



**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

Fifth session

Geneva, 30 October-3 November 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the Protection of the Rights
of All Migrant Workers and Members of Their Families**

MEXICO

1. The Committee considered the initial report of Mexico (CMW/C/MEX/1) at its 40th and 42nd meetings (see CMW/C/SR.40 and SR.42), held on 30 and 31 October 2006, and adopted the following concluding observations at its 47th meeting, held on 3 November 2006.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party and is gratified by the constructive and fruitful dialogue initiated with a competent high-level delegation. The Committee thanks the State party for its detailed replies to the list of issues and the additional information submitted by the delegation which enabled the Committee to gain a clearer idea of the situation with regard to the implementation of the Convention in the State party.

3. The Committee recognizes that Mexico is a country of migrants, with significant numbers of the three traditional types of migrant, as it is a country of origin, transit and destination for migrant workers.

4. The Committee notes that some of the countries in which Mexican migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee appreciates the fact that the State party considers the question of migration as a priority of its domestic and foreign policy agenda.

6. The Committee acknowledges the State party's very active participation at the international level in efforts to promote the ratification of this Convention, as was mentioned in the report.

7. The Committee takes note with satisfaction of the existence of the Beta Migrant Protection Groups with responsibility for protecting and counselling migrants on the country's northern and southern borders.

8. The Committee notes with satisfaction the implementation of migration regularization programmes implemented by the Government with the aim of documenting thousands of illegal migrants.

9. The Committee welcomes the information that civil society organizations were involved in the preparation of the State party's initial report. It also notes with satisfaction that civil society organizations are also participating in the Subcommission for the Protection of the Human Rights of Migrants established within the Commission on Governmental Policy.

10. The Committee also recognizes the efforts made by the State party for voting rights to be extended to Mexican citizens resident abroad.

11. The Committee also welcomes the ratification of the following instruments:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 4 May and 4 March 2003 respectively;

(b) International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 1999, ratified on 30 June 2000;

(c) The optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 15 March 2002;

(d) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 11 April 2005.

C. Factors and difficulties impeding implementation of the Convention

12. The Committee notes the very significant increase in migration flows within the State party in recent years, which makes full implementation of the Convention difficult, particularly at the local level.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

The Committee notes with concern the State party's reservation to article 22, paragraph 4, of the Convention, given the fact that article 33 of the Constitution stipulates that the Executive has exclusive authority to expel from the national territory, immediately and without a judicial hearing, any foreigner whose residence in Mexico it deems undesirable.

13. **The Committee recommends that the State party should consider taking the necessary legislative measures to withdraw its reservation to article 22, paragraph 4, of the Convention, in order to guarantee the right of the persons concerned to explain their reasons for objecting to their expulsion and to submit their case to the competent authority. It also recommends that the State party should:**

(a) Ensure that migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by the competent authority in conformity with the law;

(b) Notify the expulsion decision to the migrant workers and members of their families in a language they understand, and indicate the reasons for the decision, save in exceptional circumstances justified by reasons of national security;

(c) Guarantee the right to claim compensation in conformity with the law when an already executed expulsion decision is subsequently rescinded.

14. The Committee takes note of the migration reform initiatives before Congress to amend the General Population Act promulgated in 1974. The Committee is nevertheless concerned at the fact that these initiatives have not made much headway in Congress and that articles 118 to 125 of the General Population Act, which stipulate that infractions relating to migration may be subject to criminal proceedings, remain in force.

15. The Committee recommends that the State party direct its efforts towards the formulation of a migration law which corresponds to the new migration situation in Mexico and is in conformity with the provisions of the Convention and other applicable international instruments. This law should, inter alia, annul the classification of illegal entry into the country as an offence punishable by deprivation of liberty.

16. The Committee notes that Mexico has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

17. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

18. The Committee notes that Mexico has still not acceded to the ILO Migration for Employment Convention, 1949 (No. 97) or the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

19. The Committee invites the State party to consider acceding to ILO conventions No. 97 and No. 143, which concern migrant workers, as soon as possible.

Training in and dissemination of the Convention

20. The Committee notes with satisfaction that the National Institute for Migration (INM) periodically organizes technical training courses for administrative officials focusing on the protection of the human rights of migrants, with special emphasis on the rights of women migrants, in conjunction with the National Institute for Women (INMUJERES).

21. The Committee invites the State party to continue training all officials working in the area of migration, especially at the local level, and in particular INM personnel and Federal Preventive Police (PFP) personnel involved in support for the INM in the area of migration management, and also officials working for the Beta Groups.

22. The Committee also recommends that the State party should provide adequate financial and human resources to the INM in order that the latter may properly implement all migration activities provided for in its mandate.

2. General principles (arts. 7 and 83)

Non-discrimination

23. The Committee welcomes the promulgation, in 2003, of the Federal Act to Prevent and Eliminate Discrimination, and also the establishment of the National Council for the Prevention of Discrimination (CONAPRED) in 2004 and its National Programme for the Prevention and Elimination of Discrimination in 2006. The Committee is nevertheless concerned at the fact that migrant workers and members of their families suffer from various forms of discrimination in the area of employment and from social stigmatization. The Committee expresses its particular concern at the situation of indigenous migrants and women migrants who suffer from dual discrimination in the enjoyment of their rights, especially their economic, social and cultural rights, and are more vulnerable to violations and abuses.

24. **The Committee encourages the State party to:**

(a) Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;

(b) Intensify its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrants, and combat their social marginalization and stigmatization, including the media in these activities.

Right to an effective remedy

25. The Committee takes note of the information received by the State party that, notwithstanding the fact that article 67 of the General Population Act only authorizes legally resident foreigners to institute legal proceedings, that provision does not affect the right of every migrant worker to an effective remedy in conformity with article 83 of the Convention. The Committee is nevertheless concerned that this provision may in practice give rise to discriminatory treatment of undocumented migrant workers, which would limit their access to justice.

26. **The Committee recommends that the State party should ensure that:**

(a) In legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and have access to redress mechanisms before the courts;

(b) Any person whose rights or freedoms, as recognized in this Convention, have been violated may obtain effective redress.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

27. The Committee welcomes the programme for upgrading migrant holding centres in order to improve conditions there, and the opening of the new Siglo XXI holding centre in Tapachula. It also welcomes the launch of the Migrant Holding Centre Securing and Transfer System (SICATEM), which makes it possible to ascertain the number of foreigners secured in each centre and thereby prevent overcrowding in those centres. Nevertheless, the Committee remains concerned at the difficult detention conditions in certain centres, where cases of cruel and degrading treatment have been reported and overcrowding, lack of medical care and failure to notify consulates are commonplace. The Committee is also concerned at the fact that premises designed for pretrial detention are still being used as migrant holding centres.

28. **The Committee recommends that the State party should:**

(a) Continue to take steps to improve conditions of detention in migrant holding centres in accordance with international standards, and to solve the overcrowding problem;

(b) Stop using premises designed for pretrial detention, and/or for deprivation of liberty of persons in conflict with the law, for the purpose of securing migrants;

(c) Investigate all complaints of ill-treatment and cruel and degrading treatment on the part of State officials in migrant holding centres and punish the culprits;

(d) Notify the consular or diplomatic authorities of the State of origin without delay whenever a migrant worker or a member of his family is arrested or detained, if so requested by the individual concerned;

(e) Ensure that migrants are deprived of their liberty for as short a time as possible.

29. The Committee is concerned at reports confirming the use of ill-treatment, extortion and theft by State officials and private security personnel against migrant workers and members of their families, including children and women, particularly those who have no migration papers. It is also concerned at the recurrent acts of violence and attacks against migrants by ordinary criminals, which frequently go unpunished.

30. The Committee recommends that the State party should continue and step up its efforts to address as a matter of urgency the problem of ill-treatment and other acts of violence against migrant workers and their families, regardless of who is responsible. In particular, the Committee urges the State party to ensure that such acts are investigated and the culprits brought to trial and punished.

31. The Committee notes that, under the General Population Act and its regulations, only officials of the National Institute for Migration and the Federal Preventive Police are empowered to carry out appropriate duties related to immigration control and supervision of foreign men and

women in the country. It also notes that, under article 73 of the General Population Act, other authorities who by law have federal, local or municipal forces under their command, may provide assistance to the migration authorities when so requested. However, the Committee is disturbed to find that in certain cases authorities not so empowered, including members of the Armed Forces and private security personnel, carry out migration control activities and arrests.

32. The Committee recommends that the State party, and more specifically the National Institute for Migration, should take appropriate steps to ensure that migration control and securing of migrants are carried out exclusively by the competent authorities and that every violation in this regard is promptly reported.

33. Despite the State party's efforts, the Committee remains disturbed by the extreme vulnerability of undocumented women migrant workers in domestic service, particularly on the southern border, many of whom are subjected to illegal working conditions, degrading housing conditions, ill-treatment, extortion and even sexual harassment or rape by their employers.

34. The Committee recommends that the State party should continue to take appropriate measures to protect women domestic workers, including access to regular migration status and greater and more systematic involvement of the labour authorities in monitoring their working conditions. It also recommends that women migrant workers in domestic service should have access to mechanisms for bringing complaints against employers and that all abuses, including ill-treatment, should be investigated and punished.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

35. With reference to article 40 of the Convention, the Committee is concerned at the fact that article 372 of the Federal Labour Act prohibits foreigners from forming part of the leadership of trade unions.

36. The Committee recommends that the State party should take the necessary measures, including legislative amendments, to guarantee to migrant workers and members of their families the right to form, and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention.

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

37. The Committee is concerned at the situation of seasonal agricultural workers who are subjected to inequitable working conditions, including long hours, low wages and late payment of wages. The Committee is also concerned that ill-treatment by their employers is not uncommon.

38. The Committee recommends that the State party should take the necessary steps to improve the working conditions of seasonal agricultural workers by, for example, ensuring

systematic monitoring by the Federal Labour Inspectorate of compliance with the standards governing the work of agricultural day labourers. It also recommends that all allegations of abuses, including ill-treatment, should be investigated and the culprits punished.

6. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

39. The Committee welcomes the measure taken by the National Institute for Migration to make it easier for foreigners who are victims of crime or of human rights violations, including trafficking in persons, to remain in Mexico. The Committee also takes note of the project “Combating the trafficking of women, adolescents and children in Mexico 2004-2005” and of the measures taken to combat migrant-smuggling. The Committee is nevertheless concerned at the following:

- (a) The extent of the problems of trafficking in persons and migrant-smuggling in the State party;
- (b) The fact that the offence of trafficking in persons is not adequately defined in the law;
- (c) The involvement of State officials in criminal acts of this kind.

40. **The Committee urges the State party to:**

- (a) **Finalize the amendment to the Criminal Code in order to define trafficking in persons as a criminal offence;**
- (b) **Step up its efforts to counter migrant-smuggling and trafficking in persons, especially women and children, inter alia by taking appropriate steps to detect the illegal or clandestine movement of migrant workers and their families and punish the criminals and/or groups who orchestrate or assist such movement;**
- (c) **Properly investigate complaints of involvement by State officials in such offences and duly prosecute and punish the culprits.**

41. The Committee welcomes the State party’s efforts to care for the large numbers of unaccompanied minors on the northern and southern borders, inter alia through the inter-agency programme for the care of border-area minors and the other programmes for safe and orderly repatriation. However, the Committee remains concerned - like the Committee on the Rights of the Child - at the situation of extreme vulnerability of a great many unaccompanied minors (whether repatriated from Mexico to their countries of origin or repatriated to Mexico), which leaves them at very high risk of exploitation of various kinds, including trafficking for purposes of labour and sexual exploitation.

42. **The Committee recommends that the State party should pay particular attention to the vulnerable situation of migrant unaccompanied minors. In particular, the State party should:**

(a) **Strengthen its programmes for the safe and orderly repatriation of unaccompanied minors on the southern and northern borders;**

(b) **Provide specific training in children's rights for State officials working in border areas who come into contact with unaccompanied minors;**

(c) **Ensure that detention of migrant children and adolescents, accompanied or otherwise, is carried out in accordance with the law and used only as a last resort and for the shortest possible time;**

(d) **Strengthen its cooperation with civil society and international organizations, in order to address the growing problem of unaccompanied minors.**

7. Follow-up and dissemination

Follow-up

43. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Congress, as well as local authorities.

Dissemination

44. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to inform Mexican migrants abroad and foreign migrant workers in transit or residing in Mexico of the rights they and members of their families enjoy under the Convention.

8. Next periodic report

45. The Committee requests the State party to submit its second periodic report by 1 July 2009.
