



**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

Third session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 15 December 2005, at 3 p.m.

Chairperson: Mr. KARIYAWASAM

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

DAY OF GENERAL DISCUSSION (agenda item 7) (continued)

Protecting the rights of all migrant workers as a tool to enhance development

1. Mr. CHOLEWINSKI (University of Leicester) delivered the keynote speech on the second theme of the day of general discussion, “Protection of the human rights of migrant workers and members of their families under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a tool to enhance development in the country of employment”. He said that labour migration and migrants were very important for the development of countries of employment, whether those were developed countries, in the case of South-North migration, or developing countries, in the case of South-South migration. The core international human rights instruments applied to both citizens and non-citizens alike, and thus to all migrants regardless of their status and nationality. Development did not simply mean economic development but was rather a comprehensive economic, social, cultural and political process. The human person was the central subject of development and the integration policies and socio-economic conditions in the country of employment determined the ultimate consequences of migration. Labour migration, development and respect for human rights were three inseparable, mutually reinforcing concepts.
2. In order to use the Convention as a tool to enhance development in the country of employment, it was necessary to protect the fundamental rights of migrant workers and members of their families so as to facilitate their integration into the country of employment and their contribution to society in the host country. That would mean, among other things, taking measures to facilitate family reunion and to ensure that migrant workers, regardless of their status, benefited from the same working, employment and remuneration conditions as citizens, that they had access to education and social security, particularly in emergencies, and that they could exercise their right to organize and maintain their cultural identity. Ideally, they should also be allowed to participate in the political life of the host country.
3. To reduce the harmful effects of illegal immigration, the rights of migrant workers and members of their families in irregular situations needed to be protected. In that regard, the Convention had a number of shortcomings. For example, while the Convention stressed that important social rights such as the rights to social security, health care and education were applicable to irregular migrants, the scope of some of those rights in the Convention appeared narrower than in more general international human rights instruments as interpreted by the competent treaty bodies.
4. None of the provisions of the Convention could be interpreted as implying that all migrant workers and members of their families without papers or in irregular situations should be regularized. However, migrant workers and members of their families needed to be better informed about their rights, as they still faced many legal and practical obstacles. The initiative of the non-governmental organization (NGO) Platform for International Cooperation on Undocumented Migrants (PICUM), which had recently published a report entitled “Ten ways to protect undocumented migrant workers”, was to be commended in that respect.

5. Regarding the role of consultation and cooperation between States in promoting development in countries of employment, it should be noted that even though States might be reluctant to sign up to legally binding normative instruments, given the complex nature of migratory patterns, States parties to the Convention were making increasing efforts to cooperate at the international, regional and bilateral levels to promote sound, equitable and humane conditions for the international migration of workers and members of their families.
6. The Convention was undoubtedly an instrument that helped to promote increased awareness of the advantages of protecting the basic rights of all migrant workers and members of their families in countries of employment, to prevent the marginalization and social exclusion of irregular migrants and to underscore the importance of international cooperation on the issue. The day of general discussion would illustrate the multifaceted nature of international migration and development and show the importance of respect for human rights in the sustainable development of all countries involved in the labour migration process.
7. Ms. GONZÁLEZ (Colombia) urged destination countries to ratify the Convention in order to promote respect for the basic rights of migrants. Labour migrations could, if negotiated and carried out in a dignified manner, be extremely beneficial for all countries and regions, offering more human resources for some and new skills and economic benefits for others. It was important to recognize the contribution made by migrant workers to the development of countries of employment and their right to equal remuneration and working conditions, since that would discourage the employment of workers in irregular situations.
8. Everyone would benefit if migrant workers were able to work legally. Countries of employment should adopt migration policies that encouraged mobility in order to raise their production capacities and increase their competitiveness. Where possible, regularizing workers in irregular situations was particularly advantageous insofar as it prevented the most serious cases of persecution and exploitation and enhanced migrant workers' ability to contribute to the development of the society in which they lived and worked.
9. Mr. DOUCIN (Observer for France) said that his country had held discussions with the other member States of the European Union and the Organization for Security and Cooperation in Europe about the need to accede to the Convention. Although his Government agreed unreservedly with the provisions of the Convention, it believed that the International Labour Organization conventions and the European Convention on the Legal Status of Migrant Workers already covered the same ground. In addition, the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, to which the Government of France had been reporting for a long time, already dealt with many of the questions relevant to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. His Government therefore believed it was preferable to wait for the results of the treaty body reform instigated by the Secretary-General before making a decision on whether to accede to the Convention.
10. Mr. DOMÍNGUEZ SANTOS (Frente Indígena de Organizaciones Binacionales) said that the thousands of Mexican workers living in the United States of America made a great contribution to the economic and cultural development of that nation. He noted that many participants in the general discussion recognized the economic contribution of migrants to host countries but underestimated their cultural contribution, which was in fact just as important. The

best solution in the United States would be to regularize the situation of the thousands of migrant workers there. The authorities of that country were mistaken in thinking that they could put an end to the flow of migration by closing its borders. A permanent forum should be set up to address migration issues and all States should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. Ms. MASTROMATTEO (Collectif des travailleuses et travailleurs sans statut légal) called upon Switzerland, home to the founders of the Red Cross and host country to many international human rights bodies, to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to regularize the situation of the 300,000 or so undocumented migrants within its borders, who contributed to the economic and cultural development of the country, and to put an end to all measures to expel illegal migrant workers.

12. Mr. PÉREZ BUSTILLO (MIREDES Internacional) said that his organization campaigned ceaselessly to ensure that the voices of millions of migrant workers whose basic rights were flouted all over the world were heard, and that human beings were given priority over States. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was one of the few treaty bodies that did not treat NGOs dealing with the rights of migrant workers as organizations of secondary importance. It was unacceptable that the United Nations General Assembly had decided to allow only one NGO to participate in the high-level dialogue on international migration and development that it was organizing for September 2006. It was vital that the United Nations should give civil society a more prominent role in its substantive discussions.

13. Ms. SMITH (National Employment Law Project) expressed regret that the United States of America, which had approximately 6 million illegal migrants in its territory, had not deemed it useful to ratify the Convention. The situation of migrant workers was increasingly alarming, particularly because their basic rights were not sufficiently protected and they were more and more often the victims of discrimination, especially in the workplace. The adoption of increasingly strict migration policies in the United States had not had any dissuasive effect and the number of illegal migrants attempting to enter the country was still increasing. Regularizing illegal migrants would improve the situation but would not completely solve the problem of the failure to respect the rights of migrants, illegal or not. It must be noted that there were many international instruments dedicated to the principle of non-discrimination which aimed to protect the basic rights of migrants, but few of them were really enforced. States also possessed some very strict labour standards but few seemed to have the political will to enforce them. Migrants made an enormous contribution to the economic development of a country and every effort should be made to improve the working conditions of migrant workers, including by enforcing labour law, especially freedom of association.

14. She agreed with the previous speaker that it was of the highest importance to make the voice of migrants heard and to put human beings back at the centre of the debate.

15. Ms. JOURDAN (Association of World Citizens) said that her association was particularly interested in migrant workers' right to health care and stressed that prevention, rather than emergency medicine, was essential, given the upsurge in many infectious and communicable diseases, especially among migrant workers. Health services should be available

to all migrants, regardless of their status, if possible in their mother tongue. Countries of origin and host countries should cooperate closely to create networks of health and social services and develop cross-border action plans.

16. The cultural contribution made by migrant workers was very important; she urged host countries to promote the traditional cultural practices of migrants.

17. Ms. GRANGE (International Catholic Migration Commission) noted that the link between development and migration was not being discussed from a human rights perspective. Likewise, plans for the General Assembly's high-level dialogue on international migration and development due to be held in 2006 did not contain a specific human rights component. In the course of that dialogue, the Committee should present a general comment recommending a rights-based approach to migration and development. That general comment could serve as the basis for the Committee's future collaboration with other treaty-monitoring bodies.

18. Non-governmental organizations could not be represented by just one person in that dialogue; she urged the Committee to ensure that such organizations were widely represented, along the lines of United Nations regional groupings, and that representatives of migrant workers could also participate.

19. Mr. DURASAIMI (Coordination of Action Research on AIDS and Mobility (CARAM) Asia) said that, as far as health was concerned, the Convention recognized the right of migrant workers to receive medical care, but only if it was urgently required. However, since migrants stayed in their host countries for long periods and since their health was adversely affected by their working conditions, they should have access to medical care even if they were in an irregular situation. Migrant workers were often considered to be carriers of contagious diseases, and on arrival in certain host countries were required to undergo as many as 15 medical tests. In the event that they tested positive - particularly in the case of pregnancy testing - they were automatically returned to their country of origin. Once in the host country, migrant workers were exposed to the risk of occupational accidents, and women who were employed as domestic workers were particularly vulnerable to sexual abuse. Moreover, women migrants in an irregular situation could not afford to have a sex life or to become pregnant because their children would not be able to obtain legal status. For that reason, they resorted to abortions, which were often carried out in conditions that posed a threat to their health.

20. Since most migrant workers were from countries that were seen as rear bases for international terrorism, host countries considered them to be dangerous and expelled them, or arrested them and placed them in detention centres. It was important to understand, however, that migrant workers and their families were at the mercy of terrorist groups in countries affected by conflict and terrorism and therefore needed protection.

21. Mr. NARVÁEZ GARCÍA (American Association of Jurists) recalled that the right to work was a fundamental right under the Universal Declaration of Human Rights. Migration should also be considered an inherent right because all the peoples of the earth had emigrated at one time or another. For those reasons, all States that were not yet parties to the Convention

should accede to it, judges and courts should stop making a distinction in their decisions between migrant workers in a regular situation and those in an irregular one, and States should incorporate in their domestic legislation principles and norms that placed all workers, regardless of their status, on an equal footing.

22. Ms. CAHUASQUI (Comité andino de servicios) said that no speaker had, at any time during the discussion, talked about the political will needed to examine the causes of migration. In fact, when the representatives of States referred to cooperation, it was the situation in their respective labour markets and their security policies that were uppermost in their minds. They gave precedence to the free circulation of capital over that of persons, a graphic example of which was the excessive militarization of the border between Mexico and the United States of America.

23. Against such a background, it was necessary to give greater prominence to NGOs in meetings on migration, and to emphasize that ratifying the Convention was only of limited usefulness if it was not accompanied by political will on the part of States to recognize the contributions made by migrants both to countries of destination and to countries of origin.

24. Ms. DINGU-KYRKLUND (Centre for Research in International Migration and Ethnic Relations, University of Stockholm) said that the term “migrants” actually encompassed three categories of persons: migrants in a regular situation, migrants in an irregular situation and potential migrants. The latter had increasingly been the focus of discussions at the national and international levels because the developed countries were increasingly concerned about the ageing of their populations and the resulting problems related to the maintenance of their social security and pension systems. Migrants would do well to find out how rights, such as the right to work and social rights, were implemented in both countries of destination and countries of origin. She therefore invited the Committee to take the practical implementation of the Convention as the starting point for its subsequent discussions, with a view to defining the minimum level of implementation that States parties should be capable of achieving.

25. Ms. MARTIN (Collectif des travailleuses et travailleurs sans statut légal) said that, in Switzerland, the Foreign Nationals Act provided for differential treatment depending on whether a non-national was from a European or North American country or from an emerging or developing country - a practice commonly referred to as the “two circles policy”. The effect of that discriminatory legislation in Switzerland was that a large number of migrant workers in an irregular situation lived in constant fear of expulsion, despite the fact that they were active in all economic sectors and that the migrant workforce was indispensable. Pointing out that the Canton of Geneva had submitted a request to the federal authorities for the collective regularization of 5,000 undocumented workers, she urged all States to put pressure on the Swiss authorities to accede to the request and thereby put an end to an intolerable situation.

26. Mr. CHOLEWINSKI (University of Leicester), referring to the main points made by NGO representatives, said he agreed that the Committee was the most suitable body to define the link between migration and development as one founded on human rights. The Committee should pay special attention to the implementation of human rights when it considered the periodic reports of States parties.

27. With respect to the regularization of undocumented workers, the Convention did not prevent States that wished to do so from adopting measures for that purpose. Regarding the need to give migrants the opportunity to express their opinion, the Convention already met that concern by providing that States parties should facilitate their participation in decisions on matters of interest to them. By granting rights even to migrant workers who were in an irregular situation, the Convention provided “added value” not offered by other human rights instruments.

28. With regard to the attitude of the European Union towards accession to the Convention, no directive had been issued to prevent member States from ratifying the Convention should they so desire. The fact that there were divergent views within the European Union was essentially due to the fact that the labour market differed from one member State to the other. The results of a joint study carried out by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the member States of the European Union indicated that the text of the Convention had already been examined at all levels in France, but there was very little awareness of it in the other countries. Among the institutions of the European Union, the European Economic and Social Committee and the European Parliament had advocated ratification of the Convention, but the European Commission and the Council of Europe had not yet reacted to that recommendation.

The meeting was suspended at 5 p.m. and resumed at 5.20 p.m.

29. The CHAIRPERSON noted the richness of the discussion and commended the States that were not parties to the Convention for their participation in the meeting. He gave the floor to the representative of the International Labour Organization, which played an important role in efforts to implement the Convention.

30. Mr. TARAN (International Labour Organization) said that four main principles had emerged from the day’s discussion. Firstly, given that migrant workers were recognized as agents of development, both in their host countries and in their countries of origin, and as human beings and not commodities, the question of migration should be approached from a human rights perspective. Secondly, the contribution of migrants to the economic and social development of their host countries could be evaluated according to the standard of living, working conditions and level of integration of migrant workers, as Mr. Cholewinski had amply underscored. Thirdly, the way in which migrant workers were treated had a considerable impact on the level and nature of their contribution to the creation of human capital and to the development of their countries of origin. Hence, not properly remunerating a migrant worker deprived not only the migrant worker of the means of subsistence but also his or her country of origin of a source of income. Fourthly, protecting the human rights of all migrants was a legal, political and ethical imperative, and promoting equality of treatment and integration was essential if migration was to contribute in a substantial and positive manner to economic and social development.

31. He recalled that the 177 member States of the International Labour Organization (ILO) were all required to implement the provisions of the core international labour conventions. Those included ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, and Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, which, by definition and according to judicial practice, applied to all workers regardless of their nationality and status, including workers in an

irregular situation. In conclusion, progress could only be made in the protection and integration of migrants, as well as in the formulation of the corresponding legal framework, if the persons entrusted with those tasks reached a sufficiently high position of influence to prevail over those who believed only in deregulation and competition.

32. Mr. ALBA, summarizing the discussion, said that the close relationship between migration and human rights was clear: the more human rights were respected in migrants' countries of origin, the more the decision to migrate would be made by choice and not by necessity, and would thus be of benefit to all. Respect for human rights in the area of migration had both a direct and an indirect influence on development. Thus, the remittances sent home by migrants directly financed efforts to combat poverty and had an incidental effect on the development of financial institutions, and therefore on economic progress, in migrants' countries of origin. The discussion had revealed the need for a system of shared responsibility, like the systems for dealing with human rights or globalization, in order to achieve a certain amount of coherence, notably in the economic and social spheres. The speakers had denounced the consideration of migrants as a form of productive capital, since they constituted above all a form of "human capital", which was why it was so important to consider their education and health.

33. In the future, the inseparable questions of migration and development should be approached from the perspective of sexual equality, since women had become increasingly independent, at least financially. Some speakers felt that migrants should participate directly in decisions concerning them and that they should acquire political rights, where appropriate. Others held that migrants should be able to actually exercise the rights they enjoyed in theory, such as the right to obtain redress in the event of non-compliance with employment contracts or failure to pay their wages.

34. Mr. GAKWANDI, summarizing the speeches, said that the issue of migrant workers was often approached from the standpoint of their financial contributions to their countries of origin rather than what they offered their countries of employment in terms of knowledge, skills, and social and cultural enrichment. Nevertheless, it seemed that the role of migrant workers in the development of countries of employment was beginning to be recognized, following the example set at the 2004 annual conference of the International Labour Organization. The participants in the discussion had stressed the importance of combating discrimination, particularly by facilitating family reunification and by enabling migrant workers to exercise their social and political rights and to preserve their cultural identity. They had examined the strengths and weaknesses of the Convention and had suggested to the Committee that those weaknesses could be overcome by placing the issue of migrant workers in the broader framework of human rights.

35. Only two States had been represented in the discussion on efforts to combat discrimination against migrant workers. The representative of Colombia had described her country's policies in that area, and the representative of France had explained the main reason why his country had not ratified the Convention, which was that the latter duplicated other instruments to which France was a party. However, the possibility that France would ratify the Convention had not been ruled out.

36. Most of the NGOs had called for greater recognition, on the part of States of employment, of the role played by migrant workers. They had also called for greater respect for migrant workers' fundamental rights, including their right to health and, in particular, to

emergency medical care. Several NGOs favoured regularizing the situation of illegal workers. Closing down certain migration channels, far from putting an end to migration, might in fact exacerbate it. The views of migrants should be taken into account in national debates on migration: human rights were not the prerogative of States but rather belonged to individuals. Certain NGOs had called on the United Nations to ensure that civil society played a greater role, particularly in the preparations for the high-level dialogue on international migration and development due to be held at the upcoming session of the General Assembly. Overall, the NGOs favoured greater participation by migrants.

37. The CHAIRPERSON said that an account of the discussion would be formalized for the high-level dialogue in 2006. He recalled that the Committee's mandate was to monitor the implementation of the Convention, to publicize its provisions and to promote the idea that greater participation in Convention-related activities was essential to the protection of migrant workers around the world. Its role in the current discussion on migrant workers was to insist on the pre-eminence of human rights so that migrant workers were no longer treated as commodities but rather as human beings.

The meeting rose at 6 p.m.