

National Employment Law Project

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March 24, 2006

Carla Edelenbos, Secretariat
UNITED NATIONS
COMMITTEE ON THE PROTECTION OF THE RIGHTS
OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES
Palais des Nations
CH-1211 Geneva 10
Switzerland

Submitted via e-mail to cedelenbos@ohchr.org

Re: Government of Mexico Report on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Dear Committee:

We enclose a brief series of questions regarding the Government of Mexico's report on compliance with the Convention on the Protection of Migrant Workers and their Families. We write on behalf of the National Employment Law Project, a non-governmental organization based in New York, which dedicates itself to upholding and expanding the rights of low-wage workers, including the some six million undocumented workers who labor in the United States economy.

Please accept our thanks to the Committee for the opportunity to share these views with you. Please do not hesitate to contact us if you have questions about this submission or if we can be of further assistance to the Committee. We are grateful for the important work of this committee in the protection of the rights of all migrant workers.

Sincerely,

Rebecca Smith
National Employment Law Project

Sarah Paoletti, Practitioner-in-Residence
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(for identification purposes only).

Encls.
Cc: IPMWC

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES

**International Convention on the Protection of the
Rights of All Migrant Workers and Members
of Their Families**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Comments on Government of Mexico's report
Rebecca Smith and Sarah Paoletti

As the Committee well knows, immigrant workers are in crisis in the United States and throughout the world. In many countries, millions of immigrants who have left their home countries in search of work are subject to officially-sanctioned discrimination and unredressed workplace abuses. The Convention that this Committee oversees is a vital tool in the efforts to protect migrant workers around the globe. The Government of Mexico should be commended, first, for its important efforts to protect its citizens who labor in other countries, principally the United States. It should be commended as well for submitting a frank, detailed analysis of its own compliance with the treaty.

We would like to suggest that the Government provide more detailed information on how it complies with each of the elements of Article 25 as it relates to migrants in irregular status; that is, remuneration and overtime, hours of work, weekly rest, holidays, safety, health, termination of the employment relationship, minimum age of employment and home work. In its initial report, the government indicates that the protections of minimum wage and equal pay for equal work are applied to all migrants, no matter what their immigration status, these other questions are not addressed. (paragraphs 317-319). A detailed discussion of Mexico's practices in this area would help identify a set of "best practices" that the Committee can recommend to states party to the Convention. It would also serve to promote the recent decision of the Inter-American Court of Human Rights in Advisory Opinion 18 (OC-18), sought by Mexico, and which further details countries' duties with respect to the principle of non-discrimination that is part of many of the world's important treaties, including Article 2 of the International Covenant on Civil and Political Rights, Article 26 of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and Article 2 of the Convention on the Rights of the Child.

In OC-18, the Court held that under several human rights instruments providing protection against discrimination, undocumented immigrant workers must be allowed the same labor rights as documented workers and citizens.¹ The Court held international principles of human rights prohibit discrimination on the basis of immigration status, using the term "discrimination" to refer to "any exclusion, restriction or privilege that is not objective and reasonable, and which adversely affects human rights."² The Court said that "the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment." In addition to the elements of Article 25 of the Convention, the Court said that countries must offer protection against forced labor, care for women workers, and judicial and administrative guarantees.³ Therefore, we would suggest that under the principal of non-discrimination contained in Article 7 of the Convention, Mexico be asked to provide detail on its

¹ THE LEGAL STATUS AND RIGHTS OF UNDOCUMENTED MIGRANTS, September 17, 2003, available at http://www.corteidh.or.cr/serieapdf_ing/seriea_18_ing.pdf.

² Id. at para. 134.

³ Id. at para. 157.

compliance, with respect to workers in irregular status, with these specific precepts.

With respect to judicial and administrative guarantees, the Court's decision in OC-18 indicates that assistance in bringing a claim must be offered to workers in irregular status.⁴ While the Government of Mexico's report, in paragraph 323, indicates that PROFEDET provides legal assistance to workers who have claims, it does not indicate whether or not that assistance is provided to workers in irregular status. We would add that a corollary to protecting undocumented workers rights is to make certain that in enforcing their rights, they do not suffer exposure to immigration authorities: otherwise, if workers are afraid of deportation if they complain, they will not complain.

Finally, Article 25 specifies both that workers must receive safety and health protection and protection under social security laws. Because many workers in irregular status work under extremely dangerous conditions – in agriculture and construction, for example – their rights to health and safety on the job, including medical care and replacement of wages lost after workplace accidents, must be protected. The report of the Government of Mexico suggests, in paragraphs 325-327 that the social security system is available only to migrants who are in regular status and whose employers enter them into the social security system. We would suggest that the Government of Mexico provide information about how a worker in irregular status would get compensation if injured on the job.

⁴ Id., at Para. 170.