



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

List of issues to be taken up in connection with the consideration of the initial report of Guatemala (CMW/C/GTM/1)

I. General information

1. Please report on the progress made in harmonizing domestic legislation with the Convention. Please inform the Committee what stage has been reached in the process of reforming the existing legislative framework applicable to migration in the State party and, in particular, in enacting Migration Bill No. 4126. Please indicate how the provisions of the Convention are incorporated in that bill.
2. Paragraph 130 of the report mentions that the State party lacks disaggregated statistical data relating to migration. Please inform the Committee of the measures taken by the State party to compile disaggregated statistics on the number and characteristics of migrants who reside in or are in transit through the territory of the State party. Please provide estimates also of migratory flows in the State party between 2005 and 2010.
3. The report mentions a number of programmes and activities, such as the Programme for Migration, which the State party has launched on behalf of migrant workers, especially nationals of the State party living abroad. Please inform the Committee whether the State party intends to formulate an integrated public policy on migrants that incorporates the provisions of the Convention and includes programmes and activities in support of both Guatemalan migrant workers abroad and migrant workers in transit or whose final destination is the State party.
4. The report mentions the establishment of the National Migrant Support Board of Guatemala (CONAMIGUA), a governmental body tasked with coordinating, delimiting, supervising and monitoring the actions and activities of other bodies in the State party that are responsible for protecting, supporting and offering assistance to Guatemalan migrants and their families abroad and migrants present in the territory of the State party. Please provide detailed information on the content of the law establishing CONAMIGUA, especially on the provisions applicable to migrants in the territory of the State party. Please report on how CONAMIGUA performs its role in practice and how it coordinates its

activities with the National Migration Directorate in matters relating to the needs of migrants in the territory of the State party, and with the Ministry of Foreign Affairs when attending to the needs of nationals of the State party abroad.

5. Please clarify the functions of the National Civil Police (PNC) and the Army in the area of migration control and interception of undocumented migrants and their relationship with the Directorate-General for Migration (DGM), and list any other authorities that have responsibilities in this area.
6. Please provide information on measures taken to disseminate and promote the Convention. Indicate also whether there are any specific training courses on the Convention for public officials of the Directorate-General for Migration, the National Civil Police, social workers, judges, prosecutors and other relevant State authorities.
7. Please describe the participation of NGOs in the drafting of the State party's report and their involvement in the implementation of the Convention.
8. Please indicate whether the State party intends to accede to the International Labour Organization (ILO) Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143).

II. Information relating to each of the articles of the Convention

A. General principles

9. Please describe the existing machinery for guaranteeing the principle of non-discrimination against migrant workers and their families in the State party and provide information on measures that have been taken to counter discriminatory attitudes towards migrant workers and their families. In particular, please tell the Committee how migrant workers, regardless of their status, are ensured effective access to the Labour Inspectorate-General to file complaints concerning discrimination and what procedures are used to follow up on such complaints. Please indicate which other authorities are competent to receive complaints of alleged violations of the rights of all migrant workers and members of their families and how the latter exercise their right to an effective remedy in accordance with article 83 of the Convention.

B. Part III of the Convention

Article 8

10. According to information received by the Committee, failure by some officials of the Directorate-General for Migration and the National Civil Police to comply with the Central America 4 (CA-4) Agreement on freedom of movement for nationals of countries that are parties to the Agreement has led to the commission of abusive acts and irregularities vis-à-vis nationals of CA-4 countries. In this connection, please inform the Committee about the following:

(a) Action taken to disseminate the CA-4 Agreement among the Guatemalan migration authorities and to promote its implementation. Please indicate whether a register is kept of the entry and departure of nationals of countries that are parties to the CA-4 Agreement and describe the impact of the entry into force of the Agreement on 28 November 2007 on the use of the State party as a transit and destination country;

(b) Measures taken by the State party to grant Guatemalan nationality by birth to persons from the republics that constituted the Central American Federation, in accordance

with article 145 of the Constitution, and to promote the rights of migrant workers from those countries.

Articles 10, 11 and 16

11. According to paragraph 152 of the report, foreigners who breach the Migration Act and its regulations are sent to the shelters run by the Directorate-General for Migration pending clarification of their migratory status. Please:

(a) Clarify whether entry into the country by a person whose status is irregular constitutes an offence;

(b) Explain the rules and criteria applied by the authorities in checking a person's migratory status;

(c) Indicate the number of migrant workers currently held in the shelter run by the Directorate-General for Migration for having violated the migratory provisions in force and the duration of their detention. Please state whether the current legislation establishes a time limit for detention in such a shelter;

(d) Provide detailed information concerning the conditions of detention of the migrant population held in shelters run by the Directorate-General for Migration, indicating whether there is separate accommodation for migrant men and women and adequate accommodation for migrant families;

(e) Describe conditions in the shelter for migrants and state whether the services provided to the migrant population held in the centre are adequate in terms of food, sanitary conditions, recreation, communication and consular access.

Articles 21 and 22

12. The Committee has received information to the effect that migrant workers, regardless of their status, are subjected to violations and acts of abuse by officers of the National Civil Police and the Directorate-General for Migration. These abuses include, in particular, assertions that identity documents are invalid, retention and destruction of such documents, and imposition of unlawful charges for entry into or departure from the territory of the State party. Please comment on this information in the light of article 21 of the Convention. Please indicate also whether there are any arrangements for monitoring the acts of officers of the National Civil Police and the Directorate-General for Migration and how such acts are sanctioned.

13. Please describe the laws and procedures regarding deportation and expulsion of migrants from the State party. Kindly state also whether migrant workers may apply for a judicial review of their expulsion order. How is due process guaranteed in cases of deportation of migrant workers and their families from the territory of the State party?

14. Paragraph 185 of the report states that non-Guatemalan migrant workers are often erroneously deported to the State party because they decide to claim that they are Guatemalan so that they may be deported to the closest country and then wend their way back. Please describe the measures taken by the State party to identify the nationality of these migrant workers and state how many of them are effectively returned to their countries of origin. Please indicate whether nationals of CA-4 Agreement countries who have been erroneously deported to Guatemala can remain in the State party for 90 days in accordance with the provisions concerning freedom of movement of persons from CA-4 countries. Are there any arrangements for coordination with CA-4 countries?

Article 23

15. Please provide detailed information about the policy on protection, assistance and support for Guatemalans abroad. Please indicate what types of consular services are provided for the protection of Guatemalan migrant workers, including those deprived of their liberty. Are they provided with legal assistance in the case of deportation as well?

Articles 25 to 28

16. The report mentions a series of provisions of the Labour Code concerning the recruitment of foreigners by private companies in the State party. Please clarify whether these provisions are applicable both to migrant workers employed in skilled occupations and to those employed in non-skilled occupations in the State party. Please indicate how the State party guarantees and monitors equal treatment for migrant workers employed in agricultural and domestic activities.

17. The report mentions in paragraph 175 that migrant workers who are in a regular situation are free to join trade unions. Please indicate whether the State party intends to extend this right to all migrant workers, in accordance with article 26 of the Convention.

18. According to paragraph 205 of the State party's report, migrant workers in an irregular situation and their families can obtain emergency medical attention in neighbourhood health clinics and health centres. Please provide additional information about the measures taken by the State party to guarantee the right of migrant workers in an irregular situation to receive emergency medical attention.

Articles 29 to 31

19. Please specify under what circumstances the children of migrant workers in an irregular situation are deemed to be Guatemalan by birth and explain how the National Register of Persons (RENAP) facilitates the registration of their birth in practice. The Committee also wishes to know whether the children of undocumented migrant workers are guaranteed access to education and how this is done.

Article 33

20. Please state which bodies are responsible for providing migrant workers with the information required by article 33 of the Convention, and explain how effective access to this information is ensured for Guatemalan nationals who are preparing for migratory employment and foreign migrant workers and their families who are present in Guatemala.

C. Part IV of the Convention**Articles 40–42**

21. Please indicate whether documented migrant workers have the right to establish associations and trade unions. Please also comment, in the light of article 40 of the Convention, on the requirement that a person must hold Guatemalan nationality in order to become a member of a governing body of a trade union.

22. Please inform the Committee whether the State party intends to consider the possibility of granting voting rights to Guatemalans resident abroad and to include a provision to that effect in the proposal to amend the Electoral and Political Parties Act that has been pending before Congress since December 2008.

Articles 46–48

23. Please inform the Committee about measures taken by the State party to guarantee the rights of migrant workers in the light of articles 46 through 48 of the Convention. Please indicate also whether the State party intends to implement measures to facilitate and reduce the cost of sending remittances from and to Guatemala.

D. Part VI of the Convention**Article 67**

24. Please inform the Committee about the measures taken by the State party to extend support and services to Guatemalan migrant workers who have been repatriated. In particular, please provide more information about the support programmes on behalf of repatriated unaccompanied Guatemalan children and adolescents launched by the Secretariat for Social Welfare and the measures taken to support and repatriate migrant children and adolescents. Please inform the Committee also about the results of the implementation of the Memorandum of Understanding signed by the Governments of Mexico, El Salvador, Guatemala, Honduras and Nicaragua for the decent, orderly, speedy and secure repatriation of Central American migrants by land, which has been in force since 22 July 2005.

Article 68

25. Please provide more information about the scale of illicit smuggling of migrants and trafficking in persons in the territory of the State party and about the measures taken to prevent and counter these activities. Please also provide information on:

(a) Measures taken to detect and eliminate illegal or clandestine movements, including trafficking, of migrant workers and their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(b) The legal and institutional framework established and the budgetary funds earmarked for the purpose of countering and preventing trafficking in persons and assisting victims;

(c) Procedures for the speedy identification of trafficking victims, especially children and adolescents, in the context of migration control, and the number of training courses provided for authorities, including judges, involved in action to counter trafficking in persons;

(d) The estimated number, disaggregated by gender, age and nationality, of victims of trafficking in persons to, from, in transit or within the State party between 2005 and 2010;

(e) Measures to support and protect victims of trafficking in persons, and accommodation conditions in the shelter for migrants;

(f) Implementation of the memorandums of understanding between El Salvador and Guatemala, Guatemala and the United States, and Guatemala and Mexico for the protection of victims of trafficking in persons and illicit smuggling of migrants.

26. Please provide information about measures taken by the State party to prevent irregular migration by Guatemalans, including unaccompanied children and adolescents.

Article 69

27. Given that, according to paragraphs 190 and 243 of the report, the Directorate-General for Migration gives migrant workers in an irregular situation 10 days to legalize their stay in Guatemala and that, according to paragraph 241 of the report, they need to obtain authorization to work from the Ministry of Labour, please indicate what measures have been taken by the State party to facilitate the regularization of the migratory status of undocumented migrant workers and their acquisition of labour permits.
