



**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

Fourth session

SUMMARY RECORD OF THE 38th MEETING*

Held at the Palais Wilson, Geneva,
on Friday, 28 April 2006, at 3 p.m.

Chairperson: Mr. KARIYAWASAM

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* No summary records were issued for the 36th and 37th meetings.

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Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.25 p.m.

ADOPTION OF A WRITTEN CONTRIBUTION TO THE GENERAL ASSEMBLY'S
HIGH-LEVEL DIALOGUE ON MIGRATION AND DEVELOPMENT (agenda item 8)
(continued) (CMW/C/4/CRP.2/Rev.3)

1. The CHAIRPERSON invited the Committee to consider, paragraph by paragraph, the third revision of the draft text of the Committee's written contribution to the General Assembly's high-level dialogue on migration and development, with a view to its adoption. The references in brackets in the draft would not appear in the final text.

Paragraph 1

2. Paragraph 1 was adopted.

Paragraph 2

3. Mr. ALBA suggested that the phrase "human rights" in the second sentence should be replaced by the word "rights".

4. Paragraph 2, as amended, was adopted.

Paragraph 3

5. Paragraph 3 was adopted.

Paragraph 4

6. Mr. ALBA suggested that the order of the words "trafficking" and "smuggling" in the last sentence should be reversed.

7. Paragraph 4, as amended, was adopted.

Paragraph 5

8. Paragraph 5 was adopted.

Paragraph 6

9. Mr. ALBA suggested that, in the second sentence, the order of the words "trafficking" and "smuggling" should be reversed, as in paragraph 4.

10. Paragraph 6, as amended, was adopted.

Paragraph 7

11. Mr. ALBA suggested that the phrase "will facilitate their integration", in the second sentence, should be moved to the end of the sentence, which would thus read: "Such preparation will place them in a better position to perform their activity and thus contribute to the social and economic development of their country of employment, and will facilitate their integration."

12. Paragraph 7, as amended, was adopted.

Paragraphs 8 to 12

13. Paragraphs 8 to 12 were adopted.

Paragraphs 13 and 14

14. Paragraphs 13 and 14 were adopted.

Paragraph 15 (a)

15. Mr. BRILLANTES said that consular protection should be provided before migrants suffered any impairment of their human rights. He therefore suggested that the word “impaired” should be replaced by the word “threatened”.

16. Mr. ALBA suggested that, in order to cover both eventualities, the phrase “threatened or impaired” could be used.

17. Paragraph 15 (a), as amended, was adopted.

Paragraph 15 (b)

18. Mr. EL JAMRI suggested that the word “forced” should be inserted before the word “sponsorship”, in order to stress that the Committee had in mind sponsorship involving coercion.

19. The CHAIRPERSON suggested that the singular word “system” should be replaced by the plural word “systems”.

20. Paragraph 15 (b), as amended, was adopted.

Paragraphs 15 (c) to (h)

21. Paragraphs 15 (c) to (h) were adopted.

Paragraph 16

22. Following an exchange of views with Mr. ALBA, the CHAIRPERSON suggested that the phrase “in the impossibility of seeking justice” should be replaced by the phrase “with difficulties in seeking justice”.

23. Paragraph 16, as amended, was adopted.

Paragraphs 17 to 20

24. Paragraphs 17 to 20 were adopted.

Paragraph 21

25. Mr. ALBA said that the word “developing” in paragraph 21 (a) should be replaced by a more appropriate word.

26. Mr. BRILLANTES suggested that the phrase “When developing” should be replaced by the phrase “In pursuing”.

27. Paragraph 21, as amended, was adopted.

Paragraph 22

28. Mr. ALBA, supported by the CHAIRPERSON, suggested that the expression “of course” should be deleted; it was too colloquial.

29. Paragraph 22, as amended, was adopted.

Paragraph 23

30. Mr. SEVIM said that, in paragraph 23 (b), which dealt with the need to avoid double taxation of the earnings and savings of migrant workers, mention should also be made of pensions and social security benefits.

31. The CHAIRPERSON said that he understood Mr. Sevim’s concern but pointed out that the Convention did not explicitly mention pensions or social security. He drew the Committee’s attention to article 48, paragraph 2, of the Convention, which provided that: “States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.” It must therefore be presumed that the “earnings” mentioned in the article included pensions and social security benefits. He wondered whether it would be wise to go further than the provisions of the Convention. In his view, it would not. The Committee’s immediate aim, after all, was to encourage more States to accede to the Convention. He recalled that the representatives of over 150 States that were not party to the Convention would be attending the next session of the General Assembly; it would be more sensible to abide by the letter of the Convention so as not to give States any cause for additional concern with regard to the text.

32. Mr. SEVIM said that to retain the text in its current form, without including an explicit reference to pensions and social security benefits, would mean that the Committee was as good as endorsing the double taxation of pensions and benefits.

33. The CHAIRPERSON said that he could not agree with that view. It seemed to him that the word “earnings” also covered pensions and social security benefits.

34. Mr. ALBA suggested that the word “any” should be inserted before the words “double taxation”, which would cover all the possibilities without specifying the nature of the earnings.

35. The CHAIRPERSON suggested taking that idea a step further and amending the phrase to read “any double taxation of any earnings”. The phrase “any earnings” would cover all payments, whatever their source, including pensions and social security benefits.

36. Mr. SEVIM, supported by Mr. ALBA, wondered in which categories old-age pensions and family allowances belonged. Could they be considered earnings? If they could, there was no problem; but old-age pensions, disability allowances, widows’ pensions and child benefits were not really earnings. Perhaps a term covering all those concepts could be found.

37. The CHAIRPERSON said that the question was whether the Committee was going to keep to the terminology used in the Convention or whether it was going to put its own interpretation on the provisions of the Convention. From the point of view of the Committee's report to the General Assembly, it would, in his view, be more sensible, for the time being, to stick to the wording of the Convention and not attempt to introduce innovations. There could be no doubt that "any earnings" included all benefits, of whatever kind. The Committee could, at least, agree on that approach for the time being and await the opportunities for discussing the issue that would arise in the future when it came to consider other country reports. The text before the Committee was a contribution to the high-level dialogue to be held under United Nations auspices and, for that reason, it would be better not to go into too much detail. He asked whether the Committee could agree on the wording "to avoid any double taxation of any earnings and any savings of migrant workers" or else "any earnings or savings of migrant workers".

38. Mr. SEVIM wondered whether it might not be preferable to use the word "remuneration" rather than "earnings", because bilateral agreements on the avoidance of double taxation already existed at the level of the Organization for Economic Cooperation and Development (OECD) and other organizations. Under such agreements, social security payments could not be subject to double taxation. It would be remiss of the Committee not to take that into account in its written contribution.

39. Ms. CUBIAS MEDINA said that the document prepared by the Committee was based on the articles of the Convention, which it was intended to promote. It would therefore be appropriate to continue using the language of the Convention, as the Chairperson's suggested wording did. There was certainly much to be said for the point made by Mr. Sevim, but the question had not yet been properly considered by the Committee. Moreover, different regions took different views of the topic. The Committee should stay within the framework of the Convention and focus on its provisions so as to profit by the opportunity offered by the high-level dialogue to promote a wider understanding of the Convention.

40. The CHAIRPERSON said that he fully shared Ms. Cubias Medina's opinion. In the future, the Committee must set aside some time to establish the meaning of the provisions of the Convention more precisely but, in the meantime, it should not use different wording without due deliberation. Admittedly, the words "remuneration" and "earnings" had the same meaning, but the words "earnings" and "savings" must be used because they were the ones used in the Convention. He therefore suggested that the phrase "the earnings and savings" should be replaced by the phrase "any earnings and savings", thus keeping to the wording of the Convention but at the same time including every aspect of remuneration or savings that might be covered by the word "earnings", the exact meaning of which the Committee should make a point of establishing in the course of its future work.

41. Following a discussion in which Mr. SEVIM, Mr. ALBA and Ms. CUBIAS MEDINA took part, the CHAIRPERSON suggested the adoption of the following wording: "any earnings and savings of migrant workers".

42. Paragraph 23 (b), as amended, was adopted.

Paragraphs 23 (c) and (d)

43. Paragraphs 23 (c) and (d) were adopted.

Paragraph 24

44. The CHAIRPERSON suggested that the words “in their development” in the first sentence should be deleted, so that the text would simply state that “countries of origin, of transit or of employment all benefit from migration”.

45. Mr. EL JAMRI said that he was unhappy with the phrasing of the sentence, since it implied that a State had to protect migrant workers’ rights only because such workers contributed to its development. The inference might be that non-working migrants were not entitled to the same protection.

46. The CHAIRPERSON said that the message that the Committee should convey was indeed the importance of the role played by migrant workers in development. If, however, Mr. El Jamri felt that the effect of the text was to make migrants’ rights dependent on their contribution to development, the sentence should be redrafted.

47. Mr. EL JAMRI suggested the following wording: “Migration has an impact on the development of countries of origin, of transit or of employment; it is the shared responsibility of all States to guarantee the human rights of migrant workers and members of their families.”

48. Paragraph 24, as amended, was adopted.

49. The CHAIRPERSON said that the Committee’s written contribution to the General Assembly’s high-level dialogue on migration and development had thus been adopted in its entirety.

ADOPTION OF THE ANNUAL REPORT TO THE GENERAL ASSEMBLY (agenda item 9)
(CMW/C/4/CRP.1)

50. The CHAIRPERSON invited the Committee to consider, paragraph by paragraph, the Committee’s draft annual report to the General Assembly (CMW/C/4/CRP.1).

Paragraphs 1 to 10

51. The CHAIRPERSON suggested that paragraphs 1 to 10 should be adopted, subject to editorial corrections to paragraphs 3, 7 and 8.

52. Paragraphs 1 to 10 were adopted.

Paragraph 11

53. Ms. EDELENBOS (Secretary of the Committee) submitted the estimate mentioned in paragraph 11.

54. Paragraph 11 was adopted.

Paragraphs 11 bis to 18

55. The CHAIRPERSON noted that a second paragraph 11 had been included, which should be numbered 11 bis. After reading it out, he suggested that it should be adopted, along with paragraphs 12 to 18, subject to editorial corrections to paragraphs 13 and 16.

56. Paragraphs 11 bis to 18 were adopted.

Section II. Methods of work

57. The CHAIRPERSON invited the Committee to consider the two paragraphs of section II, so far unnumbered, concerning the Committee's methods of work.

58. The two unnumbered paragraphs of section II were adopted.

Paragraphs 19 and 20

59. Paragraphs 19 and 20 were adopted.

Paragraph 21

60. The CHAIRPERSON invited Mr. Alba (Rapporteur for Mali) to present the main points of the Committee's concluding observations on the initial report of Mali, the text of which would appear immediately following paragraph 21.

61. Mr. ALBA (Rapporteur for Mali) said that the Committee began by welcoming the initial report submitted by the State party and thanking it for the written replies to the list of issues, which had been provided in a timely manner. It expressed regret, however, that several of the questions put to the delegation, especially those concerning current legislation and practical arrangements implemented at local level, had been met with only general, incomplete or vague answers. It had also noted with concern that many countries employing Malian migrant workers were not parties to the Convention, which hampered those workers' enjoyment of their rights under the Convention.

62. The positive aspects included the fact that Mali had been the first country to submit an initial report; the existence of the Ministry for Malians Living Abroad and African integration; the fact that a number of expatriate Malians were entitled to participate in presidential elections; and the fact that Mali had acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Committee welcomed the promulgation of Act No. 04-058 of 25 November 2004 governing the entry, stay and residence of foreigners in the Republic of Mali.

63. The Committee took note of the difficulty that the State party claimed to have in controlling the illegal or clandestine movements of migrant workers, largely owing to the length of its borders with the seven neighbouring countries. It noted with regret that Mali had not made the declarations provided for in articles 76 and 77 of the Convention and had not yet acceded to Conventions Nos. 97 and 143 of the International Labour Organization (ILO). It also regretted

that the State party had not provided sufficient information on the specific measures it had taken to implement the Convention. It welcomed the fact that, under article 116 of the Constitution, international treaties, including the Convention, took precedence over national legislation but was nonetheless concerned that, according to the State party, the Convention could not be applied by the courts, since it had not yet been incorporated into national legislation.

64. The Committee strongly encouraged the State party to make good the lack of statistics on migration flows and to seek the technical assistance required for that purpose, and also to disseminate the provisions of the Convention as widely as possible. It further invited the State party to provide training for officials working in the area of migration and to institute an inclusive procedure that would allow non-governmental organizations and other members of civil society to participate in the preparation of the country's next periodic reports.

65. The Committee observed with interest that Malian legislation made no distinction between Malian workers and migrant workers. It regretted, however, the lack of information relating to practice and examples that would make it possible to assess the implementation of the relevant provisions. It invited the State party to provide precise, detailed information on the realization of the rights and freedoms established in the Convention in respect of all migrant workers and members of their families. It noted with concern the manifest lack of coordination among the institutions and services dealing with the various aspects of migration and encouraged the State party to establish an appropriate mechanism to improve the services provided for migrant workers and members of their families. It took note of cooperation programmes between certain countries and Mali for the voluntary return of Malian migrant workers and requested the State party to provide it, in the future, with more detailed information on the effective implementation of the programmes and on their results.

66. The Committee recommended that the State party should intensify its efforts to combat trafficking in children and women. Lastly, it requested it to take action on the recommendations contained in the concluding observations and to disseminate the conclusions widely among public agencies, non-governmental organizations and the public at large.

67. Paragraph 21 was adopted.

68. The CHAIRPERSON said that the Committee had thus adopted the report on its fourth session.

CLOSURE OF THE SESSION

69. The CHAIRPERSON, taking stock of the Committee's work at the current session, highlighted the fact that it had considered its first country report, drawn up a list of issues in connection with the consideration of the initial report of Mexico and adopted a contribution to the General Assembly's high-level dialogue on migration and development. In conclusion, he thanked all those who had contributed to the success of the Committee's fourth session.

The meeting rose at 5 p.m.