



**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**
Eleventh session

Summary record of the 118th meeting

Held at the Palais Wilson, Geneva, on Monday, 12 October 2009, at 10 a.m.

Chairperson: Mr. El Jamri

Contents

Opening of the session

Introductory statement by the Representative of the United Nations High Commissioner for Human Rights

Adoption of the agenda

Organizational and other matters

Consideration of reports submitted by States parties under article 73 of the Convention

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The meeting was called to order at 10.20 a.m.

Opening of the session

1. **The Chairperson** declared open the eleventh session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Introductory statement by the Representative of the United Nations High Commissioner for Human Rights

2. **Mr. Salama** (Representative of the United Nations High Commissioner for Human Rights) said that the realization of human rights in the context of migration was one of the strategic priorities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the biennium 2010–2011. OHCHR would strive to make the international community more responsive to the human rights dimensions of migration, the detention and criminalization of irregular migrants and the effects of the current economic crisis on migrants, who were often the first to lose their jobs and were increasingly the victims of xenophobia and discrimination. Another aim of OHCHR would be to increase the number of ratifications of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and encourage the States parties to the Convention to submit their reports to the Committee. In that connection, OHCHR, in cooperation with the International Organization of la Francophonie, was organizing treaty reporting training in Mali in November for the countries of the Economic Community of West African States (ECOWAS). The training, which would include a focus on the Convention, would be followed by a one-day seminar on the human rights of migrants and the role that national human rights institutions could play in that regard. The members of the Committee were invited to share their thoughts on ways of promoting the Convention.

3. He was pleased to note that Nigeria had recently acceded to the Convention, bringing the number of States parties to 42, and that the membership of the Committee would be increased to 14 as of 1 January 2010. Elections for the five outgoing members and the other nine members of the Committee would be held at the meeting of States parties on 3 December 2009.

4. On 17 September, at its twelfth session, the Human Rights Council had held a panel discussion on the human rights of migrants in detention centres; the Chairperson of the Committee had taken part in the discussion together with other experts, including the Special Rapporteur on the human rights of migrants. The event had again shown the enormous relevance of the Convention in the ongoing debate on migration. The Human Rights Council had also adopted a resolution at the session on migration and the human rights of the child, in which it requested the Secretary-General to continue his efforts to promote the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child, and to support the building of greater synergies between the Committee on the Rights of the Child and the Committee on Migrant Workers. The members of the Committee were invited to share their ideas on how to strengthen cooperation between the two bodies.

5. At the ninth Inter-Committee Meeting, held in Geneva in June 2009, members of the various treaty bodies had discussed ways and means of enhancing the effectiveness of the treaty bodies, including through harmonization and simplification of their working methods. He was certain that the members who had represented the Committee would provide further information on the recommendations formulated during the meeting. The tenth Inter-Committee Meeting, to take place at the end of November/early December, would be devoted to the follow-up to concluding observations and views of treaty bodies.

6. In her opening speech to the twelfth session of the Human Rights Council, the High Commissioner had underscored the importance of the treaty bodies. While welcoming the progress made to date by the human rights protection system, she had also noted the ever-increasing challenges to it, and she had invited all stakeholders to initiate a process of reflection on how to streamline the system to achieve better coordination among treaty bodies and improve their interaction with the universal periodic review procedure and special procedures mandate holders. He gathered that the Committee would address those questions at the eleventh session, and he looked forward to an exchange of views with members of the Committee on the subject.

7. **The Chairperson** asked the members of the Committee whether they had any comments to make on the introductory statement by Mr. Salama and also invited them to report on activities which they had carried out or events which they had attended since the previous session.

8. **Ms. Cubias Medina** said that she had represented the Committee in a working group on the theme “Children: rights-holders versus commodity” during the celebration of the twentieth anniversary of the Convention on the Rights of the Child. She was pleased that the recommendations made by the working group gave particular attention to migrant children. She had also taken part in the work of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, and she had sought to heighten States’ awareness of the provisions of the Convention and to send the message that migrant workers were rights-holders, regardless of their migration status or nationality.

9. **Mr. El-Borai** asked the Representative of the High Commissioner whether the Committee could produce a general comment on the *kafala* system without the question being specifically raised by a State party to the Convention.

10. **Ms. Poussi Konsimbo** was very pleased to learn that OHCHR, in cooperation with the International Organization of la Francophonie, would be holding treaty reporting training for the member States of ECOWAS, because the countries of that region had great difficulty complying with their obligation to submit reports to treaty bodies.

11. **Mr. Taghizade** said that, as he saw it, the most important thing was to make it clear to States that the real problem with migration was not the illegal migrant but the scandalous trafficking and exploitation of human beings. The Committee should focus more closely on the fact that the Convention was a tool for helping States parties to take action against those responsible for trafficking and exploitation and to regulate migration movements more effectively.

12. **Mr. Salama** (Representative of the United Nations High Commissioner for Human Rights) said that he agreed with Mr. Taghizade. The Office of the High Commissioner planned to increase its training activities to heighten States’ awareness of those priority issues. In reply to Mr. El-Borai, he said that he did not wish to express his opinion from the legal standpoint, but simply noted that the principle of the indivisibility of human rights and the existence of an integrated human rights system meant that the treaty bodies had every right to voice an opinion on questions which did not appear to fall within the direct scope of their instruments. He also welcomed the participation of members of the Committee in the work of other bodies, because he was convinced of the need to strengthen ties to other instruments, given the growing importance of the phenomenon of migration.

Adoption of the agenda (CMW/C/11/1)

13. *The provisional agenda was adopted.*

14. **The Chairperson** pointed out that States that had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had difficulty implementing it, due to a lack of information on the provisions of the Convention and uncertainty as to its status in domestic law, since some judges did not invoke the Convention, despite considerable efforts by international organizations and non-governmental organizations (NGOs) to ensure that they were better informed. The Convention was an educational instrument, and thus one could only recommend that States wishing to elaborate migration policies in conformity with the law should draw upon it.

Organizational and other matters

15. **The Chairperson** recalled that in August 2009, together with the secretariat, he had written to the Swedish Presidency of the European Union to request a meeting for an exchange of information on European migration policy. A positive response had been received, and the meeting was scheduled for the next day.

16. **Ms. Cubias Medina** informed the Committee that El Salvador had organized a week of training on international migrations for officers of the Civil National Police and officials of the migration services and the Attorney General's Office. The training had provided an opportunity to recall that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families could be applied directly in the country and should take precedence over the 1958 Migration Act in order to ensure better respect for the fundamental rights of migrants. In addition, a one-month educational unit, organized in conjunction with Valparaíso University (Chile), had been devoted to migration, consular services and the protection of the rights of migrants as part of training for future diplomats.

17. **The Chairperson** said that, at the twelfth session of the Human Rights Council, he had spoken with a number of United Nations experts and representatives of civil society about the question of migrant workers placed in detention centres or holding facilities. Prior to that, he had reviewed with the secretariat the work of the Committee on Migrant Workers in that regard and had found that it had regularly focused on the question as part of its consideration of country reports, providing clear and precise replies to the States concerned. It must be said that today, the human rights situation of migrant workers had deteriorated considerably everywhere, and States had been reminded that they must respect a number of principles: when a person was detained, that person's status as migrant must not be invoked; premises must be set aside for detaining or holding migrants when necessary; a language must be used which the migrant understood; and the migrant must be informed of available means of recourse. The Chairperson had also participated in the preparation of the panel discussion on the integration of migrant workers in host countries, which would take place during the Global Forum on Migration and Development, to be held the following month in Athens. Another topic of discussion would be the integration of seasonal or, as they were now called, temporary circular migrant workers, who still did not have the same rights as other migrant workers.

18. With regard to Mr. El-Borai's proposal concerning the *kafala* system, he suggested that the Committee draw up an opinion on the subject as part of the discussion on migrant domestic workers. He recalled that *kafala* was a system used in virtually all the countries of the Persian Gulf, in which the migrant worker was required to have a sponsor, a *kafil*, who obtained a work permit for the migrant and ran the migrant's occupational and sometimes even personal life, because the *kafil* could confiscate the migrant's passport. There was also an intermediary *kafil*, who charged the migrant worker for merely enabling him or her to enter the country and did not give the slightest consideration to the kind of employment the migrant had. The *kafala* system could lead to all kinds of abuse, such as prostitution or illegal labour, because the migrant could not leave the country without the permission of

the *kafil*. In some countries, when the migrant obtained authorization to leave the country, his or her photo and name were published in the newspapers so that anyone who had a dispute with the migrant could come forward. Pending the renewal of a migrant's work permit, it was not unusual for the *kafil* to send the migrant to a neighbouring country, where he or she did not have any protection.

19. **Mr. El-Borai** drew attention to the fact that a consideration of the question of the *kafils* by the Committee would raise other issues, including of a criminal nature, such as the question of torture. In view of the seriousness of the matter, it was up to the Committee to decide whether it wished to go that far.

20. **Mr. Taghizade**, recognizing the risks of human rights violations which the practice of *kafala* entailed, said that the Committee should base its consideration of the question on statistics indicating the number of persons concerned, the number of migrants wishing to leave a country who had been denied authorization to do so, how many cases were involved, etc. Those details would enable the Committee to have an informed opinion.

21. **Mr. El-Borai** said that he would collect information on the subject and forward it to the members of the Committee.

The meeting was suspended at 11.25 a.m. and resumed at 12.05 p.m.

22. **Ms. Fernando** (International Movement Against All Forms of Discrimination and Racism (IMADR)), reporting on the comments collected by her organization in cooperation with the Action Network for Migrant Workers (ACTFORM), said that Sri Lankans who worked abroad, and especially those in the Middle East, did not receive any assistance other than that provided by the missions and by other Sri Lankans in a similar situation. Thus, generally speaking, for Sri Lankan migrant workers the Convention was a dead letter.

23. Although migration was a voluntary act, the reasons for migrating were compelling: poverty, unemployment, lack of skills for women and ethnic conflicts, to name a few. For its part, the Government of Sri Lanka had adopted a policy to promote migration in order to address a number of pressing problems, above all the search for employment and the need to redress the balance of payments deficit, which had grown due to loans and imports. In 2007, migration remittances had risen to 277 billion rupees (2.5 billion US dollars). Unfortunately, the report failed to indicate the expenditure incurred by the Government to provide for the safety and protection of Sri Lankan migrant workers and their family members in the countries of destination.

24. Sri Lanka was a developing country which depended on wealthier countries for loans and welfare assistance. One of its biggest problems was its inability to assert the rights of its workers in the countries of the Persian Gulf. The lack of political power, together with a mentality of dependency, was a major impediment. It was regrettable that only countries which were exporters of labour had ratified the Convention. The main countries of destination had not yet recognized its importance, although the millions of workers they employed contributed to their affluence.

25. In closing, she drew the Committee's attention to the recommendations contained in the reports submitted by the Migrant Forum in Asia and other organizations of civil society.

26. **Ms. Benisrael** (Kav LaOved) said that, according to an official report released by Israel's Central Bureau for Statistics, in 2008, 2,200 Sri Lankan nationals had entered Israel with caregiver visas. Despite the large number of migrant workers entering Israel from Sri Lanka, it would appear that the two countries had neglected to conclude bilateral agreements or informal arrangements which would facilitate the flow of labour migration into Israel. That lack of cooperation created a fertile ground for corruption, exploitation and abuse of migrant workers at all stages of migration to Israel.

27. It had been reported that Sri Lankans coming to Israel had to pay fees to intermediaries of between US\$ 6,000 and US\$ 8,000. The inability to repay that heavy debt put the lives of those workers and their families in danger. The high commissions also gave rise to various types of visa frauds, whereby the intermediaries brought migrant workers into Israel for the sole purpose of charging them thousands of dollars in recruitment fees; they had no intention of finding them lawful and gainful employment in Israel. It was also a matter of grave concern that Sri Lankan workers were so poorly informed. Many Sri Lankan nationals arrived in Israel without even the most basic knowledge of their rights.

28. To the extent that the Government of Sri Lanka offered the services to migrant workers set out in the country report, civil society organizations in the country of destination must be informed as to their availability. Those organizations were often the only place migrant workers could turn to when their rights had been violated.

29. **Mr. O'Neill** (Caritas Lebanon Migrants Centre) said that over the past 10 to 15 years, there had been increasing demand in Lebanon for migrant workers to take low-skilled or unskilled jobs shunned by the local labour force. The majority of migrant workers were women, mainly from Africa and Asia, who worked as domestic helpers or caregivers. According to the Lebanese Ministry of Labour, there were approximately 90,000 Sri Lankan migrant workers in the country. Most of them came to Lebanon through recruitment agencies. The failure to monitor the activities of those agencies had led to a number of violations of workers' rights. There were reports of agencies recruiting children or minors and assisting in the fabrication of fake passports. Even when acting legally, those agencies charged exorbitant fees that were extremely difficult for workers to pay back. Sri Lankan migrant workers who went to Lebanon through recruitment agencies had to attend a two-week pre-departure orientation session. Most participants stressed that the sessions had been inefficient and that they had not been provided with country-specific information on their rights and responsibilities in Lebanon, focus having been placed mainly on practical considerations.

30. Apparently there were still no signed memorandums of understanding or bilateral agreements between the Governments of Sri Lanka and Lebanon on labour migration. The Government of Sri Lanka referred in its report to the existence of a welfare fund and a pension scheme for migrant workers abroad, but none of the workers interviewed by Caritas Lebanon had been aware of either programme.

31. Although the Government of Sri Lanka did not tax remittances, it had not developed any measures to reduce the fees charged by private companies for such operations, money transfers being the main method used by most migrant workers. Given the importance of remittances for the Sri Lankan economy, the Government of Sri Lanka should do more to help facilitate such transactions.

32. **Ms. Delprine** (Migrant Workers Protection Society) said that the Kingdom of Bahrain was a country of destination for migrant labour, and most Sri Lankan migrant workers there were employed as domestic workers or in the construction and garment industries. There was an urgent need to open a Sri Lankan embassy in Bahrain and to appoint an official with competence in questions concerning worker welfare.

33. Although the Government of Sri Lanka had signed bilateral agreements with Bahrain, it must ensure that they were implemented so that migrant workers could benefit from them. Moreover, further bilateral agreements were needed to provide protection to workers. For example, domestic workers in Bahrain fell within the category "family" and thus were not entitled to protection in many of the areas in which other categories of workers were covered. The Government of Sri Lanka must also address the abusive practices of some recruitment agencies. In one such practice, an employer could "return" a worker before the end of the latter's three-month probation period. The worker was then at

the mercy of the recruitment agency, which punished the worker for being returned. A frightening reality for a large number of female migrant workers in Bahrain was the threat of human trafficking and sexual exploitation.

34. **Mr. Goia** (Action Network for Migrant Workers and Women and Media Collective), referring to the situation of migrant workers in the Republic of Korea, said that three officials responsible for the welfare of workers served the public in Sri Lankan consulates. However, according to the information provided by the Joint Committee for Migrants in Korea, those officials were not sufficiently trained and did not have the means to meet the needs of migrant workers. As they did not speak Korean, they were unable to help migrant workers communicate with employers or the local authorities.

35. The Government of Sri Lanka had not set up any appropriate training programme for future migrant workers, and pre-departure orientation courses focused primarily on practical questions and hardly at all on the rights of workers in the country of destination.

36. Some Sri Lankan migrant workers knew that the consulates could provide them with services, but most of them did not believe that the consulates could help them with representations other than administrative formalities. When they had problems or disputes, they tended to contact non-governmental organizations or migrant support groups in the Korean Ministry of Labour rather than the consular services.

37. Recruitment was also a concern due to the serious information deficit and the unclear details provided about consular services abroad. Moreover, Sri Lankans usually feared that they would lose their employment if they complained to those services.

38. The question of the bilateral agreements concluded between Sri Lanka and a number of countries of destination also gave cause for concern. Despite requests and representations made to the Committee on Migrant Workers, it had not been possible to consult those agreements to see whether they were in conformity with the provisions of the Convention.

39. **The Chairperson** welcomed the opportunity to engage in a dialogue with civil society. He asked the NGOs present whether they were in contact with the Sri Lankan authorities, whether they had informed them of their complaints and, if so, what their reactions had been. He also enquired what specific problems stemmed from the feminization of migration. With regard to Sri Lankans who become victims of prostitution networks abroad, he wondered whether some of the victims had returned to their country of origin and had instituted legal proceedings there, if only to warn other women who were planning to migrate. It would also be useful for the NGOs to elaborate on their references to high fees for the transfer of remittances.

40. **Mr. Sevim** referred to the complex nature of problems raised by the employment of Sri Lankan migrant workers in the countries of the Middle East. Regardless of the level of cooperation with those countries, problems associated with their legislation would persist; that was an area in which neither Sri Lanka nor its diplomats had any influence. Recalling that the legislation of the country of destination was applicable to everyone, he asked the NGOs that criticized the inadequacy of consular services for migrant workers to explain exactly what they expected of consulates.

41. The Convention protected migrant workers who came to Sri Lanka, which had ratified that instrument, and the dialogue between the delegation and the Committee would focus on domestic legislation relating to migrants who lived there. It would also be interesting to learn whether the bilateral agreements concluded with States of the Gulf contained provisions on social security and readmission. Concerning the protection of family unity, that was primarily a matter for the country of employment.

42. **Ms. Cubias Medina** said that would like to know to what extent the human rights of Sri Lankan workers were protected in the country of destination. She also asked whether

there was a direct correlation between the number of bilateral agreements concluded between Sri Lanka and those countries and the number of Sri Lankan workers who lived there. If agreements had been concluded with all countries in which Sri Lankans worked, and consulates had been opened there, one might in fact ask what more could be expected of Sri Lanka. The Convention had no impact when the country of employment was not a party to the instrument.

43. **Mr. El-Borai** said that additional information would be welcome concerning procedures for leaving Sri Lanka. Did the State party require a labour contract validated by the authorities? Information should also be provided on whether the population was informed of the fate of migrant workers, especially clandestine ones, in the country of destination. He would also like NGOs to indicate their point of view with regard to the *kafala* system.

44. **Mr. Brillantes** asked the NGOs whether they had reported their allegations to embassies, consulates or the Governments themselves and whether steps had ever been taken in cooperation with an embassy or a consulate to protect a migrant worker in danger. The NGOs should also say whether they had observed that Sri Lankan migrant workers had been going to other countries of destination and whether migrants in Sri Lanka came from a wide variety of countries.

45. It would be useful to know what role NGOs had played in elaborating the report under consideration, whether the questions which they had just raised had been drawn to the attention of those who had drafted the report, whether they had made any recommendations and what the results of those recommendations had been.

46. **Ms. Fernando** (International Movement Against All Forms of Discrimination and Racism (IMADR)) said that the NGOs had not been consulted during the elaboration of the report. On the other hand, when the NGOs had held a conference to draft a shadow report and had invited high officials, the latter had attended.

47. Most Sri Lankan migrant workers were women employed as domestics. Unfortunately, the fact that they earned a living in that activity was by no means synonymous with their emancipation, because the patriarchal model of Sri Lankan households was reproduced in migration, hence their vulnerability to violence and harassment, in particular of a sexual nature. That question and many others had in fact been brought to the attention of the Government of Sri Lanka and the Governments of the countries of destination. The point was that the memorandums of understanding and the bilateral agreements did not incorporate the human rights perspective, as could be seen in the copies of those documents which she would make available to the Committee members so that they could judge for themselves. It was also a subject of great concern to her organization that recruitment agencies confiscated the passports of migrant workers.

48. **Ms. Benisrael** (Kav LaOved) said that her organization worked in Israel and did not have a direct dialogue with the Government of Sri Lanka. It had only had the occasion to contact the Sri Lankan embassy from time to time about purely logistical questions, for example with regard to the confiscation of passports.

49. She took note of the comment by Mr. Sevim relating to family unity but said that the whole point of a bilateral agreement, which most unfortunately was lacking between Israel and Sri Lanka, was to improve the situation of immigrants. On the question as to what her organization expected of diplomatic services, she said that they should inform migrants of the legal and social services available to them which were referred to in the report. On the question of the *kafil*, she noted that a variation of that practice existed in Israel, but the Supreme Court had ruled that it was in violation of labour law and unconstitutional.

50. **Mr. Goia** (Action Network for Migrant Workers and Women and Media Collective) said that an attempt had been made to collaborate with NGOs on the elaboration of the report, but it had not been followed through. He expected the Sri Lankan consular services to provide data and statistics on Sri Lankans in detention and Sri Lankans who had been expelled, in particular in the Middle East. Bahrain had reception centres for homeless migrants, but they were run by NGOs. Likewise, campaigns to raise public awareness about the situation of undocumented workers were usually organized by civil society networks.

51. His organization was of the view that the *kafala* system was a contemporary form of slavery. It was currently studying the question in Bahrain and hoped to complete its work in a few months.

The meeting rose at 1.05 p.m.