



**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
Thirteenth session**

Summary record of the 152nd meeting

Held at the Palais Wilson, Geneva, on Wednesday, 1 December 2010, at 3 p.m.

Chairperson: Mr. El Jamri

Contents

Issues pertaining to the Convention (*continued*)

Consideration of draft general comment No. 1 on migrant domestic workers
(continued)

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

Issues pertaining to the Convention (*continued*)

Consideration of draft general comment No. 1 on migrant domestic workers (continued)
(CMW/C/12/CRP.2/Rev.2)

Paragraph 45

1. **Ms. Barrita-Chagoya** (Secretary of the Committee) said that following the Committee's previous consideration of draft general comment No. 1, the following new paragraph 45 had been added:

“45. In the event of the death of domestic migrant workers in the State of employment, States parties should ensure that their families have the possibility to repatriate their earnings and social security benefits (articles 27 and 61).”

2. She informed the Committee that the International Catholic Migration Commission disagreed with the inclusion of the paragraph, since the paragraph concerned migrant workers in general, and did not specifically relate to migrant domestic workers.

3. **Ms. Sidoti** (December 18) said that, in addition to the reference to articles 27 and 61 of the Convention, a reference to article 71, paragraph 2, should be inserted. While it was true that the new paragraph concerned migrant workers in general, and not migrant domestic workers specifically, its inclusion would serve to strengthen the message conveyed by the Convention.

4. **The Chairperson** suggested that the original wording should be retained. He said he took it that the Committee wished to adopt the new paragraph 45 as it stood.

5. *It was so decided.*

Paragraph 49

6. **Ms. Barrita-Chagoya** (Secretary of the Committee) said that following the Committee's previous consideration of draft general comment No. 1, the following new paragraph 49 had been added:

“49. States parties should take effective measures to ensure that migrant domestic workers are free to practise the religion or belief of their choice, individually or in community with others, in public and in private (article 12).”

7. In addition, Mr. Tall had proposed the insertion of the words “and to express themselves freely in accordance with the provisions of the Convention”, after the word “choice”.

8. **Mr. Kariyawasam** said that the paragraph should include information on the limitations referred to in article 12, paragraph 3, of the Convention. To that end, he proposed the insertion of the words “subject to the limitations prescribed in article 12 of the Convention” at the end of paragraph 49, after the words “in private”.

9. **The Chairperson** expressed support for the amendment proposed by Mr. Kariyawasam but said that he would prefer the phrase “subject to the provisions” rather than “subject to the limitations”.

10. **Mr. El-Borai** said that he too supported the amendment proposed by Mr. Kariyawasam, but it was necessary to amend the words “in public”. Religious practice always took place in designated places of worship, and some people — Muslims in France, for example — would be shocked by the idea of worship in public. In French, the words “en commun” would be more appropriate.

11. **Mr. Tall** said that if “in public and in private” was to be amended, one possible version in French might be “de façon collective ou individuelle”. However, he drew attention to the wording of article 18, paragraph 1, of the International Covenant on Civil and Political Rights: “... freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. That wording was reproduced in article 12, paragraph 1, of the Convention. With regard to the suggested phrase “subject to the limitations”, the words “sujet à” should not be used in French; rather, a phrase such as “qui ne peut faire l’objet que des restrictions prévues à l’article 12” should be used. Otherwise more general wording could be employed, such as “in accordance with the provisions of the Convention”.

12. **Mr. Taghizade**, supported by **Ms. Sidoti** (December 18), said that simply stating “in accordance with article 12” would suffice since, by definition, article 12 included the paragraph on limitations.

13. **Ms. Barrita-Chagoya** (Secretary of the Committee) informed Committee members that the International Catholic Migration Commission had not been in favour of reiterating in the general comment what was said in article 12 of the Convention, which related to migrant workers in general. A representative of Caritas Internationalis, however, had made the point that migrant domestic workers were sometimes hidden away or locked up in their employer’s house, which made the implementation of their rights under article 12 of the Convention especially problematic. The article was therefore worthy of a mention in the general comment.

14. **Mr. Kariyawasam** agreed with the point made by the representative of Caritas Internationalis. The paragraph should be retained, with the wording amended in line with Mr. Taghizade’s proposal.

15. **The Chairperson** said he took it that the Committee wished to adopt the new paragraph 49, as amended.

16. *It was so decided.*

Paragraph 51

17. **Ms. Barrita-Chagoya** (Secretary of the Committee) said that following the Committee’s previous consideration of draft general comment No. 1, the following addition had been made to paragraph 51:

“In order to ensure the effective access to justice and remedies of all migrant domestic workers, the Committee considers that migrant domestic workers should be able to access courts and other justice mechanisms without fear of being deported as a consequence, and that migrant domestic workers should have access to temporary shelter when needed, due to the abusive circumstances of their employment. In the determination of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (article 18). States parties are encouraged to consider time-bound or expedited legal proceedings to address complaints of migrant domestic workers. Moreover, States parties are encouraged to enter into bilateral agreements in order to ensure that migrants who return to their country of origin may have access to justice in the country of employment, including to complain about abuse and to claim unpaid wages and benefits.”

18. She pointed out that the second sentence had been added to reflect earlier discussions.

Paragraph 57

19. **Ms. Barrita-Chagoya** (Secretary of the Committee) said that following the Committee's previous consideration of draft general comment No. 1, the following new paragraph 57 had been added:

“57. Taking into consideration their obligations under the Convention on the Rights of the Child, States should prohibit the recruitment of migrant children in any form of migrating domestic work, except when the child is accompanied by his/her family in the State of employment and forbid live-in domestic work for children owing to the inherent risks of such situations.¹⁰” (Footnote 10: “The Convention on the Rights of the Child and existing ILO conventions addressing child domestic work (ILO Convention Nos. 138 (Minimum Age for Admission to Employment) and 182 (Worst Forms of Child Labour) do not explicitly address the special circumstances of child domestic workers in particular. However, the Committee on the Rights of the Child and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) regularly raise concerns about the exploitation and abuse of child domestic workers.”)

20. **The Chairperson** recalled that, while the Convention on the Rights of the Child prohibited all employment of children under the age of 18, national laws were vague regarding the employment of children between the ages of 15 and 18. Under the proposed new paragraph 57, the employment of child migrant domestic workers between the ages of 15 and 18 would be prohibited, except when the child was accompanied by his or her parents.

21. **Mr. Kariyawasam** said that the Committee should not recommend or condone child labour, regardless of whether the child was accompanied by his or her parents. The words “in any form of migrating domestic work” should be corrected to read “in any form of domestic work”, and the sentence should end there.

22. **Mr. El-Borai** said age should be the determining factor in whether children were allowed to work, and not whether they were accompanied by their parents.

23. **Mr. Tall** expressed support for Mr. Kariyawasam's proposal to change the words “in any form of migrating domestic work” to “any form of domestic work”. He said that child migrant workers were doubly vulnerable: first because they were migrants, and second because they were children. The Committee should make it very clear that the minimum age for admission to employment should be 18, not 15. The employment of children as domestic workers affected their other rights, such as the right to education. Whether they were accompanied by their parents or not was irrelevant.

24. **Ms. Cubias Medina** pointed out that, although the United Nations and its specialized agencies were attempting to have the minimum working age raised to 18 years, the International Labour Organization (ILO) Convention concerning Minimum Age for Admission to Employment (No. 138) permitted the age to be set at 14. The legislation in many countries, while completely prohibiting children under the age of 14 from working except in the context of helping their parents, did allow young people between the ages of 14 and 18 to work, subject to restrictions related to the nature of the work and the child's right to education, health and development. As desirable as it was to achieve progress, the Committee should not forget the real situation.

25. **Ms. Barrita-Chagoya** (Secretary of the Committee) said that the Convention on the Rights of the Child defined a child as being under the age of 18 but did not prohibit children from working in certain conditions. According to the International Catholic Migration Commission, the new paragraph 57 was possibly too ambitious in the current context and might actually weaken the effect of the general comment.

26. **Ms. Sidoti** (December 18) said that she agreed with the point made by the International Catholic Migration Commission.
27. **Mr. El-Borai** said that, as there was no universal agreement on a clear definition of the age at which children should be allowed to work, nor in which areas of work, the Committee should take its guidance from the international conventions.
28. **Mr. Kariyawasam** said that, since the Convention on the Rights of the Child, unlike other international conventions, had universal support, it provided a basis on which all States parties could agree and so should be the only one mentioned. He proposed deleting the second part of the sentence, beginning “except when”.
29. **The Chairperson** said that the general comment could be an opportunity to establish clearer definitions.
30. **Mr. Tall** said that, as migrant children were at greater risk than other children, they needed more protection, and so the Committee should take the opportunity to use stronger wording than that in the Convention on the Rights of the Child.
31. **The Chairperson** suggested that the secretariat should work with Mr. Kariyawasam to redraft the paragraph to reflect the discussion.

Paragraph 65

32. **Mr. Kariyawasam** said that the paragraph would be clearer if the middle part read: “... the person shall be contacted by the embassies or consulates concerned, with a view to arranging visits by the relevant consular officials, in consultation with the State of employment”.
33. **Mr. El-Borai**, supported by the **Chairperson**, called for the text and all amendments to be made available in the different language versions in time for the Committee’s next meeting on the subject.

The meeting rose at 4.10 p.m.