



**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

Ninth session

SUMMARY RECORD OF THE 88th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 24 November 2008, at 10 a.m.

Chairperson: Mr. EL JAMRI

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The meeting was called to order at 10.15 a.m.

OPENING OF THE SESSION (agenda item 1)

1. The CHAIRPERSON declared open the ninth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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

2. Mr. DAVID (Coordinator, Unit IV, Treaties and Council Branch, Office of the High Commissioner for Human Rights, Representative of the United Nations High Commissioner for Human Rights) wished the Committee success on the High Commissioner's behalf and reviewed developments since the Committee's eighth session.

3. The Office of the High Commissioner (OHCHR) had continued to promote migrants' rights, as evidenced by meetings that had systematically promoted ratification of the Convention (ICRMW) and in which representatives of the Committee had been active participants. In May 2008, OHCHR had jointly organized with the African Parliamentary Union, the International Labour Organization (ILO) and the International Organization for Migration (IOM) a conference for African parliamentarians on migration. In September it had organized together with the Government of Mexico an international meeting on children and migration. Two weeks prior to the Committee's session, OHCHR, IOM and the Office of the United Nations High Commissioner for Refugees (UNHCR) had organized a regional conference at Dakar on refugee protection and international migration in West Africa.

4. OHCHR had also made a considerable contribution to the report entitled "International Migration and Human Rights -- Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights", the first joint report of the Global Migration Group (GMG).

5. Since the previous session, Jamaica and Paraguay had ratified the Convention and Congo had signed it. The steady growth in ratifications gave hope that the threshold of 41 ratifications would soon be reached and that the Committee would therefore be able to expand its membership to 14. It was gratifying in that respect that ratification had been discussed at the recent Manila Global Forum on Migration and Development.

6. The current year had also been marked by the first meetings of the Human Rights Council (HRC) devoted to the new international human rights mechanism of the Universal Periodic Review (UPR). To date, 32 countries had been reviewed and 18 more would be by year-end. It was still too early to assess the UPR, but it was clear that it led to systematic addressing of migrants' rights and that the recommendations of treaty bodies were among its firmest foundations. Treaty bodies should therefore be encouraged to follow up on States' implementation of the pledges and recommendations made in the review process.

7. Regarding the Committee's programme of work, he noted with particular interest the meeting with the Committee on Migration, Refugees and Population of the Parliamentary

Assembly of the Council of Europe at which the two bodies were to discuss co-operation in promoting migrants' rights.

8. The CHAIRPERSON thanked the representative of the High Commissioner for his statement and said that the Committee looked forward to its meeting later in the week with the High Commissioner to discuss promotion of the Convention and relations with the 32 countries so far reviewed under the UPR process.

ADOPTION OF THE AGENDA (agenda item 2) (CMW/C/9/1)

9. *The provisional agenda was adopted.*

10. The CHAIRPERSON invited members to report on their activities and, with the exception of the Global Forum on Migration and Development, which would be discussed the coming Friday morning, the meetings they had attended since the previous session.

11. Mr. KARIYAWASAM said that he would reserve most of his remarks for the Friday morning. Thanking the representative of the High Commissioner for the OHCHR contribution to the GMG report, which had been distributed at the Manila Forum, he drew attention to the report's main conclusions and the risk that the vague concept of a human rights-based approach might confine the Convention to the sidelines, since the report focused on the ILO conventions, which were themselves important. In that connection, OHCHR must continue to give the Committee the support and resources it needed to pursue its advocacy for the central role of the Convention.

12. Ms. CUBIAS MEDINA said that the meeting with the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe should be used to discuss the European Parliament's and the Council's "returns directive" concerning common standards and procedures in member States for returning illegally staying third-country nationals. That directive could affect migrants' human rights. Many countries and groups of countries had spoken about it, including at the meeting of the Ibero-American Summit in El Salvador, where Spain and Portugal, the two European countries concerned, had clearly stated their restrictive position on migration, at variance with that of many of the Latin American countries present. The South American Conference on Migration had also firmly rejected the directive. To support the Convention better and promote wider accession to it, groups of countries must adopt a strategy and clearly assert a common position on the matter.

13. Ms. DIEGUEZ reported on the meeting held in Mexico on migration and children's fundamental rights, at which she had chaired a session on the situation of children entrusted to third parties by parents who went to work abroad. The lack of any real statistics concerning such children was very worrying. United Nations Children's Fund studies having failed to yield any firm results, the Committee should discuss the issue further. It would be good to know, for example, whether the children in question were at greater risk of becoming criminals or whether, because of their parents' remittances, they had easier access to education and better academic results.

14. At its seminar in Guatemala for the countries concerned by a proposed association agreement, the European Union had said that its intention, while not to make mass expulsions,

was to introduce more selective migration. That intention presaged a brain drain. The European Union had also ruled out the possibility of a region-to-region agreement on migration issues, on the ground that they should be handled bilaterally. The agreements between Spain and the Dominican Republic and Ecuador, for example, had been concluded because it had become essential to regulate very substantial migratory flows.

15. Ms. POUSSI KONSIMBO reported on her attendance at Dakar at the Conference on Refugee Protection and International Migration, which had dealt with migration issues of relevance to the 15 countries of the Economic Community of West African States (ECOWAS). At the workshop on the problems of protecting migrants' rights, participants had said that, while there was no lack of legal instruments to protect migrants' and refugees' rights, they were poorly applied. They had discussed what was done to make migrants more aware of those instruments so that they could claim their rights. The workshop had shown that it was essential for the seven ECOWAS countries parties to the Convention to submit their reports to the Committee, which only Mali had done, and for thought to be given to ways of persuading receiving countries, where migrants' rights were often violated, to ratify the Convention. She had made it clear to participants that the Convention did not apply to refugees, but did apply to asylum seekers.

16. Mr. EL-BORAI said he had attended the seventh treaty bodies' Inter-Committee Meeting at Geneva the previous June, at which the OHCHR representative had explained that the single report would complement, not replace, States' periodic reports and that treaty bodies' conclusions and recommendations would continue to take precedence over those in the single report. It would not, a priori, be obligatory but optional for States to make a single report. Regarding the list of issues, the representatives of committees had said it was normal that there should not be a single model and had questioned the need to disclose the rapporteur's identity. The question was still pending. A number of participants had said that the possibility of examining the human rights situation in a non-reporting State party could be considered if the State had not submitted a report for many years. In his view, that possibility was legally questionable and the matter needed more thorough study.

17. Mr. TAGHIZADE said he had participated in a Council of Europe conference on the Convention on the Rights of Persons with Disabilities and had taken the opportunity to call on the countries members of that Council to ratify the ICRMW. Generally speaking, he was in favour of closer co-operation between the Committee and the Council of Europe, especially with regard to study of the effects of the international economic crisis on migratory flows.

18. The CHAIRPERSON remarked that the European Parliament, the Council of Europe and the European Commission were three distinct bodies and did not have a common position on ratification of the Convention. The European Parliament had appealed to States members of the European Union to ratify the Convention, but a number of countries in the European Commission, the European Union's executive body, were against ratification. The statements by Committee members showed that there was a real movement in regions in favour of ratification but a lack of international initiatives to promote exchanges between regions. The Committee definitely had a role to play in that regard.

19. In May, he had attended at Rabat a conference on migrants and migration policy organized by the African Parliamentary Union. The conference had shown that African parliamentarians were unfamiliar with the Convention and that the Committee would have much to gain from

doing more to inform them. He had also attended an IOM, ILO and Organization for Security and Co-operation in Europe seminar for the launch of the Mediterranean edition of those bodies' handbook on establishing migration policies. Early in the current month he had attended the Euro-Mediterranean Civil Forum, which had discussed the establishment of the Euro-Mediterranean partnership. Many civil society organizations had said that, while trade and other economic issues were strengthening cooperation between Europe and the South, cultural and human exchanges were becoming more difficult because European countries were adopting very restrictive migration policies and giving a very negative image of migrants. He had become a member of the Council for the Moroccan Community Abroad, a body recently established to provide advisory opinions on Moroccan migration policy.

The meeting was suspended at 11:20 a.m. and resumed at 11.45 a.m.

20. The CHAIRPERSON announced that the Committee would meet members of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe the following Friday, 26 November. The Council of Europe, which had 47 members, and the European Union, which had only 27, were separate bodies. Among the members of the Council of Europe, Turkey, Bosnia and Herzegovina, Azerbaijan and Albania were parties to ICRMW. The purpose of the meeting would be to study how the two bodies could cooperate in promoting ratification of the Convention and therefore migrants' rights.

21. Mr. KARIYAWASAM hoped the meeting would result in the formation between the Committee and the Council of Europe of a real coalition aimed at persuading European decision-makers to accept the Convention. There was no uniform migration policy in the European Union and many European countries wrongly thought that it was too soon for them to ratify the Convention because they could not discharge the obligations it laid down. Many developing countries had, however, ratified instruments such as the International Covenant on Civil and Political Rights and the Convention against Torture in the knowledge that their domestic law was not up to the ideal level under those instruments and the hope that ratification would spur them on to reach that level. That some States felt that they could not ratify the ICRMW if they could not fully apply it was at variance with the Committee's conception of the goals of the Convention and the way of attaining them. For that reason, the Committee should perhaps invite the members of the Committee on Migration, Refugees and Population to encourage the States they represented to ratify the Convention. In addition, the Council of Europe should support the implementation of the provisions of the Convention in the European Union. The Convention was not based on the all-or-nothing principle and if States which ratified it had problems in applying it, they should tell the Committee of their concerns so that it could see how it could help them.

22. Mr. TAGHIZADE said that the Council of Europe comprised several categories of States: the countries of old Europe; former socialist-bloc countries in central and eastern Europe, such as Romania, Bulgaria, Hungary and the Czech Republic, and countries of the former Soviet Union, such as the Republic of Moldova, Azerbaijan, Georgia and Armenia, not to mention the countries of the former Yugoslavia. The countries in the latter groups were in a very special situation regarding migratory flows since they were mainly countries of emigration that many highly skilled young people left for old Europe. It was therefore to their advantage to ratify the Convention, since they regularly encountered serious problems in protecting their nationals' rights that they tried, without much success, to resolve bilaterally. The granting to citizens of

countries of the former Soviet Union and central and eastern European countries of the equivalent of the green card exacerbated those countries' problems by speeding up the brain drain towards Western Europe.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION

Dialogue with national human rights institutions and non-governmental organizations on the initial report of El Salvador

23. Mr. LUNA (Procurator for the Protection of Human Rights) said that since submitting its report to the Committee in April of the current year his office had investigated a variety of cases and had seen how the national authorities treated migrant workers living in or in transit through El Salvador. With respect to articles 1 to 7 of the Convention, he cited case No. SS-0364-07, a still open case filed by a Cuban, Ms. Doris Alvarez Tejada, against the Salvadoran authorities' refusal to allow her daughter, Dorianne Garrido Alvarez, to enter the country. Another pending case, from the department of San Miguel, concerned discrimination against nationals of Guatemala, Nicaragua and Honduras and breaches of the right under article 10 of the Convention not be subjected to cruel treatment. The workers in question had suffered collective expulsion. There were also breaches of article 16 of the Convention because illegal migrants were deprived of liberty and held in a detention centre before being expelled. The recent opening of a shelter for migrants had, however, improved the situation. The Directorate-General for Migration had introduced administrative rules providing for the waiver of the probationary period. That constituted a breach of article 18 of the Convention, since migrants were often forced to sign a waiver. With regard to article 41 of the Convention, the Electoral Code had not been amended to permit Salvadorans living abroad to vote in elections held in El Salvador. With respect to article 67 concerning return to the State of origin, improvements were still needed to the "Bienvenido a casa" (Welcome Home) programme. Between the end of 2007 and July 2008, 10,984 Salvadorans, 3,501 of whom had committed offences in the United States of America, had been expelled from their receiving countries. They had had help on their return, but follow-up was needed to enable them to reintegrate into society. With respect to article 84, the current laws on migration and aliens were in urgent need of review.

24. Some problems had been overcome since the submission of the previous report. In particular, the Chinese citizens who had been detained in the premises of the Frontiers Division of the National Civil Police between October 2006 and March of the current year had been released. A Haitian, Mr. Pierre Larochez Shneider, had also been released, in accordance with a decision of the Ministry of Public Security and Justice. A draft bill on aid and protection for migrants and their families had been submitted to the Legislative Assembly's Foreign Affairs Commission in July of the current year. A special-care centre for migrants in an irregular situation had been opened the same month, partially resolving the problem of detention in often unsuitable facilities of people arrested at the border or in airports. With respect to the application of the Convention in general, government review of domestic law was desirable.

25. Ms. REYES (International Federation for Human Rights, FIDH) said that in April of the current year FIDH had submitted a detailed alternative report drawn up by the Mesa Permanente sobre Derechos de los Migrantes (Standing Council on Migrants' Rights) and itself which had concluded that a number of the provisions of the Convention were not observed. Many

provisions of the 1958 Migration Act and the 1986 Aliens Act were obsolete and should be amended in collaboration with civil society and the Office of the Procurator. There was a legal vacuum with regard to article 16, paragraph 4, of the Convention, which dealt with arbitrary arrest and detention, since neither the Constitution nor the law contained any provision regarding detention of undocumented migrants during expulsion proceedings. Undocumented migrant workers were numerous in border areas and the recently established shelter was inadequate because it did not provide decent conditions for them.

26. With regard to article 22 of the Convention, administrative appeals could be made against expulsion, but the relevant procedures were either ignored or followed in name only. The Government had discretion in that regard since the law provided that the Minister for Public Security could expel a migrant if he considered his presence in the country as contrary to the national interest. Furthermore, article 97 of the Constitution allowed for the expulsion of aliens who participated directly or indirectly in the country's domestic politics. Article 40 of the Labour Code contravened article 26 of the Convention by providing that aliens could not be members of trade unions' governing bodies. Of El Salvador's adult population, 30% lived abroad and had no right to vote in Salvadoran elections, a situation that must be remedied. As the Welcome Home programme was aimed primarily at the minority of Salvadorans who had been expelled from their receiving country for unlawful activity, provision must be made for helping people who were in very insecure situations abroad reintegrate into Salvadoran society

27. The CHAIRPERSON, observing that the preparation of reports on application of the Convention often led countries to reflect on the real state of their migration policy and so to identify and consider remedying problems and deficiencies, asked whether El Salvador had envisaged reforming its law since it had begun drafting its report.

28. Mr. EL-BORAI asked whether the ban on membership of trade unions' governing bodies, the procedure for expulsion and the disenfranchisement of Salvadorans abroad were provided for by law or were attributable to a legal vacuum or improper application of the law.

29. Ms. DIEGUEZ asked what specific improvements could be made in the operation of the recently established shelter for migrants so as to provide better assistance to persons transiting the country or more opportunities for social reinsertion. She also asked whether it was police officers or social workers who met migrants at airports.

30. Mr. KARIYAWASAM wished to know whether the relevant consular services assisted migrants who were to be expelled from El Salvador and Salvadorans expelled from other countries by representing their interests and ensuring that the expulsion procedure was applied with the greatest possible transparency, humaneness and respect for the migrants' rights.

31. Mr. TAGHIZADE, referring to the 2007 population census, said he would like even approximate figures for the numbers of people leaving El Salvador and their destinations. Such information was very useful in assessing migratory flows. He also wished to know, with particular regard to the many Guatemalans, Hondurans and Nicaraguans, most of them women and children, who worked as domestic employees in El Salvador, what the country had done to guarantee migrants' rights under article 25 of the Convention.

32. Mr. SEVIM asked whether El Salvador had concluded re-admission agreements with third countries and, if so, exactly how they protected migrant workers.

33. Mr. EL-BORAI asked what was the legal value in domestic law of an international convention ratified by El Salvador and how much information judges were given in that connection.

34. Mr. LUNA (Procurator for the Protection of Human Rights) said that the 1959 Migration Act and the 1986 Aliens Act, the two acts currently governing migrant workers' rights, had not been brought into line with international human rights law and that the only bill currently aimed at protecting those rights, the proposed Migrants and their Families (Protection and Assistance) Act, had yet to be adopted. Despite the numerous recommendations for its reform that had been made to the Supreme Electoral Court, the Electoral Code did not expressly provide for the exercise of the franchise by Salvadorans abroad.

35. The shelter for migrants recently opened in the capital afforded migrants decent living conditions, but improvements were still needed, especially with regard to medical and psychological care for returning expellees. Similar shelters were needed in other parts of the country if the holding of migrants in unsatisfactory conditions in police or border guard facilities was to be avoided.

36. As stated in his report, expulsions often took place according to procedures that, contrary to the judicial and procedural guarantees in the Convention, were inconsistent with the relevant international instruments. Absent a procedure in domestic law, the provisions of the Convention should be applied, for they took precedence over domestic law. He was unaware of any agreements for the readmission of Salvadorans found in an irregular situation abroad.

37. His office had no precise statistics of migratory flows in El Salvador. It was, however, common knowledge that some 500 people left the country every day, most of them for the United States. His office supervised the work of a number of institutions and did all it could to see that the rights of children, and especially of migrant children employed as domestic servants or in forced labour, were respected.

38. Ms. REYES (International Federation for Human Rights) endorsed all the Procurator's responses. The Salvadoran Labour Code contravened article 26 of the Convention by providing that aliens could not be members of trade unions' governing bodies. The fact that Salvadorans abroad had no vote was contrary to the Constitution, which provided that all adult citizens wherever resident were entitled to vote. The reform of Salvadoran law was therefore urgently needed so that judges could apply the Convention.

39. She condemned the Salvadoran authorities' tendency to criminalize Salvadorans expelled to El Salvador. Such persons were frequently questioned on their arrival, after several days' detention in the United States or Mexico and a long bus journey, and then transferred to police stations, where they were questioned again and their personal details placed on file.

40. With respect to statistics, between 500 and 600 Salvadorans left the country every day., mainly for the United States (in 90% of cases), neighbouring countries and the European Union. Some 2.8 million Salvadorans, or 29% of the population, lived abroad. In El Salvador itself, the

great majority of people worked in the informal sector and labour law was widely ignored. The situation of foreign children was no better than that of their Salvadoran counterparts.

41. Mr. MONTENEGRO (El Salvador Human Rights Commission) said that his organization had received several complaints concerning the difficult situation of Guatemalans, Hondurans and in particular Nicaraguans living in the department of San Miguel and the conditions of their expulsion. Salvadorans repatriated or expelled from the United States of America were also frequently mistreated: after having spent long periods in detention, made a lengthy journey and left their belongings behind, they faced having their personal details placed on file and were then transferred to facilities close to the airport for questioning.

42. Salvadorans in search of a better life went in their great majority to the United States, but also to Mexico and increasingly to Italy and Spain. A number of Salvadoran women having recently been kidnapped in Chiapas by groups of former soldiers, it would be interesting to hear what the Salvadoran authorities intended to do to obtain their release. The Committee might also stress the need for El Salvador to give the vote to Salvadorans abroad.

43. The CHAIRPERSON thanked the representatives of national human rights institutions and NGOs for their participation and the additional information they had provided in preparation for the consideration of the country's report at the Committee's next meeting.

The meeting rose at 1 p.m.
