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COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Fifth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 30 October 2006, at 10 a.m.

Chairperson: Mr. KARIYAWASAM

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

OPENING OF THE SESSION (item 1 of the provisional agenda) (CMW/C/5/1)

1. The CHAIRPERSON declared open the fifth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and invited the representative of the United Nations High Commissioner for Human Rights to make a statement before the Committee.

OPENING STATEMENT BY THE REPRESENTATIVE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mr. BRUNI (Representative of the United Nations High Commissioner for Human Rights) informed the Committee of the developments that had taken place since the Committee's previous session in April 2006. He mentioned the mandate and deliberations of the Human Rights Council, which had held its first and second sessions in June and September-October 2006, respectively, and those of the intersessional open-ended working group, which had submitted to the Council its report on the modalities of the universal periodic review of the fulfilment by each State of its human rights obligations and commitments. Owing to lack of time, the working group had not been able to adopt a decision and would meet again from 13 to 17 November 2006. In the meantime, all the proposals made by States and intergovernmental and non-governmental organizations (NGOs) were available on the Council's Extranet website.

3. At its first session, the Council had adopted the draft International Convention for the Protection of All Persons from Enforced Disappearance and the draft United Nations Declaration on the Rights of Indigenous Peoples, both of which had been submitted to the General Assembly for adoption.

4. In addition, the Council had convened two special sessions: the first, on the human rights situation in the Occupied Palestinian Territory, had been held on 5 and 6 July 2006, and the second, on the human rights situation in Lebanon, had been held on 11 August 2006. The Commission of Inquiry established by the Council and dispatched to Lebanon at the end of September was expected to submit its report on the mission to the Council on 27 November 2006.

5. The entry into force on 22 June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment represented a milestone in the fight against torture, for it provided for an innovative monitoring mechanism according to which States parties agreed to accept regular unannounced visits to places of detention in their territory.

6. The Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities had adopted the draft Convention on the Rights of Persons with Disabilities and its Optional Protocol on 25 August 2006. The forthcoming adoption of that instrument by the General Assembly would be a great accomplishment in the field of human rights and would protect the rights of 10 per cent of the world's population, or 650 million people.

7. He provided an overview of the work of the Fifth Inter-Committee Meeting of the human rights treaty bodies, and the eighteenth joint meeting of chairpersons of the human rights treaty bodies and special procedures mandate-holders. The outcome of the meeting held on 8 and 9 June 2006 by the working group on reservations, during which participants had discussed the issue of treaty body reform and the High Commissioner's proposal to establish a unified standing treaty body, had been distributed to Committee members. A further meeting of the working group on treaty body reform had been scheduled for 28 and 29 November 2006, and the Committee should nominate a representative to attend.

8. With regard to the reform of the treaty bodies, he noted that a brainstorming meeting had been held from 14 to 16 July 2006 in Malbun, Liechtenstein, on the proposal to create a unified standing treaty body. A two-day meeting would be held, probably in February 2007, to allow States parties to continue their dialogue with the chairpersons of the treaty bodies.

9. He pointed out that the High-level Dialogue on International Migration and Development at the General Assembly on 14 and 15 September 2006 and in which the High Commissioner had participated, had been very well attended. Many references had been made to respect for human rights as the necessary foundation for the beneficial effects of migration on development to accrue. Furthermore, participants had discussed the creation of a Global Forum on Migration and Development, and Belgium had offered to host its first meeting in 2007.

10. The Office of the United Nations High Commissioner for Human Rights was looking into ways of more actively promoting ratification of the Convention on migrant workers. In her opening statement to the second session of the Human Rights Council, the High Commissioner had emphasized that the inextricable connection between migration and human rights had yet to permeate discussions and policy, and had called upon all States that had not yet done so to ratify the Convention and to encourage others to do the same.

11. He informed the Committee that the initial report of Ecuador under the Convention had recently been received. He assured the Committee that it could count on the continuing support of the Office to assist it in its important work.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (CMW/C/5/1)

12. The provisional agenda was adopted.

13. The CHAIRPERSON, reporting on his activities since the Committee's previous session, referred briefly to his participation in the High-level Dialogue on International Migration and Development at the General Assembly. Along with the Special Rapporteur on the human rights of migrants, he had, the previous week, attended the Eighth International Conference for National Human Rights Institutions, held in Bolivia on the theme "Migration: the Role of National Human Rights Institutions". In that connection, it was vital to take advantage of the current marked interest in migration that was manifested at the local and international levels.

14. Ms. CUBIAS MEDINA said that she had participated in the Ibero-American Encounter on Migration and Development, held in Madrid with a view to drafting the "Montevideo Commitment". The meeting had been interesting in that it had enabled a comparison between the viewpoints of Spain and Portugal, both member States of the European Union, and those of

Latin American countries. The meeting had revealed that, although there was a general commitment to ensuring respect for the rights of migrant workers, the same could not be said for the adoption of the Convention.

15. She had also participated in the High-level Dialogue at the General Assembly and wished to highlight the importance of the consultative forum on migration and development - to be established by a resolution that was currently under consideration - and follow-up to the High-level Dialogue at the sixty-second session of the General Assembly. She welcomed the efforts that had been made by the Central American countries to promote ratification of the Convention and encourage a change in attitude in the countries that did not see the Convention in a favourable light.

16. Mr. ALBA referred to a statement he had made on the management of migration and governance during the recent Ibero-American Encounter in Madrid, as well as a statement on the importance of the Convention made at the international meeting on migration and human rights held in Mexico. He pointed out that the Convention posed enormous challenges for the countries that had ratified it.

17. Mr. BRILLANTES said that, at the invitation of his country, the Philippines, he had participated in setting up a working group that would be responsible for producing the Philippines' initial report under article 73 of the Convention and submitting it to the Committee as soon as possible. Since the Committee's previous session, he had also attended a conference in Lima, Peru, in preparation for the High-level Dialogue on International Migration and Development at the General Assembly. He welcomed the fact that the Lima Declaration urged countries to ratify the Convention; however, he regretted that participants had refused to include the notion of shared responsibility (between sending and receiving countries) for the management and control of migratory flows.

18. Mr. EL-BORAI said that, since the Committee's previous session, he had taken part in the Fifth Inter-Committee Meeting of human rights treaty bodies, held in Geneva from 19 to 23 June 2006; he would present a summary on that subject at a later meeting. He had also contributed to introducing a doctoral programme in law at the University of Cairo that included broad coverage of the provisions of the Convention.

19. Mr. SEVIM said that he had participated in a round table on migration and globalization during the High-level Dialogue on International Migration and Development. Representatives of international organizations and high-level participants had made very interesting observations and recommendations, but unfortunately the closing statement of the High-level Dialogue hardly took account of their observations.

20. The CHAIRPERSON pointed out that the closing statement was a consensus document and that several countries, of Western Europe in particular, had refused to include in it certain matters covered in the round tables. He welcomed the fact that round tables had been held on subjects that were directly relevant to the Committee. The General Assembly was likely at its current session to adopt a resolution on migration and human rights.

21. Mr. EL JAMRI expressed regret that, despite the importance and relevance of the issue of migration, there had been no further ratifications of the Convention. He had attended a summit in June 2006, in Rabat, Morocco, in which representatives from some 60 African and European countries had looked into ways of improving the situation of migrants.

22. He had also taken part in a working group on the human rights of migrant workers at the Euro-Mediterranean Civil Forum. In addition, in June 2006 he had participated in an international meeting on achieving the Millennium Development Goals, held by AIDE Federation (Federation of International Agencies for Development), at which he had presented the work of the Committee.

23. The Euro-Mediterranean Civil Forum planned to carry out a project on migration of sub-Saharan Africans and to organize a mission for that purpose to certain States of origin and States of transit in order to define the responsibilities of each and to formulate proposals on ways of ensuring respect for the rights of migrant workers. He had been contacted by Portugal, which had requested to be kept informed of the Committee's work on migration and development.

24. Mr. CARRION-MENA pointed out that although migration was at the heart of the work of many national and international agencies, it was still a focus of disagreement. Among the Ibero-American States, there were major divergences of opinion between developed countries such as Spain and Portugal and developing countries such as Brazil and Cuba. His country, Ecuador, had undertaken an initial report, to be submitted to the Committee in 2007, and a draft public policy on the management of migration flows up to 2020.

25. He suggested that the Committee should publicly condemn the plan to build a wall between the United States of America and Mexico, a measure which he considered one of the worst possible ways of managing migration flows between two countries.

26. Ms. DIEGUEZ ARÉVALO expressed support for Mr. Carrion-Mena's suggestion and for Mr. El Jamri's proposal to undertake a mission to examine migration of sub-Saharan African populations.

27. The CHAIRPERSON said that the Committee would consider in a closed meeting Mr. Carrion-Mena's proposal to condemn publicly the plan to build a wall between the United States of America and Mexico.

28. Mr. TAGHIZADE noted, as had several members of the Committee, that the subject of migration had sparked the interest of many countries; he regretted the lack of a global approach and joint reflection on the issue, with resulting divergences in the programmes managing migration flows adopted by different countries. In general terms the Committee should disseminate its views on migration more widely and strengthen its cooperation with the member States of the European Union in particular. Those countries seemed to take the view that the provisions of the European Social Charter, which was intended to protect the fundamental rights of migrants, among others, did not apply to migrants who were in an irregular situation. The Committee could not accept such a stance by the European Union countries.

The meeting was suspended at 11.25 a.m. and resumed at 12.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION (agenda item 3) (CMW/C/5/1)

29. Ms. VENET (Foro Migraciones) said that her organization had drafted a written report, which was available in Spanish and covered legal reform, discrimination, control measures and the situation of women, children and adolescents, including victims of trafficking in persons.

30. Civil society organizations were concerned at the continued increase in flows of migrant workers, mostly in an irregular situation, and by the fact that these flows included unaccompanied women and adolescents, who were particularly vulnerable. It was essential to adopt integrated policies, including in the context of regional and international cooperation, to facilitate legal forms of worker migration. Such policies should promote not only economic growth but also social development, and should be supported by a strategy to prevent and reduce migratory pressure. That was the only way in which to give meaning to the currently fashionable term “shared responsibility”, and not by building a “wall of shame” or investing in detention centres.

31. There had been no progress on the legal reforms necessary to implement the Convention. The reservations to article 22, paragraph 4, of the Convention should be withdrawn, article 33 of the Mexican Constitution should be amended and laws should be harmonized. Migration should be decriminalized, regulatory provisions that obstructed migrants’ access to justice and due process should be removed, and account should be taken in migration legislation of age and differences between the sexes. Constitutional reform with respect to human rights, including the amendment of article 33, had reached stalemate. A consultative process had begun between experts from civil society and the State in order to draft a bill, which unfortunately had not been sent to the legislative bodies. The bill gave migrants the right to be heard before being expelled, but that provision had unfortunately not been retained. Immediate expulsion without notice thus remained the norm, and this was a matter of concern for her organization, since the proposed amendment of article 33 would be a step backwards.

32. There had also been no progress on general legislative harmonization, and her organization requested the Committee to urge the Mexican Government to undertake a thorough overhaul of the General Population Act and to adopt an act on migration. The Government claimed that the rights of migrant workers and members of their families were protected by the Constitution and by the laws and regulations in force, but that was not the case, as shown by the real difficulties faced by migrant workers in exercising their rights.

33. In regard to legislation, article 1 of the Mexican Constitution established the principle of non-discrimination between Mexicans and foreigners, but other articles restricted the rights of foreigners and limited their access to justice. Several provisions of the General Population Act and its implementing regulations incited discrimination against foreigners based on their migrant status. The fact that age and sex were not taken into account often led to discrimination against women and children and left women unprotected against violence by their spouses. The adoption of the Federal Act to Prevent and Eliminate Discrimination was a step forward but did not resolve the problem.

34. At a practical level, she deplored the lack of coordination between the competent institutions and considered that no progress would be possible until "discriminatory" provisions were repealed and programmes were set up for those migrants most affected by discrimination. As to the Mexican Government's reply concerning article 67 of the General Population Act, the National Human Rights Commission was not a judicial body, and hence the remedies it afforded were of limited effectiveness for foreigners whose rights had been violated.

35. Control activities were still being carried out by authorities that were not empowered to do so: by police forces other than the federal police, by the army and by the navy. Involvement of the army and navy was particularly alarming since it raised serious difficulties in terms of migrants' access to justice, as well as problems of corruption and impunity.

36. There was no legal justification for administrative detention of migrants: yet migrants, including minors, were still being subjected to preventive and other forms of detention. In certain cases, temporary detention, which should last between 24 and 48 hours, had been extended by several months, notably in the case of citizens of other Central American countries, including minors. She suggested that the Committee should make a recommendation on the detention of minors in the children's best interests, taking into account the fact that according to the Convention on the Rights of the Child detention should be used only as a measure of last resort.

37. She was also concerned about detentions of asylum-seekers while their applications were being considered and of migrants apprehended for the second or third time, when detention was extended as a punishment. The Committee should focus not only on physical conditions in detention but also on the procedural safeguards enjoyed by detainees. Although there had been an overall improvement in conditions of detention, problems remained, such as overcrowding and the fact that migrant detention centres increasingly resembled prisons since the National Institute for Migration (INM) had been transferred to the National Security Council and detention centres had begun holding dangerous individuals. As a result, civil society organizations were no longer authorized to visit them in certain cases.

38. The rule of law was not always respected: when migrants gave statements, they had not always been fully informed as to why they were being detained or the applicable procedure. They were not always informed of their rights, were sometimes made to sign their statements without reading them or receiving a copy, were not assisted by defence counsel, did not have access to interpretation or translation services when they did not speak Spanish, were given no information about the expulsion procedure and had difficulty in obtaining access to a telephone. They were not informed of their right to contact their consulates or were prevented from doing so, and in any case the consulates did not always have the relevant information. Application of the right to health and to food was unsatisfactory and cases of ill-treatment had been reported. Lastly, detainees did not always have the means to file complaints.

39. A system for the defence of migrants' rights must be set up, which could include the provision of officially appointed lawyers. The effectiveness of consular representatives needed to be improved, as did the access of civil society organizations to detention centres.

40. The social and labour rights of migrant workers were not always respected, or were difficult to exercise. Regarding family reunification, the repatriation of Guatemalan minors was currently being carried out in poor conditions.

41. In conclusion, fundamental reform was urgently needed and social development policies focusing on regions of origin should be pursued, together with policies for bilateral and regional cooperation, in order to reduce migratory pressures.

42. The CHAIRPERSON asked the representative of Foro Migraciones to clarify her comments about migration offences. While the Convention did stipulate that all migrants, including those in an irregular situation, should enjoy all human rights, States were nevertheless entitled to pass certain penal measures in regard to migration. There was thus a distinction to be made between punishing offences committed by migrants and cracking down on migration-related crime. He also wondered whether the physical conditions of migrants' detention which did not meet international standards were identical to those in which Mexican detainees were held.

43. Ms. CUBIAS MEDINA asked if Mexico intended to enact a new act on migration or if the General Population Act would be amended to penalize migrant traffickers rather than migrants themselves and take proper account of migrants' rights of defence. Regarding the practice of administrative detention by officers who belonged neither to the National Institute for Migration (INM) nor to forces such as the Federal Preventive Police, she wondered whether complaints had been filed by people so detained and whether the Mexican Government allowed the practice or whether it was a problem of coordination or communication between INM and local authorities disregarding the legal prohibition on detaining migrants themselves.

44. She wondered what the reasons were for the prolonged detention of minors in Iztapalapa and whether the problem was due to failure on the part of the consular services of the children's countries of origin or to structural disorganization. Lastly, she asked for more information about legal arrangements for victims of trafficking in persons.

45. Mr. EL-BORAI asked for clarification on articles 67, 68 and 69 of the General Population Act and on articles 150 and 156 of its implementing regulations, which were said to contain provisions that discriminated against migrants.

46. Mr. CARRION-MENA asked why the representative of Foro Migraciones, after having examined the statistics provided by the Mexican Government, had stated that the Government should pay more attention to the way in which it characterized and quantified migration flows.

47. Ms. VENET (Foro Migraciones) considered that some migration offences should be classified as criminal; others, however, such as illegal entry of a migrant worker, should not, since to do so would contribute to the criminalizing of migration and would prevent migrants from integrating. Illegal trafficking in migrants and trafficking in persons should therefore be classified as criminal offences, but illegal entry of a migrant into a country should not. Furthermore, conditions in detention for migrants should be evaluated not by comparing them with those of Mexican prisoners, who were criminals, but in terms of the international standards laid down in international human rights instruments and summarized in a policy paper on the protection of migrants in detention, published by a regional network of civil society organizations dealing with migration.

48. Civil society organizations, supported by the National Institute for Migration, hoped that Mexico would adopt a new migration act, since the General Population Act was no longer adequate. Unfortunately, it would seem that only an amendment of the current act was planned. She welcomed the fact that, thanks to pressure from civil society and elsewhere, minors under the age of 18 would henceforth be detained separately from adults, even though, from the point of view of the best interests of the child, they should not be held in detention centres, even in administrative detention. Several factors contributed to the prolonged detention of minors: essentially consular problems in the case of children from countries outside Central America, and sometimes a lack of resources in consular offices far from the capital.

49. Circular 008/2006 issued by the National Institute for Migration had made some headway, for example by allowing the possibility of staying in the country for victims of offences or human rights violations. Unfortunately, that commendable initiative was only an internal circular to which the people actually concerned would not have access, and its application was left to the discretion of the Institute's local offices and subject to vague criteria.

50. Articles 67, 68 and 69 of the General Population Act and articles 150 and 156 of its implementing regulations were discriminatory in the sense that they treated foreigners differently based on their migrant status and limited their access to justice.

51. Lastly, she explained to Mr. Carrion-Mena that her evaluation of the figures provided by the Mexican Government in its replies to the list of issues was based on the fact that the figures were not supported by any explanation, reasoning or source. There might have been some confusion with the figures concerning Mexican illegal migrants expelled from the United States of America.

The meeting rose at 1 p.m.