



**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
Twelfth session**

Summary record of the 128th meeting

Held at the Palais Wilson, Geneva, on Monday, 26 April 2010, at 3 p.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 3.10 p.m.

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

Initial report of Algeria (CMW/C/DZA/1; CMW/C/DZA/Q/1 and Add.1; HRI/CORE/1/Add.127)

1. *At the invitation of the Chairperson, the delegation of Algeria took places at the Committee table.*
2. **Mr. Jazairi** (Algeria) pointed out that Algeria had helped draft the Convention, had ratified it by presidential decree in December 2004 and was actively promoting its universal ratification and implementation.
3. Algeria had signed eight universal human rights instruments and relevant International Labour Organization conventions and was fully committed to human rights and to expanding the scope of liberties. That commitment was translated into action by incorporating international instruments into domestic law on the basis of the principles of equal treatment and non-discrimination between nationals and foreigners.
4. As a country of origin, Algeria had an estimated 1,496,000 of its nationals registered with its consular services throughout the world. They voted in national elections and elected direct representatives to the National People's Assembly and the Advisory Council of the National Community Living Abroad, established in September 2009 at the initiative of the President of the Republic. Mindful of their situation, Algeria had taken steps to defend their rights and to protect them, through dialogue and bilateral agreements and in regional and international forums, against the burgeoning scourges of xenophobia, Islamophobia and racism.
5. On account of its geographical situation at the crossroads of Africa and Europe and its economic potential, Algeria had become a transit and destination country for ever-growing numbers of migrants in a regular or irregular situation from some 30 sub-Saharan countries and, more recently, Asian countries, who wanted to reach the northern shores of the Mediterranean. In recent years, the economic growth support programme had attracted legal and illegal migrants, with some working in the Algerian informal sector in order to finance their attempt to emigrate to Europe and others looking to settle permanently in Algeria, where 107,000 migrants were already living legally. Those migration flows created labour market and public order problems that needed to be addressed, taking into account the close relationship between migration and development. Algeria was sparing no effort in that area and was carrying out several development programmes to protect the lives of some of its citizens trying to emigrate unlawfully.
6. At the regional level, Algeria had been a prime mover behind the African common position adopted at the African Union Summit held in Banjul in 2006, which called for a comprehensive, integrated, balanced and coherent development-based approach to migration issues. It had also mooted the idea of a monitoring office on migratory movements in the Mediterranean region, which was still to be established. At the international level, Algeria was taking an active part in formulating international migration and development policies, for example within the International Organization for Migration.
7. Act No. 08-11 of June 2008 on the conditions of entry, residence and movement of aliens in Algeria represented a significant step forward compared to the legislation in force during the initial reporting period, in particular with regard to the right to family reunification, the abolition of exit visas for aliens, the extension of the validity of the residence permit from 2 to 10 years and specific legal protection for alien minors. The Act placed strict procedural constraints on expulsions and deportations, provided for the right to appeal with suspensive effect and did not allow measures of collective expulsion.

8. In order to protect the right to life, specified in article 9 of the Convention, the Act established penalties for persons involved in irregular migration networks and for persons who left the country illegally. The offences of trafficking in persons and smuggling of migrants had been introduced into the Criminal Code by Act No. 09-01 of February 2009.

9. That legislation had been further strengthened by various safeguards that had been put in place under bilateral agreements entered into by Algeria in the areas of social security, employment, movement and readmission of nationals, and by agreements to avoid double taxation.

10. The Algerian authorities ensured that those texts were circulated to judges, other law enforcement personnel and diplomatic and consular officials, and provided training in their enforcement. In view of the cross-cutting nature of migration, responsibility for it was shared among the following ministries: the Ministry of the Interior and Local Government, the Ministry of Foreign Affairs, the Ministry of National Solidarity, the Family and the National Community Living Abroad, the Ministry of Labour, Employment and Social Security, the Ministry of Education and the Ministry of Health, Population and Hospital Reform.

11. The Chairperson, welcoming the establishment of the National Advisory Commission for the Promotion and Protection of Human Rights, asked whether Algeria had established a legal framework to coordinate the various sectoral policies concerning migrant workers.

12. **Ms. Poussi Konsimbo** said that she was pleased that Algeria had ratified the relevant international conventions on migrant workers and that in its migration policies it used the African guidelines, particularly the Strategic framework for migration in Africa and the African Common Position on Migration and Development. She would be interested in feedback on the implementation of the bilateral agreements on migration entered into by Algeria.

13. She would like detailed information on deportation proceedings against illegal migrant workers because the report stated that in order to be protected a foreigner must be in a regular situation, whereas the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families made no distinction between regular and irregular migrants. There was no information in the report on the recognition of migrant workers in an irregular situation as persons before the law or on how Algeria guaranteed them the possibility of declaring the birth of a child without fearing deportation. It would also be useful to have details on the way in which expulsion orders were notified, the remedies available and the place of residence that could be designated in the event of expulsion. She would also like to know who covered the living expenses of the person concerned, how long the situation might last, what treatment was accorded to persons subject to an expulsion order who could prove that they were unable to return to their country of origin or a third country and why no investigation into such a person's situation was carried out before the expulsion order was made. Neither did the report explain how the legal aid system worked or what the conditions of eligibility were, nor did it make clear whether migrant worker status could constitute a mitigating circumstance in criminal cases.

14. Current legislation on trade unions appeared to breach article 40 of the Convention although, under article 132 of the Constitution, it was supposed to take precedence over domestic law. It would be interesting to know whether migrant workers were currently able to join a trade union and, if not, whether their right to do so would be recognized in the new Labour Code. The report stated that migrant workers enjoyed no political rights, despite the fact that article 42 of the Convention encouraged States to facilitate their participation in the administration of local communities. In addition, it would be useful to know whether migrant workers enjoyed freedom of thought, conscience and religion and the right to freedom of opinion and expression.

15. With respect to the educational establishments that the children of migrant workers could attend, the delegation might like to make it clear whether the citizenship criterion was strictly applied or whether it was possible to choose a school. Information on the situation of unaccompanied migrant children would also be welcome.

16. She would like to learn on what legal basis and why Algeria had in 1975 reportedly expelled 45,000 Moroccan families, what the impact had been on those families and whether any compensation had been envisaged.

17. As Algeria's written replies to some questions had been inadequate, the delegation might like to indicate whether the Convention applied to refugees and stateless persons (question 7), whether some of the sub-Saharan migrants collectively expelled in 2008 had been able to appeal the expulsion order and, if so, what the result of those appeals had been (question 15) and whether a mechanism for coordination between the various State services dealing with migration questions had been established (question 27).

18. **Mr. Sevim** asked whether there was a programme to help migrant women overcome the problems they faced, particularly given that some from sub-Saharan Africa were reportedly forced into prostitution to pay back the cost of their journey, and whether the authorities intended to take action to improve the overall situation of women in Algeria. The Criminal Code criminalized only trafficking in persons for the purpose of prostitution, which was alarming because all forms of trafficking should be prohibited.

19. He was concerned that only persons who had been Algerian citizens for at least 10 years had the right to establish a trade union organization and that migrant workers therefore had little opportunity to assert their rights effectively in their workplace.

20. The delegation might like to indicate whether the readmission agreements entered into with France, Germany, Switzerland, Italy, Spain and the United Kingdom incorporated the due process provided for in article 22 of the Convention and whether collective expulsions were now prohibited.

21. It would also be useful to know how many social security agreements the State party had entered into with other countries, which social security benefits were transferrable between the host country and the migrant workers' country of origin and whether the migrant workers' family members left behind in their home country were entitled to the benefits provided by Algeria.

22. **Mr. El-Borai** asked whether article 42 of the 2010 Finance Act, which had ordered the Land Registry to remove the names of owners of abandoned property, applied to expelled migrant workers and, if so, whether that provision was not inconsistent with article 15 of the Convention.

23. **Mr. Tall** requested further information on the legislation and regulations mentioned in article 9 of Act No. 8-11 of 25 June 2008, whereby "a non-resident alien in a regular situation on Algerian territory may leave the country pursuant to the legislation and regulations in force". What happened in the case of an alien in an irregular situation who wanted to leave the country?

24. The new Labour Code should expressly guarantee the migrant worker's right to engage in trade union activities; he wondered whether article 42 of the Constitution, under which only persons in a regular situation could found or join an association did not discriminate against migrant workers in an irregular situation.

25. Detailed information on the application of article 67 of the Constitution would be useful, recognizing as it did the right only of aliens lawfully present in Algerian territory to legal protection of their person and property, which raised the question of the treatment of aliens in an irregular situation. The delegation might perhaps explain the current procedures for the expulsion and refoulement of aliens at the border, indicate whether those persons were entitled to the assistance of counsel, what was done to provide a lawyer for those

unable to afford one, and describe the explicit measures taken to ensure in practice the right of aliens detained, facing prosecution or threatened with an expulsion order to receive assistance from their country's diplomatic or consular representatives in Algeria.

26. He would be interested to learn whether Act No. 09-11 contained provisions on the protection of victims of trafficking and migrant smuggling.

27. **Mr. Alba** asked whether Algerians who left the country were more likely to come from rural or urban areas and whether the characteristics of Algerian immigrants and emigrants were very different. He would like further information on consular assistance to foreign migrant workers in Algeria and to Algerian migrant workers abroad and on the number of migrant workers whose repatriation costs were borne by their country of origin. The delegation might perhaps indicate the penalties for anyone employing migrants in an irregular situation and the consequences for migrant workers of breaching laws and regulations on conditions of employment and residence for foreigners.

28. Recalling that under the Convention each child of a migrant worker should have the right to registration of birth and to a nationality and, in view of the State party's written reply to question 19, he wondered whether there was not a conflict in Algerian legislation between the notions of birth registration and nationality.

29. He wished to know how many people benefited from the scheme to provide assisted holidays in the migrant worker's country of origin, from reductions on airfares and ferry tickets and the level of those reductions.

30. **Ms. Cubias Medina** asked whether the children of migrant workers had to produce a certificate showing that their parents were legally resident in Algeria in order to be able to attend school and whether graduation depended on showing their parents' residence permit. She wondered whether access to health services was guaranteed to all children of migrant workers only for emergency treatment or whether they were entitled to primary health care.

31. She would like to know whether the State party provided shelters for the victims of trafficking in persons, whether awareness-raising campaigns on the risks of travelling without documents were held, whether there were detention centres for illegal migrants, whether minors were held in such centres or whether there were special centres for them and whether Algerian migrants expelled from other countries benefited from special programmes that took account of their particular needs.

32. **Mr. Brillantes** asked whether Algeria applied International Civil Aviation Organization standards, particularly with respect to issuing biometric passports, with a view to preventing falsification of travel documents. A law establishing the offence of illegal departure from Algeria had apparently been passed, and would be inconsistent with the principle of freedom of movement. He would therefore like further information, particularly on whether the law applied only to persons who were caught in the act of attempting to emigrate illegally or whether it also applied to persons who had returned to Algeria after emigrating illegally.

33. **Mr. Carrión Mena** asked what countries Algeria had entered into bilateral agreements with and what impact their implementation had had on managing migration flows. He would also like to know to what extent religious and cultural factors might influence implementation of the Convention, particularly with regards to divorce, and what happened to the members of the family of a migrant worker if he died.

34. **Ms. Miller-Stennett** asked whether the Algerian Government cooperated with NGOs in areas involving migrants, documented or otherwise, and whether it used statistics and other information from NGOs in preparing its reports.

35. **The Chairperson** asked what rights Algerians with dual nationality lost when they acquired foreign citizenship and what the State did to ensure social protection for Algerians living in countries, particularly African or Arab countries, which had no such system.

The meeting was suspended at 4.55 p.m. and resumed at 5.45 p.m.

36. **Mr. Saadi** (Algeria) said that the right to education, which was free and guaranteed by the State up to the age of 16, was enshrined in the Constitution and applied to all citizens and residents of Algeria. Migrant workers, legal or illegal, could enrol their children in Algerian schools or in foreign schools funded by third countries. The award of a graduation certificate was in no way linked to the residence status of pupils or students, who were not obliged to take courses in religion, in that context.

37. Algeria guaranteed the practice of religion within the framework of the law: all religious communities had the right to practise, respect their own rites, pray and organize religious ceremonies, provided that the religious establishments were accredited. Accordingly, Christmas was celebrated by all Christian residents of Algeria.

38. The right to health was guaranteed. All children living in Algeria, irrespective of their nationality or residence status, were vaccinated, free of charge, as part of the compulsory vaccination programme.

39. There was no NGO in Algeria working specifically in the area of migration and even though no member of the Advisory Committee, which was made up of NGO and civil society representatives, had been included in the delegation, it had been involved in the drafting of the report, which had been overseen by the Ministry of Social Affairs.

40. **Mr. Bourbia** (Algeria) said that six major pieces of social legislation based on international labour law standards ratified by Algeria had been enacted shortly after adoption of the Constitution in 1989. The Labour Relations Act (No. 90-11) made no distinction between Algerian and foreign wage earners regarding compliance with working conditions. Under article 5, workers enjoyed the following basic rights: exercise of the right to organize, collective bargaining, worker participation, social security cover, irrespective of nationality, occupational health, safety and medicine and participation in the prevention and settlement of collective labour conflicts. Article 17 prohibited all forms of discrimination and article 142 established that the signatory to a collective agreement or a collective labour agreement containing provisions conducive to discrimination between workers in employment, remuneration and working conditions was punishable by a fine of DA 2,000 to DA 5,000. In practice, workers of Jewish or Christian faiths enjoyed paid leave under legislation dating from 1963, which was still in force.

41. The Labour Inspectorate, established under the Act of 6 February 1990, was an effective body charged in particular with enforcing legislation and regulations regarding individual and collective labour relations and working, sanitary and safety conditions for workers. Article 3 established that the Labour Inspectorate mandate covered any place where workers were employed, without distinction of any kind.

42. Article 6 of Act No. 90-14 on the exercise of the right to organize set out several criteria for establishing trade unions, including the proviso of Algerian citizenship. Nevertheless, a foreign worker in a company could join a trade union and enjoy all workers' rights. Article 14, in accordance with the International Labour Organization Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), provided that the management boards of trade union organizations should be elected or re-elected in accordance with democratic principles and with existing statutes and regulations governing those trade unions. A foreign worker employed in a company could therefore stand for election and be elected without hindrance if he was in a regular situation and had been working in the company for a certain time.

43. **Ms. Driss** (Algeria) said that, following ratification of the United Nations Convention against Transnational Organized Crime, its Protocol against the Smuggling of Migrants by Land, Sea and Air and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Algeria had brought its legislation into line by adopting Act 09-01 amending the Criminal Code, which criminalized trafficking in persons and smuggling of migrants. Section 5 bis defined trafficking in persons in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, namely “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. Trafficking in persons was punishable by a prison term of 3 to 10 years; it was considered an aggravated offence, punishable by a prison term of 5 to 15 years, when it was committed against a person whose vulnerability due to age, illness or physical or mental disability was apparent or known to the perpetrator. It was punishable by a prison term of 10 to 20 years if committed by more than one person, with a weapon or threat of a weapon, by an organized or transnational criminal group.

44. Ordinance No. 72-03 relating to the protection of children and young persons applied to foreign children in an irregular situation in the same way as it did to all Algerian children in moral danger. Article 1 provided that “minors under the age of 21 years whose health, security, morals or education are endangered, or whose living conditions or behaviour may jeopardize their future, may be subject to protective and educational assistance measures”. A minor in an irregular situation and without parents was covered by that provision.

45. Protective measures provided for by the Ordinance were implemented by the juvenile court, to which the case could be referred *ex officio* or at the request of the public prosecutor, *wali*, president of the court or probation officer. The juvenile court requisitioned a personality study of the minor through a social background check, a behavioural study and medical, psychological and psychiatric tests, before taking measures adapted to their personality, in particular awarding custody to a trustworthy person or placing them in a childcare or observation centre. If the minor proved to be foreign and his or her parents were known, the case was referred to the consular authorities of the minor’s country of origin with a view to repatriation. If foreign minors did not provide sufficient information for them to be identified, because of their youth or refusal to cooperate, the juvenile court placed them in a juvenile protection centre, where they would benefit from full guarantees (health, educational and moral protection). In the meantime, the court continued its efforts to identify the minor, with the cooperation of the relevant authorities, and nothing prevented it from seeking the assistance of international organizations and institutions through the authorities concerned.

46. **Mr. Jazaïry** (Algeria) pointed out that migrant children unaccompanied by their parents were registered and given Algerian citizenship until they had been successfully identified.

The meeting rose at 6.05 p.m.