



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

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Summary record of the 172nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 15 September 2011, at 10 a.m.

Chairperson: Mr. El Jamri
later: Mr. Brillantes (Vice-Chairperson)
later: Mr. El Jamri (Chairperson)

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

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

Initial report of Guatemala (continued) (CMW/C/GTM/1; CMW/C/GTM/Q/1 and Add.1; HRI/CORE/1/Add.47)

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **The Chairperson** invited the delegation of Guatemala to continue with its replies to the questions asked at the previous meeting.
3. **Ms. del Valle** (Guatemala) said that her Government would provide the Committee with information on the progress made in combating discrimination and racism at a later date.
4. Under article 145 of the Guatemalan Constitution on the nationality of Central Americans, individuals born on the territory of the constituent republics of the Central American Federation (formed in 1824 following the independence of Mexico from Spain and comprising five Central American nations: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) were considered Guatemalans by birth if they established domicile in Guatemala and expressed the wish to become Guatemalan before a competent authority. In that case, they could keep their nationality of origin, without prejudice to the provisions of any Central American treaty or agreement. Those individuals thus obtained all the rights accorded to Guatemalans by birth. For example, one of the candidates in the recent presidential elections in Guatemala had originally come from El Salvador. On the other hand, foreign nationals of other countries who obtained Guatemalan nationality did not enjoy all the rights accorded to Guatemalans by birth. They could therefore not serve as President or as judges.
5. Aliens in an irregular situation subject to an expulsion order were entitled to due process and access to legal assistance. It was therefore surprising that those concerned did not seek judicial remedies.
6. The procedure for regularizing migrants was described in paragraphs 165–167 of the State party's written replies to the list of issues (CMW/C/GTM/Q/1/Add.1). The new migration bill provided for simplified appeal procedures in cases of fines for illegal residence; under current arrangements, appeals had to be submitted to the Office of the President of the Republic.
7. Article 43 of the Migration Act stated that “foreigners who obtain a temporary or permanent residence permit and wish to work as wage earners must do so in lawful activities and obtain appropriate authorization from the Ministry of Labour and Social Security”. That did not imply, however, that permission was granted for employment in unlawful activities.
8. Cases of ill-treatment by police officers came under the Migration Act, which established that the National Civil Police was responsible for overseeing migration. The new migration bill provided for the establishment of a specific authority to deal with migration. Pending approval of the bill, the National Migrant Support Board of Guatemala (CONAMIGUA) had recommended that police forces should observe human rights.
9. Administrative proceedings could be instituted against any official who had committed an offence or infraction. The only requirement was that a formal complaint should be filed to enable the public prosecution service to institute proceedings. However,

there was evidence that migrants in an irregular situation found it difficult to go to the judicial authorities.

10. Article 26 of the Constitution on freedom of movement, mentioned in paragraph 20 of the initial report (CMW/C/GTM/1), stated that Guatemalans could enter and leave the country without a visa. That might be considered quite normal nowadays, but under military governments some Guatemalans had been refused entry to Guatemala or had had their passport withdrawn. The Constitution, approved in 1985 during the transition to democracy, reflected that desire for freedom.

11. The Convention had only recently been ratified, and there was as yet no case law based on it. However, it was being studied at the School of Legal Studies, and article 46 of the Constitution established the primacy of international human rights instruments over national laws. There was therefore reason to believe that judicial decisions would soon be based on the Convention.

12. The children of migrants in an irregular situation were entitled to free health care in public medical centres. Anyone could receive emergency and outpatient treatment without having to present identity documents. Identity documents were required for hospital admission, but migration status was not checked. The Ministries of Public Health of Guatemala and Mexico had established a Guatemala-Mexico border health commission, which was working on specific issues such as vaccination, nutrition, care for HIV-positive persons, mental health and maternal and child health care.

13. Education had been provided free of charge in Guatemala since 2009. In order to enrol children in school, it was not necessary to indicate the migration status of parents; however, if children wished to continue their studies, their school record had to be submitted to the education authorities to allow equivalencies to be established. There were no restrictions on the enrolment of foreign children.

14. A national consultation process had been launched on the ratification of the International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). However, the ILO website indicated that to date only 23 countries had ratified the Convention, with Venezuela being the only Latin American country to sign it. Guatemala was therefore not all that far behind in that regard.

15. When unaccompanied migrant children were reported to the authorities, they were taken to the Casa Nuestras Raíces shelter, situated on the Mexican border. The Social Welfare Secretariat notified the Office of the Attorney-General, the Ministry of Foreign Affairs, the juvenile court, the Ombudsman's Office and the National Civil Police and sought their help in tracing the family. When a child was believed to be Guatemalan, the family was traced in order to return the child to them. Otherwise, the Ministry of Foreign Affairs was notified so that it could contact the authorities of the probable country or countries of origin in order to locate the child's family. If the parents were traced, the child was returned to them. Otherwise, the child was placed under the protection of the State until the family was found. If the search was unsuccessful, the child remained under the protection of the State and was placed in alternative care facilities or with a foster family before being adopted. Legislation in that area was in line with international law, which took account of the best interests of the child. Between January 2011 and July 2011, the Casa Nuestras Raíces had cared for 351 children.

16. If the unaccompanied child was of Mexican, Salvadoran, Honduran or Nicaraguan origin, the memorandum of understanding between Mexico, El Salvador, Guatemala, Honduras and Nicaragua on the decent, orderly, prompt and safe repatriation by land of migrant Central American nationals was applied, thereby facilitating the tracing of the family. If the country of origin was known, the Guatemalan Government handed the child over to the competent authorities and they continued the search. In addition, Guatemala was

cooperating with Mexico and the Organization of American States (OAS) on a project to promote and protect the rights of unaccompanied migrant children and adolescents, aimed at sharing experience, programmes and practice in the area in order to identify a more effective common strategy.

17. During their stay at the shelter, unaccompanied children and adolescents were fed and received physical and mental health care and legal assistance. They were looked after by social workers and took part in educational and recreational activities tailored to their age and the length of their stay. The only available statistics on migrant children and adolescents, which dated from 2009 and 2010, had been annexed to the report. The statistics for 2011 were disaggregated by age, sex and month. Guatemala had had problems in compiling statistics on migrants, but it was working to introduce an integrated statistical system.

18. The offences defined by the Migration Act were set out in paragraph 38 of the initial report. A penalty was provided for each migration offence. Thus, for example, promoting or facilitating the illegal entry of persons was punishable by a non-commutable sentence of between 5 and 8 years' imprisonment; similarly, promoting or facilitating the illegal transit of persons, which was similar to trafficking in persons, was punishable by between 5 and 8 years' imprisonment; promoting or facilitating the transport of persons in an illegal situation was punishable by between 3 and 6 years' imprisonment; concealing persons in an illegal situation, generally with a view to their sexual or labour exploitation, was punishable by between 3 and 6 years' imprisonment; and employing persons in an illegal situation was punishable by between 2 and 5 years' imprisonment. The corresponding penalties were increased when the offences involved minors or were committed by State agents, as indicated in paragraph 39 of the initial report.

19. The Migration Act also established minor infractions (*faltas*) which involved foreigners entering or residing in the country without the authorization of the Directorate-General for Migration or without meeting the legal requirements. Those minor infractions were punishable by penalties ranging from a fine to expulsion (paragraph 39 of the initial report). When the Directorate-General for Migration heard of such cases, it opened an investigation to establish the origin and identity of the migrant in an irregular situation and placed the individual concerned in a special shelter. Such shelters had to meet a number of requirements and respect human dignity.

20. Migrants who failed to leave Guatemala within 60 days of the expiry of their residence permit were expelled. However, during that period, they could regularize their situation within 10 days of receiving notification of their irregular situation, in particular by paying the fine imposed on them. Migrants who violated the Migration Act in order to enter Guatemala were also expelled, as were those who broke national laws, those whose stay was contrary to the national interest as defined by the Directorate-General for Migration, those who entered Guatemala illegally or with false papers, those who returned to Guatemala after being expelled and without authorization from the Guatemalan authorities, and those who had been sentenced by a Guatemalan court to a prison term of 2 years or more. In the last case, migrants were expelled after serving their sentence or when released on parole. The Directorate-General for Migration had five days in which to gather the necessary evidence, as defined in the Code of Civil Procedure, so as to avoid a lengthy period of detention for migrants, and it was required to hand down a decision within 72 hours of the parties being heard.

21. There were specific regulations for the private sector concerning the recruitment of foreigners to management posts (Ministerial Decision No. 528/2003 of 17 September 2003). When submitting written recruitment requests, companies had to provide the Ministry of Labour with documents proving that they observed the quota provision (article 13 of the Labour Code), which specified that companies had to train a certain number of

Guatemalan nationals for management posts according to the number of foreigners they employed. Companies also had to attach the foreigner's passport with the residence visa or a letter of authorization from the Directorate-General for Migration and a list of their employees. If all those requirements were met, the worker received a work permit valid for one year and renewable.

22. All migrants in an irregular situation could join a trade union or become a member of a company's board of directors. Children aged 14 were permitted to work except in hazardous, physically demanding or night-time jobs or in the civil service.

23. The document entitled "Forma migratoria de trabajador fronterizo" (border worker pass), which Mexico issued to Guatemalan temporary migrant workers, was a work permit valid for up to one year in the four adjacent states, namely Chiapas, Tabasco, Quintana Roo and Campeche. Migrants could go with their families to work in those states provided that they had a job offer. Workers and their families had access to public services, mainly in the areas of health and education. Although the permit had initially been mainly for agricultural and domestic workers, it was now valid for work in all sectors.

24. **Ms. Martínez Alvarado** (Guatemala) said that the introduction of mobile consulates was a good idea even though there were some difficulties in setting them up. The network of conventional and mobile consulates had made it possible to establish the "Justicia Global" programme, which enabled Guatemalans living in the United States of America to have free access to legal assistance, thanks to an agreement signed between the Guatemalan Ministry of Foreign Affairs and a law firm based in the United States. Consulates now acted as intermediaries between migrants and the law firm via their web pages. Lawyers sometimes went to the mobile consulates to answer Guatemalans' questions. For example, when a sick or injured Guatemalan went to a hospital which asked the consulate for a travel document for the patient, the law firm sent a letter indicating the legal provisions specifying that everyone must be treated before being returned to their country. That made it possible to save time and to avoid the repatriation and expulsion of sick Guatemalans, in particular following a work accident for which the injured worker's employer did not wish to assume responsibility. The quality of consular protection varied according to how far away migrants were from the 11 general consulates.

25. Mobility within the CA-4 countries, namely Nicaragua, Honduras, Guatemala and El Salvador, was facilitated to a greater or lesser extent depending on security-related events in each country. Nevertheless, visa processing within those countries had been harmonized.

26. **Ms. Gordillo** (Guatemala) said that a memorandum of understanding had been signed in 2003 between the International Organization for Migration (IOM), the Fondation québécoise des entreprises en recrutement de main-d'œuvre agricole étrangère (FERME) and the Guatemalan Ministry of Foreign Affairs. It marked the beginning of the movement of Guatemalan agricultural workers to Canada, where they accounted for 5 per cent of the unskilled agricultural workforce.

27. However, the Ministry of Labour had never received copies of contracts and could not monitor compliance with labour law regulations. Labour standards were often not met in Canada and the interests of business federations prevailed, since there were no bilateral agreements regulating such matters as the number of hours worked. As the workers did not want the Canadian authorities to be involved in the scheme, for fear that they might not be taken on the following year, they did not complete complaints procedures. A reform passed by the Canadian Parliament, which had come into force on 1 April 2011, introduced a four-year limit on the stay of temporary migrant workers, followed by a four-year period during which they were not allowed to work in Canada. That provision affected established rights, since previously, after 10 years of temporary work, workers could claim a pension.

28. In 2011, the Guatemalan Ministries of Labour and Foreign Affairs had prepared a draft agreement with FERME and not a bilateral agreement. In fact, as the Canadian Parliament appeared to want to restrict workers' rights, the Guatemalan authorities preferred to negotiate directly with businesses. The draft agreement, which included the protection of workers' rights, provided for the creation of an agency and the appointment of a representative in Guatemala. She called for farm workers' rights to be respected in Canada, which was not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Although Guatemala was grateful to countries receiving its nationals, they must show respect for migrant workers' rights.

29. The bill amending the Migration Act, which had been prepared by all relevant stakeholders, contained a number of advances, particularly regarding the application of international treaties and the definition of offences, and incorporated the provisions of article 46 of the Convention. It also provided for the establishment of a national institute for migration, which would be more robust than the current Directorate-General for Migration, which had been undermined by years of corruption. The new institute would be placed directly under the authority of the National Security Council, since the issues it would address were related to security and therefore within the remit of the Ministry of the Interior, which had a seat on the Council. Guatemala, which was experiencing budgetary difficulties, would welcome the collaboration of countries to help it tackle the problems mentioned, in particular regarding security, bearing in mind that it was a transit country for trafficking in persons, drug trafficking and arms trafficking, all of which it lacked the means to combat.

30. *Mr. Brillantes (Vice-Chairperson) took the Chair.*

31. **Mr. Martínez Alvarado** (Guatemala), replying to a question on representation abroad, said that Guatemala had opened a consulate-general in Montreal in 2003–2004 in order to be closer to Guatemalan workers employed in Canada's large agricultural businesses and to ensure that their rights were observed. The Guatemalan Labour Code, which dated from 1947, had been almost entirely amended in 1971 and was in the process of being amended again to take account of the ILO conventions adopted by Guatemala. Owing to its limited resources, Guatemala had no consular representation in Saudi Arabia or in many other countries for that matter.

32. **Ms. Cubias Medina** noted Guatemala's efforts as a source and destination country for migrants, but wished to know what it was doing as a transit country for the many migrants who came from every continent, in particular to protect the rights of those in transit to the United States of America, Canada and elsewhere. It would be interesting to know whether regional or bilateral initiatives had been taken in that regard with the assistance of other States parties to the Convention because the spirit of the Convention also required that. Noting the programme entitled "Decent Repatriation of Migrant Children and Adolescents" implemented by the Social Welfare Secretariat, she asked how the State party protected undocumented Guatemalan migrant children and children of other nationalities in transit through its territory. She asked the delegation to indicate whether procedures had been introduced to combat trafficking and, if so, to specify which population groups were involved and in what areas (sexual exploitation, for example).

33. **Ms. Dicko**, noting that Guatemala had ratified the ILO Minimum Age Convention, 1973 (No. 138), asked what age Guatemala had specified in the instrument of ratification to the Convention, given that it should correspond to the age of completion of compulsory schooling. She expressed concern about the number of deported children and adolescents mentioned in paragraph 98 of the report (CMW/C/GTM/1) and wished to know about the procedures used to carry out those deportations.

34. **Mr. Alba**, noting the challenges faced by Guatemala in compiling migration statistics, asked whether the State party had sought the assistance of other Central American countries and the International Organization for Migration (IOM). Referring to Part VI of the Convention, he asked about the measures taken by Guatemala to combat illegal migration. He wished to know more about the difficulties encountered by the Directorate-General for Migration and its relations with the National Civil Police.

35. **Mr. Kariyawasam**, noting that more than 10 per cent of Guatemalans lived and worked abroad, asked about programmes introduced by the State to facilitate the transfer of remittances to Guatemala and their delivery to recipients. He also requested information on the assistance provided to Guatemalan migrant workers who returned to settle in their country.

36. **Ms. Poussi Konsimbo** asked whether the budgetary provisions made to comply with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment mentioned in paragraph 146 of the report under consideration (CMW/C/GMT/1) also applied to all the human rights law instruments to which Guatemala was party, and therefore to the Migrant Workers Convention, or whether they concerned only that protocol and, if so, why. With regard to the search for Guatemalan migrants missing abroad, referred to in paragraph 156 of the report, she asked about the role played by the Guatemalan consular authorities in searches conducted on the territory of other countries, in particular in border areas and deserts.

37. **Mr. Sevim** asked the delegation to indicate whether the social security benefits of migrants settled in Guatemala were transferable to other countries.

38. **Mr. Tall** asked about the difficulties encountered by the State party in implementing the Convention, referred to in paragraph 7 of the report. Noting that the National Council for Assistance to Guatemalan Migrants had started its work in 2008, he asked the delegation to provide a brief assessment of its performance and to outline the challenges it faced, as appropriate. He expressed regret that, in its report, the State party failed to provide information on all the rights mentioned under an item; in paragraph 223, for example, several rights were mentioned in connection with articles 40, 41 and 42 of the Convention. However, the explanations given related only to the electoral system. In future reports the State party should ensure that it provided information and statistics on each of the rights referred to, including practical steps taken in the economic and social fields.

39. **The Chairperson**, speaking as a member of the Committee, invited the delegation to explain under what procedure undocumented migrant workers could be placed in a reception centre with a view to regularizing their situation.

The meeting was suspended at 11.55 a.m. and resumed at 12.15 p.m.

40. **Mr. El Jamri (Chairperson) resumed the Chair.**

41. **Ms. del Valle** (Guatemala) said that, unlike the current policy, the new comprehensive migration policy, currently before Congress, contained specific measures to protect migrants in transit in the country and to combat trafficking in persons and people-smuggling. However, as indicated in the initial report (CMW/C/GTM/1), Guatemala had a number of agreements with neighbouring and more distant countries on combating trafficking in persons and people-smuggling, consular and migration-related cooperation and the regularization of migrants and their repatriation. It had also acceded to the two protocols supplementing the United Nations Convention against Transnational Organized Crime.

42. Three shelters for the victims of trafficking in persons had recently been opened – one for adults, both male and female, one for boys and one for girls; they were run by the Social Welfare Secretariat. Guatemala also had an assistance protocol for victims of

trafficking in persons, which addressed psychological, medical and other issues and also covered repatriation.

43. The ILO Minimum Age Convention, 1973 (No. 138) set the minimum age for admission to employment at 16 years; however, in Guatemala it was currently 14 years. Nevertheless, schooling, which was compulsory until 15 years and was free of charge, now allowed pupils to continue their studies. By ratifying the Convention, Guatemala had undertaken to raise the minimum age in its territory to at least the age specified in the treaty. In that regard, it was worth recalling the proposed reform of the Labour Code currently before Parliament; it would be helpful if Parliament passed the bill and other legislation, such as the new migration act, which the country needed.

44. The Guatemalan Government was currently working with IOM on establishing a procedure to facilitate the transfer of remittances by Guatemalans working abroad. It was important to point out that those remittances were not subject to tax in Guatemala. Furthermore, as the right of ownership was recognized by the Constitution, all Guatemalan citizens who went to work abroad retained ownership of their property. There was also a bilateral agreement with Mexico exempting from tax a certain number of personal belongings imported by returning migrant workers.

45. The reason the decree adopting the Optional Protocol to the Convention against Torture specified that the executive must include the allocations necessary for its implementation in the draft State budget was to provide for the functioning of the national preventive mechanism, as required by the Protocol.

46. In reply to the question as to whether Guatemala intervened directly in the event of the disappearance of one of its nationals in a foreign country, she said that the Guatemalan authorities contacted the competent authorities of the country concerned in order to coordinate their efforts. Furthermore, if there was a criminal aspect to the disappearance, Guatemala had mutual legal assistance and other agreements with a number of countries.

47. There was no entry-exit registration system for migrants coordinated at the level of Central America. The Central American Integration System included a measure of that sort but it applied to tourist travel.

48. All workers entitled to a retirement pension in Guatemala could receive it wherever they wished.

49. With respect to the difficulties encountered by Guatemala in implementing the Convention, it should be noted that, when the initial report was being prepared, Congress had not yet elected the executive secretary of the National Council for Assistance to Guatemalan Migrants, established in October 2008. A considerable amount of work had been achieved considering that everything had had to be started from scratch. Measures included numerous proposals and initiatives, a new migration bill, broad consultations with public institutions and civil society and assistance provided to Guatemalans living abroad. Nevertheless, the implementation of any new international mechanism remained a huge challenge for Guatemala with its limited resources and fledgling democracy.

50. As to the observation that the information provided in paragraph 223 of the initial report was incomplete with respect to the first two rights mentioned, she said that there was little information on the issue, but the Committee's observation would be taken into account.

51. Not all migrants in an irregular situation were automatically placed in shelters or subject to a 10-day time limit to regularize their situation. There was, for example, provision for a comprehensive procedure for migrants who had never had proper papers to enable them to regularize their situation; those facing criminal charges received legal aid from the Public Defender's Office.

52. **Ms. Cubias Medina** said that Guatemala was an extremely important country in terms of migration since it was a country of origin, transit and destination at one and the same time. As a country of origin, it had a legal framework that allowed it to meet the needs of its nationals living abroad and which it was working to improve in line with the Convention. As a country of destination, Guatemala had the necessary tools to facilitate the regularization of undocumented migrant workers. Nevertheless, it needed to make progress in two areas: the dissemination of accessible information on eligibility for regularization and facilitated access to Guatemalan nationality for citizens of Central American countries, which would be a good way to promote a form of regional integration beneficial to all. Lastly, as a transit country, Guatemala lacked legal mechanisms, clear policies and specific projects. It needed specific deportation and due process procedures and adequate accommodation facilities; furthermore, it needed to display absolute vigilance with regard to trafficking in persons and the issue of refugees. Once again, the dissemination of information on the dangers of irregular migration was vital. Guatemala must also improve identification and protection mechanisms for Guatemalan and foreign migrant children and adolescents, and the advisory opinion requested from the Inter-American Court of Human Rights by Argentina, Chile, Brazil and Uruguay regarding an initiative to strengthen the protection of that category of migrants should be seen as an encouragement to continue in that direction. Lastly, Guatemala should strive to collect more detailed data that would enable it to have a more accurate picture of the situation and to develop more focused and effective programmes.

53. **The Chairperson** commended the high level of the delegation and thanked it for the quality of the information provided. He encouraged Guatemala to pursue its migratory policy as a country of origin, transit and destination. He recalled that a good migration policy was one that was dynamic and evolving and invited the State party to take account of the Committee's recommendations.

The meeting rose at 12.50 p.m.