead for the consideration of reports after 2014 and to become a paperless "green Committee".

Adoption of the agenda (CMW/C/16/1)

23. *The provisional agenda was adopted.*

Methods of work of the Committee

24. **The Chairperson** suggested that Committee members should approach Mr. Salama to discuss treaty body strengthening, which was currently an open process in which all

concerned parties, experts, national human rights institutions, States and civil society could be consulted.

25. **Mr. Salama** (Director of the Human Rights Treaties Division) recalled that the last consultation between Member States on treaty body strengthening had been held in New York on 2 and 3 April 2011. The current system did not establish links between treaty bodies. That was why the proposal of the previous High Commissioner, which had been rejected, had been aimed at bringing all those bodies together into a unified body. The current approach was to work within the existing framework.

26. The comprehensive reporting calendar showed that periodicity was at the centre of the system. Currently, only 30 per cent of States submitted their reports on time. In some committees, the delay could stretch to several years, which made the reports out-of-date and useless and caused a waste of time and resources for experts and States. Paradoxically, the fact that 70 per cent of States did not meet their obligations actually enabled the system to function. If it were otherwise, there would be a need to double resources to deal with the workload. The treaty body system was a unique structure of the United Nations and offered outstanding potential advantages thanks to its collegiality and the diversity of experience of its experts, which was a guarantee of objectivity when recommendations were made to States.

27. He asked the Committee to consider the outcome document referred to earlier, Dublin II, as it summed up the ideas presented during the various meetings held on treaty body strengthening, and the document concerning the comprehensive reporting calendar in order to prepare for dialogues with States. It was important for Member States to know that the committees had already undertaken to make the best use of their time and resources. They should also be aware that the various treaty bodies had a coherent and shared approach.

28. The treaty body system was threefold. First, there were the States, which had created the system and retained exclusive authority over questions involving resources, elections, the implementation of recommendations and the submission and periodicity of reports. Second there were the experts, who set standards and developed methodologies, which meant that they defined working methods, assessed human rights situations in countries and made recommendations. Third there was the secretariat, which had no power other than the knowledge that it acquired from drawing on the practice of experts, and which put forward options that had either been productive or failed to produce convincing results.

29. Two years previously the High Commissioner had requested experts to consider ways of strengthening the treaty body system, before discussing the matter with them and preparing a report for the approval of States and experts. While the States were divided, the experts of the various committees could arrive at a common opinion based on the Dublin II outcome document, on which the report of the High Commissioner would also be based. The experts were not obliged to endorse the document as such and could make observations either in their personal capacity or collectively, which would be taken into account in her report.

30. **The Chairperson** said that the Committee would return to the issue of treaty body strengthening at its 200th meeting on Wednesday, 25 April. He invited Committee members to become acquainted with the outcome document as amended and the note on the Human Rights Committee on the subject. While running the Committee was straightforward and manageable, coordinating the work of all the treaty bodies was far more complicated.

31. **Mr. El-Borai** said that the problem was not so much the low number of ratifications as the high number of host countries that had not ratified the Convention. The International Labour Organization (ILO) had produced a document that was of direct relevance to the

treaty body strengthening process. In the light of the low number of ratifications of the conventions that were of most importance to workers, the Organization had adopted the ILO Declaration on Fundamental Principles and Rights at Work, according to which the reports of States that had not ratified the conventions could be reviewed by the Committee of Independent Expert Advisers. That initiative had encouraged some States to ratify the instruments. While the Committee was not always able to deal with the migration problems of which it was aware on the legal front, it might draft a declaration of fundamental human rights principles covering certain rights.

Promotion of the Convention

32. **Mr. Brillantes** said that he had been invited to Phnom Penh on 20 March 2012 by OHCHR to speak at the publication launch of the Khmer translation of the Convention. Reactions to his presentation had been positive. The event had been attended by two cabinet ministers and senior military officers and had enjoyed wide media coverage. The Cambodian Parliament should soon be ratifying the Convention.

33. **Mr. Ibarra González** pointed out that in some States parties to the Convention temporary migrant workers had difficulty obtaining birth certificates for their children. In Mexico, for example, registering the birth of a child required the services of a lawyer, which such workers could not afford.

34. Violence continued in northern Mexico, where 73 migrants from Central America had been killed in 2010. For workers transiting through the region to the United States, Mexico was one of the most violent countries. In the United States, where migrant workers were constantly being victimized, the States were attempting to legislate in order to strip children born in the United States to undocumented migrant workers of their citizenship. The same was happening in Canada, where the Government was willing to enter into agreements with private companies concerning the rights of temporary migrant workers, but refused to do so with their countries of origin. It would be worth having a document that would help to enhance the legal status of migrant workers in Canada.

35. **Mr. Taghizade** said that, in order to improve the application of the Convention, there was a need to work more closely with “natural” partners, such as insurance companies, social protection funds and unions that had an interest in ensuring that migrant workers were declared and received decent wages.

36. **Mr. Carrión Mena** asked Mr. Salama for clarification of the position of other treaty bodies regarding the harmonization of work between the committees, since each of those bodies had distinctive features. Referring to the comments made by Mr. Taghizade, he wondered what the Committee’s partners other than public authorities, including non-governmental organizations, private companies and others could do, if relations with those partners were sufficiently strong to influence the numbers ratifying the Convention.

37. **Mr. Kariyawasam** commended Mr. Salama’s use of the Internet to remain in contact with the experts and keep them informed of the activities of other human rights treaty bodies. The practice should be maintained, as it gave the Committee an opportunity to learn from the work other treaty bodies were doing. He was concerned that so few receiving countries had ratified the Convention. As the situation did not seem to be improving in that respect, the secretariat might look for new ways of encouraging the States concerned to accede to the Convention, failing which the Convention could lose its impact.

38. **Mr. Salama** (Director of the Human Rights Treaties Division) said that other committees had initially reacted rather negatively to proposals to harmonize activities because they had been concerned that the idea of a merger was once again being floated, although that impression was tending to recede. Moreover, some experts considered

harmonization plans to be unnecessary. Nevertheless, there was still a real need for committees to keep each other informed.

39. Referring to the comments of Mr. El-Borai and other experts concerning the status of the Convention, he pointed out that the watchword of all discussions was innovation. The Committee could promote the Convention by drawing inspiration from the successful ILO initiative to adopt the Declaration on Fundamental Principles and Rights at Work. Another avenue worth exploring was to reaffirm the indivisibility of fundamental rights. While the proliferation of treaties made it possible to exert added pressure in certain areas of human rights, one drawback was to give the impression that other committees did not need to bother about migrant workers. In view of their heavy workloads, many committees tended to avoid taking up issues that another committee was already dealing with. Committees should seek to make joint declarations, especially on substantive issues, in addition to regularly expressing their own views. A third possible avenue would be joint general comments, which might relate, for example, to the children of migrant workers, family reunification or the role of women in the family. States could be reminded that their obligations arose not only from the provisions of the Convention but also from other human rights texts such as the Universal Declaration of Human Rights.

40. Partnerships with civil society, and trade unions in particular, were essential in countries of destination. Reiterating the need for more ratifications was not enough; the Committee must also seek innovative ways of promoting the Convention.

The meeting was suspended at 11.30 a.m. and resumed at 12.55 p.m.

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

Initial report of Tajikistan (CMW/C/TJK/1)

41. **Ms. Turakhanova**, speaking on behalf of a coalition of 16 Tajik non-governmental organizations, said that the efforts made by the Government of Tajikistan to meet its obligations under the Convention concerning the promotion and protection of the rights of migrant workers abroad and at home had been taken into account in the shadow report drafted by the organizations. According to estimates by the World Bank, the United Nations Development Programme and the International Organization for Migration, more than a million Tajiks, out of a total population of 7 million, took the decision to seek employment and an almost equal number of persons, usually family members, were similarly affected by migration.

42. The efforts of the Government to promote and protect economic and social rights were limited and nothing was being done to address the root causes of migration, namely poverty, high unemployment, a lack of job opportunities and a poor climate for the development of small businesses. Other factors included the ineffectiveness of the authorities as a whole, the lack of transparency in the management of public funds and policymaking and the absence of accountability in budgetary spending. There was no official mechanism for public participation in policymaking, including migration policies. In reality, workers who emigrated or immigrated were compelled to pay bribes to the border police and customs and other State officials in order to cross borders and obtain the necessary official documents. Unlike what the Government maintained, corruption was common practice and endemic in Tajikistan and affected all areas of public life and the situation of migrant workers.

43. According to national statistics, 46 per cent of the population lived in poverty, which was half the figure for 2005. The Government attributed that success to its efforts to implement a series of poverty alleviation measures. NGOs attributed it, on the other hand, to remittances from Tajik workers, which accounted for 45 per cent of the country's gross

domestic product according to World Bank estimates. So it was the migrant workers, who found ways of supporting their families, while the Government did not meet its treaty obligations or uphold constitutionally protected economic and social rights. In addition, the current migration policy concentrated on seeking new destinations for Tajik workers rather than on improving the national economy. For lack of resources the Migration Service established in 2011 had not been able to operate. It was important to note that Tajik workers who emigrated to the Russian Federation, the main country of destination, were exposed to numerous violations of their rights on account of the very poor political relations between the two countries.

The meeting rose at 1.05 p.m.