



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**
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12–23 September 2011

Consideration of reports submitted by States parties under article 74 of the Convention

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Guatemala

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the initial report of Guatemala (CMW/C/GTM/1) at its 171st and 172nd meetings (CMW/C/SR.171 and 172), held on 14 and 15 September 2011. At its 181st and 182nd meetings, held on 21 and 22 September 2011, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the initial report of the State party, despite the delay in submitting it, as well as the replies to the list of issues and the additional information presented orally by the delegation, which have given the Committee a better idea of how the Convention is implemented in Guatemala. The Committee appreciated the frank and constructive dialogue with the delegation.

3. The Committee recognizes that Guatemala, as a country of origin of migrant workers, has made progress in protecting the rights of its citizens abroad. However, as a country of transit and destination, it faces great challenges as regards protecting the rights of migrant workers.

4. The Committee notes that some of the countries where Guatemalan migrant workers are employed are still not parties to the Convention, which could be an obstacle to their enjoyment of their rights under the Convention.

B. Positive aspects

5. The Committee welcomes the State party's efforts to promote and protect the rights of Guatemalan migrant workers abroad and also welcomes the establishment of the National Council for Assistance to Guatemalan Migrants (CONAMIGUA) in 2007, the establishment of mobile consulates, mainly in cities in the United States of America, and also the holding of the Legal Counselling for Migrants Fair in Los Angeles, California, in August 2009.

6. The Committee welcomes the State party's recognition of the competence of the Committee to receive and consider communications from States parties and individuals, in accordance with articles 76 and 77 of the Convention.

7. The Committee welcomes the bilateral and multilateral agreements reached by the State party at the regional and international level to promote sound, equitable and humane conditions in connection with international migration of workers and members of their families, including:

(a) The agreement between Guatemala and Peru on consular and migration-related cooperation;

(b) The memorandum of understanding between the Governments of Mexico, El Salvador, Guatemala, Honduras and Nicaragua on the decent, orderly, prompt and safe repatriation of migrant Central American nationals by land.

8. The Committee welcomes the entry into force of the Act against Sexual Violence, Exploitation and Human Trafficking (Decree No. 9-2009).

9. The Committee also welcomes the State party's accession to the following international human rights instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2008;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2007;

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2004.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

10. The Committee notes with concern that the existing legislative framework applicable to migration in the State party is vague and that this leads to inadequate protection of the rights of migrant workers and members of their families. At the same time, the Committee takes note of bill No. 4126 (the Migration Act); nevertheless, it is concerned about reports that the bill does not adequately incorporate the provisions of the Convention. It also notes that the congressional plenary session debate on bill No. 4126 has been pending since July 2010.

11. **The Committee recommends that the State party take the necessary measures to complete an early review of bill No. 4126 and ensure that it is fully in line with the Convention. The Committee also encourages the State party to adopt the bill as soon as possible in order to extend the protection of their rights to all migrant workers and members of their families in the State party.**

12. The Committee notes that the State party ratified the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) in 1952, but has still not ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

13. **The Committee invites the State party to consider ratifying ILO Convention No. 143 as soon as possible.**

Data collection

14. The Committee takes note of the efforts made to improve data collection and in particular the establishment of a migration statistics system by the Directorate-General of Migration. It regrets, however, the insufficient statistical information provided and also the lack of information on the different criteria required to evaluate the effective implementation of the Convention, in particular with regard to migrants in transit, migrant women, unaccompanied migrant children and cross-border and seasonal migrant workers.

15. **The Committee recommends that the State party step up its efforts to ensure that the migration statistics system takes into account all aspects of the Convention and includes detailed information on migrant workers in the State party, those in transit and emigrants, and encourages the State party to gather information and statistics disaggregated by sex, age, reasons for entering and leaving the country and work performed. When it is not possible to obtain precise information, such as information on migrant workers whose status is irregular, the Committee would appreciate receiving data based on studies or approximate calculations.**

Training in and dissemination of the Convention

16. The Committee notes with satisfaction the publication of the Convention in compilations of international instruments and its distribution to public officials and civil servants in the State party, as well as the publication of a version for educational purposes. Nevertheless, the Committee notes with concern that there is no information showing that the State party has developed and implemented special ongoing programmes to provide training on the content of the Convention for relevant public officials, such as those from the Directorate-General of Migration and the National Civil Police, or for civil society organizations.

17. **The Committee recommends that the State party develop continuing education and training programmes on the content of the Convention. It also recommends that the training encompass all officials whose work involves migration, including at the local level. The Committee encourages the State party to ensure that migrant workers have access to information on their rights under the Convention, and to collaborate with civil society organizations in disseminating information on and promoting the Convention.**

2. General principles (arts. 7 and 83)

Non-discrimination

18. The Committee is concerned about reports that migrant workers and members of their families sometimes suffer from discriminatory attitudes and social stigmatization.

19. **The Committee encourages the State party to:**

(a) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;**

(b) **Take immediate and effective measures, in particular awareness-raising campaigns to combat prejudice and social stigmatization for public officials working in the main areas of immigration, including at the local level, and for the general public.**

Right to an effective remedy

20. The Committee takes note of the information provided by the State party that every individual, regardless of his or her nationality, enjoys protection of the rights laid down in the legislation and also has access to the courts of law and the labour and social security courts, including migrant workers, and that complaint mechanisms before the Office of the Human Rights Advocate (*Procurador de Derechos Humanos*) are available for migrant workers. The Committee remains nevertheless concerned that migrant workers, irrespective of their legal status, are unaware of the legal actions and administrative and judicial remedies available to them, which in practice means that their access to justice is limited.

21. **The Committee encourages the State party to redouble its efforts to inform migrant workers of the legal actions available to them and the administrative and judicial remedies to which they are entitled, and to address their complaints as effectively and quickly as possible. It recommends that the State party ensure that, in legislation and practice, migrant workers and their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress before the courts, including the labour courts.**

3. **Human rights of all migrant workers and members of their families (arts. 8–35)**

22. The Committee notes with concern that expulsion and deportation procedures are not regulated by domestic legislation in accordance with the Convention. In particular, it is concerned that the right to seek a stay of expulsion is not provided for in the law. The Committee is also concerned about reports that migrant workers and members of their families in an irregular situation from outside the region have been detained for long periods in the shelter run by the Directorate-General of Migration and about the failure to appoint interpreters.

23. **The Committee recommends that the State party take the necessary measures to ensure that migration procedures, including deportation and expulsion, are in accordance with article 22 of the Convention and that they are exceptional procedures of an administrative nature. The Committee urges the State party to ensure that migrant workers and members of their families have the right to lodge an appeal against an expulsion order and to seek a stay of the expulsion until the appeal is heard. Likewise, the Committee urges the State party to carry out the necessary and effective investigations into irregularities committed by law enforcement officials who do not respect the migration procedures and to impose appropriate sanctions where necessary.**

24. The Committee notes the information provided by the delegation of the State party on efforts to improve conditions at the shelter for migrants operated by the Directorate-General of Migration. Nevertheless, it is concerned at reports about inadequate conditions at the shelter, in particular the lack of open spaces and ventilation for migrants, as well as

the limited access to basic social services. The Committee is also concerned about the limited information on the number of migrants housed in the shelter for violations of migration legislation, given the considerable number of migrants who transit through the State party every year.

25. The Committee recommends that the State party continue its efforts to improve conditions at the shelter for migrants, ensuring the provision of basic social services, including food, health care and hygienic conditions. It also encourages the State party to expedite exit procedures and to ensure that men and women are duly separated. The Committee requests the State party to include in its next report data disaggregated by age, sex and nationality, as well as information on the number of migrants housed in the shelter run by the Directorate-General of Migration.

26. The Committee is concerned about reports confirming that migrant workers and members of their families are subjected, generally while in transit, to acts of abuse and violations of their rights by officials of the Directorate-General of Migration and the National Civil Police who claim their identity documents are invalid. These abuses include the retention and destruction of identity documents, as well as the imposition of unlawful charges for entry to or departure from the territory of the State party.

27. The Committee recommends that the State party take appropriate steps to put an end to acts of abuse and violations committed against migrant workers and members of their families. In particular, the Committee urges the State party to establish a mechanism for monitoring the work of officials of the Directorate-General of Migration and the National Civil Police in order to ensure that acts of abuse and violations committed against migrant workers and members of their families, including the retention and destruction of their identity documents, are investigated and that the culprits are brought to trial and punished, in accordance with article 21 of the Convention.

28. The Committee takes note of the information provided by the State party that migrant workers in an irregular situation have the possibility to regularize their situation and to obtain work permits in the State party. Nevertheless, the Committee is concerned that unskilled migrant workers and members of their families in an irregular situation have difficulty making use of the procedures to regulate the migrant population in the State party, either because of their high cost or the many and complex requirements and conditions.

29. The Committee encourages the State party to step up its efforts to establish, implement and disseminate a comprehensive migration regularization policy for all migrant workers and members of their families in an irregular situation that satisfies the principle of non-discrimination.

30. With reference to article 26 of the Convention, the Committee is concerned that article 212 of the Labour Code does not guarantee to migrant workers in an irregular situation the right to join a trade union.

31. The Committee recommends that the State party take all necessary measures, including legislative amendments, to guarantee to migrant workers in an irregular situation the right to take part in trade union activities and to join freely trade unions, in accordance with article 26 of the Convention.

32. The Committee takes note of the existence of the Mexico-Guatemala Border Health Commission, charged with establishing action plans and providing medical services to migrant workers in the border area. However, it notes with concern the lack of specific programmes aimed at facilitating access to emergency medical care and education by migrant workers and their families present in the territory of the State party.

33. **The Committee recommends that the State party take concrete and effective measures, including the setting up of specific programmes, to ensure that access to emergency medical care is provided and, in particular, that the children of migrant workers in an irregular situation have access to, and remain in, the education system, in accordance with articles 28 and 30 of the Convention.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

34. The Committee expresses its concern at article 102 (q) of the State party's Constitution and the Labour Code, which stipulate that foreigners may not occupy leadership positions in trade unions.

35. **The Committee recommends and encourages the State party to take the necessary measures to guarantee to migrant workers and members of their families the right to form, and to sit on the executive bodies of, associations and trade unions, in accordance with article 40 of the Convention.**

36. The Committee notes that the possibility of granting the right to vote to Guatemalans living abroad has been raised in discussions on reform of the State party's Elections and Political Parties Act, but regrets that those discussions and the reform of the Act have been stalled since December 2008.

37. **The Committee encourages the State party to continue its efforts to revise its legal framework and to take additional steps to facilitate the exercise of voting rights by Guatemalan migrant workers residing abroad.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)

38. The Committee expresses its concern at the lack of coordination between, and clear guidelines for, the institutions of the State party responsible for dealing with the various aspects of international migration, including the Directorate-General of Migration, the National Civil Police and the Ministry of Labour and Social Security.

39. **The Committee encourages the State party, as a matter of priority, to finalize and implement a comprehensive migration policy, which will facilitate improved coordination between institutions on migration matters. It recommends that the policy incorporate the protection of the rights of all migrant workers and members of their families, in accordance with the Convention. It also urges the State party to strengthen the National Council for Assistance to Guatemalan Migrants (CONAMIGUA) as a mechanism for overseeing the institutions and government organs entrusted with protecting and helping all migrant workers and members of their families.**

40. The Committee notes the logistical support provided by the State party to help repatriated Guatemalan migrant workers return to their places of origin. However, it is concerned by the lack of measures to facilitate their resettlement and economic, social and cultural reintegration.

41. **The Committee recommends that the State party develop a programme, in accordance with the principles of the Convention, to assist in the long-term reintegration of returning migrants into the economic, social and cultural fabric of Guatemala.**

42. The Committee notes the implementation of the Migrant Children and Youth Programme, which is aimed at helping repatriated, unaccompanied minors. However, the Committee is concerned by the lack of information on measures to properly identify, and

hence protect, unaccompanied migrant children and young people in transit and at risk of falling victim to abuse along migration routes. The Committee also regrets the lack of data and information on the situation of children and young people in Guatemala whose parents have emigrated, in particular with regard to their family situation and education.

43. **The Committee encourages the State party to focus on developing policies that address the difficulties faced by unaccompanied migrant children and young people, and on setting up mechanisms for their identification and protection, taking into account the guidelines of the Regional Conference on Migration on assisting unaccompanied minors. It also recommends that the State party carry out studies on the situation of children and young people in Guatemala whose parents have emigrated, with a view to developing policies on care, protection and family reunion.**

44. The Committee notes the efforts made by the State party to combat human trafficking. However, it is concerned by the apparent overlap and lack of coordination between the institutions whose task it is to combat human trafficking, especially between the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) and the Inter-agency Commission against Human Trafficking (CIT). It is equally concerned by the paucity of information available on the implementation of the Act against Sexual Violence, Exploitation and Human Trafficking, in particular with regard to the proper identification, protection and care of victims, as well as on the effective investigation, prosecution and punishment of the perpetrators of trafficking, especially in cases involving public officials in criminal acts of this kind. The Committee is also concerned by the lack of studies, analysis and disaggregated data with which to measure the extent of the problem of trafficking in, through and from the State party's territory.

45. **The Committee recommends that the State party intensify its efforts to combat human trafficking, in particular by:**

(a) **Adopting regulations to ensure that legislation aimed at combating human trafficking is applied;**

(b) **Providing appropriate and intensive training to improve the ability of the National Civil Police to identify victims, along with ongoing training on the issue of human trafficking for public officials, especially the police, judges and criminal court officials, prosecutors, labour inspectors, teachers and health-care professionals at the national level, and representatives and officials of Guatemalan embassies and consulates;**

(c) **Systematically collating disaggregated data with a view to combating human trafficking more effectively;**

(d) **Taking measures to ensure that the perpetrators of human trafficking, including public officials, are tried and punished appropriately;**

(e) **Intensifying campaigns to prevent irregular migration, including human trafficking;**

(f) **Developing effective mechanisms for the identification and protection of victims of trafficking;**

(g) **Formulating a strategy to ensure respect for victims' rights and the prevention of further abuse, as well as developing projects to help the victims of trafficking rebuild their lives, taking into account the physical, psychological and social consequences of their experience on them.**

46. As far as the smuggling of migrants is concerned, the Committee recommends that the State party:

(a) Carry out the necessary investigations and act to punish the perpetrators of migrant smuggling;

(b) Step up local campaigns aimed at the general public on the risks of irregular migration.

6. Follow-up and dissemination

Follow-up

47. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to Congress, as well as to local authorities.

Dissemination

48. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies, the judiciary, diplomatic and consular officials and non-governmental organizations and other members of civil society, as well as to universities and the general public, and to take the necessary steps to bring them to the attention of Guatemalan migrant workers abroad and foreign migrant workers in transit or residing in Guatemala.

7. Next periodic report

49. The Committee requests the State party to submit its second periodic report by 1 October 2016.
