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HUMAN RIGHTS COUNCIL

Ninth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Algeria*, Argentina, Bolivia, Cuba, Ecuador*, Egypt, Guatemala*, Haiti*,
Mexico, Nicaragua, Peru*, Philippines, Tunisia*, Turkey*, Uruguay,
Venezuela (Bolivarian Republic of)*: draft resolution**

9/... Human rights of migrants

The Human Rights Council,

Reaffirming the Universal Declaration of Human Rights on its sixtieth anniversary, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular with regard to race, colour or national origin,

Recalling its previous resolutions adopted by the Commission on Human Rights and the General Assembly on the protection of migrants,

* Non-member State of the Human Rights Council.

Recalling also the provisions concerning migrants contained in the outcome documents of all major United Nations conferences and summits,

Considering that every State must ensure the protection of human rights of all individuals within its territory and subject to its jurisdiction, without discrimination of any kind, including in particular on the basis of national origin,

Recalling the judgment of the International Court of Justice of 27 June 2001 and advisory opinions OC 16/99 of 1 October 1999 and OC 18/03 of 17 September 2003, issued by the Inter-American Court of Human Rights, on the right to information on consular assistance in the framework of the guarantees of the due process of law and on the juridical condition and rights of undocumented migrants, respectively,

Taking note of the judgment of the International Court of Justice of 31 March 2004 in the *Avena and Other Mexican Nationals* case (*Mexico v. United States of America*) and recalling the obligations of States reaffirmed therein, as well as in the subsequent rulings of the International Court of Justice following that judgment,

Concerned at the large and growing number of migrants, especially women and children, who attempt to cross international borders without the required travel documents, which places them in a particularly vulnerable situation, and recognizing the obligation of States to respect the human rights of those migrants,

Recognizing the increasing participation of women in international migration movements,

Deeply concerned at the manifestations of violence, racism, racial discrimination, xenophobia and other forms of intolerance and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world,

Recalling the High-level Dialogue on International Migration and Development, held pursuant to General Assembly resolution 58/208 of 23 December 2003, in New York on 14 and 15 September 2006, for the purpose of discussing the multidimensional aspects of international migration and development, which recognized the relationship between international migration, development and human rights,

Noting the adoption of resolution 62/270 by the General Assembly on the Global Forum on Migration and Development in which, inter alia, the Assembly recognizes that exchanges of information and expertise, consultation and closer cooperation between the Global Forum on Migration and Development and the United Nations could have a positive impact,

Recognizing the role of migrants in positive interaction, particularly in social and cultural fields between the countries of migration, and their contribution to the promotion of international ties,

Recognizing also the cultural and economic contributions made by migrants to receiving societies and their communities of origin and committing to ensure dignified, humane treatment with applicable protections and to strengthening mechanisms for international cooperation to address their legitimate needs,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, the full respect of human rights and the fundamental freedoms of migrants,

Resolved to ensure respect for the human rights and fundamental freedoms of all migrants,

1. *Reaffirms* the rights set forth in the Universal Declaration of Human Rights, and in this regard:

(a) Strongly condemns the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, and urges States to apply existing laws when xenophobic or intolerant acts or manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

(b) Requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party;

(c) Expresses concern at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

(d) Calls upon States to observe national legislation and applicable international legal instruments to which they are party when enacting national security measures, in order to respect the human rights of migrants;

(e) Takes note of action taken by several special procedures of the Council towards the effective prevention of violations of human rights of migrants, including through joint statements, and encourages them to continue with their collaborative efforts to this end within their respective mandates;

(f) Calls upon States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a matter of priority, and requests the Secretary-General to continue his efforts to promote and to raise awareness of the Convention;

2. *Also reaffirms* the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and therefore:

(a) Urges all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants and to take actions to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

(b) Commends States that have successfully implemented alternative measures to detention for undocumented migrants and requests the Special Rapporteur, other special procedures of the Council and the High Commissioner for Human Rights to pay special attention to cases of arbitrary detention of migrants, and detention of migrant children and adolescents;

(c) Requests States to adopt concrete measures in order to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, and to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law;

(d) Also requests States to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

(e) Reaffirms emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, particularly with regard to the right of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right;

(f) Requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to prosecute violations of labour law firmly with regard to migrant workers' conditions of work, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

(g) Encourages all States to remove unlawful obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

(h) Welcomes the adoption by the World Health Organization of its resolution WHA61.17 on the health of migrants, and calls upon States to take it into account as a measure for the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(i) Recalls that the Universal Declaration on Human Rights recognizes that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations;

3. *Emphasizes* the importance of protecting vulnerable groups, and in this regard:

(a) Welcomes the immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting that type of programme;

(b) Encourages all States to apply a gender perspective in developing international migration policies and programmes in order to adopt the necessary measures to better protect women and girls against dangers and abuse during migration;

(c) Calls upon States to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, ensuring that the best interests of the children are a primary consideration in their policies of integration, return and family reunification;

(d) Encourages all States to prevent and eliminate discriminatory policies that deny migrant children access to education;

(e) Urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification;

(f) Encourages States that have not yet done so to enact domestic legislation and to take further effective measures to combat and prosecute international trafficking and smuggling of migrants, and to protect and assist the victims of violence and trauma in such processes, and also encourages States parties to implement fully their obligations under the United Nations Convention against Transnational Organized Crime and the two additional Protocols thereto;

4. *Stresses* the importance of international, regional and bilateral cooperation in the protection of the rights of migrants, and therefore:

(a) Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give the necessary relevance to international, regional and bilateral cooperation in this field, with a view to addressing, in a comprehensive manner, its causes and consequences and granting priority to the protection of human rights of migrants;

(b) Encourages States to consider participating in international and regional dialogues on migration that include sending and receiving countries, as well as countries of transit, and invites them to consider negotiating bilateral and regional agreements on migrant workers in the framework of applicable human rights law and designing and implementing programmes with States of other regions to protect the rights of migrants;

(c) Calls upon States and intergovernmental and non-governmental organizations to observe International Migrants Day on 18 December of each year, proclaimed by the General Assembly, by adopting measures to ensure their protection and to promote greater harmony between migrants and the societies in which they live;

(d) Notes the first meeting of the Global Forum on Migration and Development, held in Brussels, in July 2007, and the second meeting of the Global Forum to be held in Manila, in October 2008, and recognizes the discussion of human rights topics in the Global Forum as a step towards developing a comprehensive approach to this subject;

(e) Requests Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants, to ensure that the perspective of the human rights of migrants is taken into account among the priority issues in the ongoing discussions on international migration and development in the United Nations system, bearing in mind the discussions of the High-level Dialogue on International Migration and Development;

(f) Encourages the Special Rapporteur to continue to examine ways and means of overcoming obstacles to the full and effective protection of the human rights of migrants, including national and international efforts to combat the trafficking of persons and smuggling of migrants, in order to achieve a better comprehension of the phenomena and to avoid practices that could violate the human rights of migrants;

5. *Decides* to continue consideration of this question at a future session in conformity with its annual programme of work.
