



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 Twelfth session

Summary record (partial)* of the 129th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 27 April 2010, at 10 a.m.

Chairperson: Mr. El Jamri

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Initial report of Algeria (continued) (CMW/C/DZA/1; CMW/C/DZA/Q/1 and Add.1; HRI/CORE/1/Add.127)

1. **The Chairperson** invited the delegation of Algeria to take places at the Committee table and continue its replies to questions raised at the previous meeting.
2. **Mr. Jazaïry** (Algeria) said that the delegation had grouped the remaining questions together according to subject matter.
3. **Mr. Gaouaou** (Algeria) said that Algeria had signed a number of bilateral migration agreements in the 1960s and 1970s with the Maghreb States. Subsequently, similar agreements had been signed with neighbouring sub-Saharan States, including Mali. More recently, bilateral migration agreements had been signed with France, Spain, Germany, Italy, Switzerland and the United Kingdom. In the agreements signed with the four latter States, the provisions of article 22 of the Convention relating, *inter alia*, to collective expulsion and notification of expulsion orders had been duly taken into account.
4. **Mr. Bourbia** (Algeria) said that bilateral social security agreements had been signed with Belgium, France, the Libyan Arab Jamahiriya, Romania and Tunisia. They covered matters such as health insurance, maternity leave, work-related accidents and illness and family allowances.
5. **Mr. Kaci** (Algeria) said that there was coordination between the various ministries concerned by irregular migration, such as the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence and the Ministry of Health. An intersectoral committee had been established in the 1970s for that purpose. It issued reports on the movements of foreigners to and from Algerian territory. There were similar committees at the *wilaya* (department) level, although the Ministry of Foreign Affairs was not represented on them.
6. **Mr. Hadid** (Algeria) said that, in accordance with Act No. 08-11 on the entry, stay and movement of foreigners in Algeria, the expulsion of foreigners from Algerian territory must be ordered by the Ministry of the Interior. According to article 30 of the Act, the persons concerned must be notified of the expulsion, and had between 48 hours and 15 days to leave Algerian territory. They could appeal against the order within five days of receipt of notification and their appeal had a suspensive effect on the expulsion order. The courts must take a decision on the appeal within 20 days, again with suspensive effect. According to article 32 of the Act, the enforcement of the order could be deferred in cases of force majeure, for example if the foreigners concerned proved that they were supporting the education or subsidizing the needs of children born on Algerian territory, or if they were orphans or pregnant at the time the order was issued. They were allowed to request the assistance of diplomatic or consular offices on Algerian territory as well as the assistance of a lawyer or interpreter. If it proved impossible for them to leave Algerian territory, they were assigned to a fixed residence by the Ministry of the Interior until such time as the order could be enforced.
7. **Mr. Jazaïry** (Algeria) said that the grounds for exemption from expulsion, such as pregnancy, should be taken into account by the administrative authorities before issuing the expulsion order. If that had not been done, however, the persons subject to the order had the additional safeguard of lodging an appeal, thereby suspending enforcement of the order after it had been issued.
8. **Mr. Kaci** (Algeria) said that Algerian law guaranteed the protection of the property of migrant workers, irrespective of their status, in conformity with relevant international

and bilateral agreements. In fact, each time Algeria concluded an agreement for the repatriation or return of refugees, it sought guarantees regarding the protection of the individuals concerned and of their property.

9. **Mr. Jazaïry** (Algeria) said that the Algerian authorities had not received any complaints concerning the ill-treatment of female migrants, but would welcome any information the Committee might have concerning specific cases. Algeria had not conducted a social study on migrants – an omission that it must remedy in due course.

10. **Mr. Gaouaou** (Algeria) said that there was an inter-ministerial committee responsible for Algerian migrants returning to their homeland. It provided short-term assistance with problems relating to health care, administrative procedures and transport and endeavoured to ensure their social and economic reintegration in accordance with employment opportunities and their qualifications.

11. **Mr. Jazaïry** (Algeria) said that the Algerian Government's primary concern was to protect the life of foreigners and Algerian citizens who attempted to leave the country illegally. Some of them took enormous risks in crossing the Mediterranean in makeshift crafts and the death toll was high. In order to discourage such undertakings, those who organized or participated in them were liable to criminal penalties.

12. Turning to questions relating to vacant property, he cited article 42 of the Finance Act adopted on 31 December 2009, which made no reference to nationals or non-nationals. The measure was a general one to deal with certain consequences of the colonization of Algeria, notably requests received from former settlers for compensation for property left vacant, including from some who had already received compensation from another source. It was interesting to note that many such cases had been brought before the Human Rights Committee, but had been declared inadmissible, since the events in question had taken place prior to the ratification by Algeria of the International Covenant on Civil and Political Rights.

13. **Mr. Gaouaou** (Algeria) said that his delegation's understanding of article 3 (d) of the Convention was that the instrument did not apply to refugees and stateless persons. The recent increase in migration flows into and through Algeria had shown that there was some confusion about migrants with refugee status and irregular migrants. In order to remedy the situation, the State structures responsible for dealing with refugees and stateless persons were being reorganized and new regulations were being drafted to clarify their respective duties and functions.

14. **Mr. Jazaïry** (Algeria) said that the falsification of passports was part and parcel of the problem of clandestine and irregular migration.

15. **Mr. Kaci** (Algeria) said that Algeria had adopted a number of measures to comply with International Air Transport Association (IATA) regulations relating to travel documents. Considerable funds had been allocated in order to issue biometric passports, as well as to train staff and arrange facilities for processing such documents.

16. **Mr. Bourbia** (Algeria) said that the working conditions of foreigners were governed by Act No. 81-10 of 11 June 1981, on employment conditions for workers, and the relevant implementing texts. Under the provisions of the Act, foreign workers required a work permit, otherwise their employers were liable to a fine of between 5,000 and 10,000 Algerian dinars. The workers themselves were also liable to a fine, but the provision was rarely applied. Clandestine migrants were subject to the provisions of Act No. 08-11.

17. **Ms. Driss** (Algeria) said that family relations and matters such as marriage, divorce, guardianship and succession were governed by the Family Code. Under the Code, divorce was usually a unilateral decision taken by the husband, but was allowed at the wife's

request under specific circumstances detailed in the Code, such as persistent disagreements. Foreigners living in Algeria who wished to divorce were subject to their own national laws.

18. **Mr. Kaci** (Algeria) said that matters relating to the granting and withdrawal of residence permits to foreigners in Algeria were governed by article 16 of Act No. 08-11. If the head of a family who held a residence permit died, the family members did not automatically have their residence permits withdrawn, provided that they continued to meet the conditions necessary for residence. Residence permits were granted to individuals, not the family as a whole. However, situations that were unclear were decided on a case-by-case basis.

19. **Mr. Jazaïry** (Algeria) said that the family members concerned continued their life as before and the duration of their residence permit was not affected. Any application for the renewal of their residence permits was reviewed on equal terms with other foreigners in Algeria.

20. **Mr. Gaouaou** (Algeria) said that the Algerian Government had a cooperation agreement with foreign embassies and diplomatic representations on its territory on matters relating to expulsion. Under the agreement, those offices must be informed within eight days of an expulsion order issued against one of their nationals.

21. **Mr. Saadi** (Algeria) said that persons holding dual nationality enjoyed all political rights, with the exception of the right to form political parties. As for the question relating to the expulsion of Moroccan nationals from Algeria in 1975, he said that the Committee was not in possession of all the facts. Many Algerian nationals had been expelled from Morocco during the same period. The Committee was not competent to consider the matter, in conformity with the principle of the non-retroactive application of treaties.

22. **Mr. Kaci** (Algeria) said that there were some 107,000 documented migrants in Algeria. Many of them worked in sectors such as health, business, investment, education, agriculture and construction.

23. **Ms. Driss** (Algeria) said that, under the Criminal Code, migrants' status did not affect their obligation to comply with the law. It was left to the individual judge's discretion to take a migrant's status into account if the judge considered it relevant to a case.

24. **Mr. Jazaïry** (Algeria) said that foreigners could not participate in Algerian elections. All foreigners and migrants had the right to join associations. They could not form or chair Algerian associations but they could form or chair associations of foreigners.

25. **Mr. El-Borai** requested clarification of the right of migrant workers to form and join trade unions. He noted that the State party had ratified the International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87), which, like the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, contained provisions guaranteeing migrant workers freedom of association.

26. The State party had concluded bilateral agreements on social security benefits with Belgium, France, the Libyan Arab Jamahiriya, Romania and Tunisia, but he wished to know whether migrant workers from countries other than those enjoyed the right to social security benefits or to join a social security system.

27. He asked whether any cases of expropriation had involved property belonging to migrant workers. If so, he wished to know how the State party's legislation was in accordance with article 15 of the Convention.

28. **Ms. Dicko** asked whether there were any mechanisms in place to enable migrant workers to send remittances home without incurring high fees.

29. **Mr. Alba** requested additional information on the fate of migrants found to be in an irregular situation, prior to their deportation. He asked whether there were any statistics available on complaints brought before the authorities by migrant workers.

30. **Mr. Carrión-Mena** asked whether the bilateral agreement between France and the State party contained any provisions to control the migratory flows between the two countries. Given the low number of documented migrant workers known to reside in the State party, he also wished to know whether there were any reliable estimates of the total number of migrant workers, including those in an irregular situation.

31. **Mr. Sevim** welcomed the fact that the readmission agreements the State party had concluded contained procedural guarantees. He asked whether any penalties were applied to Algerian nationals who returned to the State party under those agreements, regardless of whether they had been documented or non-documented. He would appreciate additional information on the procedures followed when third country nationals returned to the State party under the readmission agreements.

32. The Committee would welcome details on the situation of female migrants in the State party.

33. It would be useful to learn whether non-documented migrant workers had the right to social security benefits and if their entitlement continued if they returned to their countries of origin.

34. **Ms. Miller-Stennett** asked whether the Ministry of Labour was a member of the inter-agency committee on irregular migration. She would also like to know if there were written criteria to enable the authorities to determine whether an individual was given the status of refugee, asylum-seeker or migrant.

35. **Mr. Tall** asked what measures were taken to facilitate the integration of the children of migrant workers in society, regardless of whether their parents were documented or non-documented. He wished to know whether the State party's legislation on people smuggling included provisions on victim protection.

36. **The Chairperson** asked what steps the State party took to raise awareness of the provisions of the Convention among Algerian migrants living abroad and foreign migrants living in Algeria. It would be useful to learn whether any courts had invoked the Convention in their rulings, and whether judges and government officials were given training on the provisions of the Convention. The Committee would welcome information on the role that civil society had played in preparing the report.

37. He wished to know how the Government regarded Algerians who had been granted territorial asylum, notably in France, having fled Algeria owing to persecution by armed groups. It would be useful to know whether they were considered as migrants and included in the statistics on migrants living abroad, and whether they had links with consulates or diplomatic missions.

38. He asked whether the Government was taking or planning measures to provide its citizens living abroad with social protection, where it was not available in their countries of residence.

39. The State party was one of the largest States in the Sahara region, which was well-known as a transit zone for migrants, where human trafficking and people smuggling were rife, and as an area where many migrants were exploited in drugs and arms trafficking. What steps was the State party taking to find out about the situation of migrants in the region and to ensure they were protected from exploitation?

40. **Mr. Ibarra González** asked whether documented migrants had the right to participate in elections. If not, he would welcome information on any plans to allow them to

do so. He also wondered whether foreigners could vote in Algerian elections if they had acquired Algerian nationality.

41. He wished to know whether non-documented migrants had the right to marry Algerian citizens. If so, it would be useful to learn whether marriage to an Algerian citizen conferred legal status on foreign migrants.

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

42. **Mr. Jazaïry** (Algeria) said that migrant workers and members of their families did not have the right to form trade unions, but they could join and chair trade unions. Migrant workers and their families had the right to vote in their own national elections through the diplomatic missions in Algeria. They could not vote in Algerian elections and there were currently no plans to change that. There were no particular restrictions on migrants' right to own property. He knew of no cases of confiscation of migrants' property since the entry into force of the Convention.

43. **Mr. Kaci** (Algeria) said that foreign nationals could own property in Algeria, although they were required to obtain authorization. That requirement was a safeguard to prevent the sale of property belonging to the State. The Constitution provided that property owners must receive compensation in the event of expropriation.

44. **Mr. Jazaïry** (Algeria) said that the transfer of funds belonging to migrants was permitted under Algerian law, provided their situation was regular. The employer asked the Central Bank for authorization for the transfer and the funds were transferred through Western Union, which levied a very high commission. The Government was therefore studying the possibility of establishing a network of Algerian banks abroad to handle such transfers at more reasonable cost.

45. No statistical data were available on complaints lodged by migrants because no distinction was made between complaints submitted by foreigners and by Algerian nationals.

46. **Mr. Gaouaou** (Algeria), responding to the question concerning the State party's bilateral agreements with France, said that there was currently no mechanism for regularizing the status of migrants between Algeria and France. Several agreements on the subject had been signed in the past, including labour agreements in the 1960s, under which Algerians had been authorized to work in France. In the early 1970s the Government of Algeria had decided to terminate those arrangements following xenophobic acts against the Algerian community in France. In the 1980s there had been agreements concerning the voluntary return of Algerians living in France, whereby the French authorities would provide support for returnees, but in fact very few Algerians had benefited from such support. The French Government had recently proposed a new type of agreement for coordinated management of migration flows. France had entered into such agreements with several African countries, but the Algerian Government had opted not to sign one because it objected to several of the provisions they contained, particularly those concerning expulsion of foreign nationals from France.

47. **Mr. Jazaïry** (Algeria) said that Algerian migrants who returned to Algeria, regardless of the circumstances under which they had left the country and regardless of whether Algeria had a readmission agreement with the destination country, were not subject to any penalties or other judicial measures. Returning Algerian migrants were entitled to basic social security coverage and, under bilateral social security agreements signed with some countries, might also be entitled to receive benefits they had acquired while working and residing abroad. As to social security coverage for Algerian migrant workers in countries where such coverage was not available, Algeria was not a wealthy country and

the Government could not afford to provide such coverage for its nationals abroad, but those whose salaries were sufficient could purchase private insurance.

48. He confirmed that the Ministry of Labour was indeed represented on the intersectoral advisory committee.

49. **Mr. Saadi** (Algeria), responding to the question on differentiation between migrants in an irregular situation and refugees, said that the Government followed the procedures and criteria of the Office of the United Nations High Commissioner for Refugees (UNHCR) in determining whether a migrant was eligible for refugee status.

50. **Ms. Driss** (Algeria) said that migrant children who were accompanied by their parents benefited from the same protections, including health care and education, as children of Algerian nationals.

51. With regard to trafficking in human beings, legislation adopted in 2009 established severe penalties for offenders. Victims of trafficking and smuggling of migrants were afforded full protection under Algerian law.

52. **Mr. Saadi** (Algeria) added that, while there were no centres specifically for victims of trafficking, they could receive shelter and support at centres for women and children in situations of distress or risk, operated by the Government or by civil society organizations.

53. **Mr. Jazaïry** (Algeria) said that migrants subject to expulsion were required to report to the authorities every day while the expulsion procedures were being completed, but they were not held in detention facilities.

54. **Mr. Kaci** (Algeria), responding to the question on control of clandestine migration in the Algerian Sahara, said that the Algerian authorities had intensified border control measures in the desert region and had allocated significant human and material resources for that purpose. A central office to combat clandestine migration had been established and special regional border patrols had been put in place. Binational border cooperation committees had been established with Niger and Mali to facilitate the exchange of information on clandestine migration and collaboration between the authorities in dismantling migrant-smuggling networks.

55. **Mr. Jazaïry** (Algeria) said that the State party had no special mechanisms for informing migrants about their rights under the Convention, apart from newspapers, the Internet, the Official Gazette and similar media. If the Committee had other suggestions for disseminating the content of the Convention, the delegation would welcome them.

56. **Ms. Driss** (Algeria) said that Algeria's ratification of international conventions was always reported in the media and that conferences, seminars and round tables on human rights were routinely held on the international human rights days, including International Migrants Day.

57. **Mr. Kaci** (Algeria) said that in December 2009 the Government, in collaboration with civil society, had organized an event in observance of International Migrants Day, which had afforded an opportunity to publicize the Convention widely. The event had received ample media coverage.

58. **Ms. Driss** (Algeria) said that basic training for judges included instruction on human rights instruments and on remedies available to individuals whose rights had been violated. The Ministry of Justice offered continuing education for judges and other law enforcement officials on the protection and promotion of human rights. On Human Rights Day in 2009 it had issued a publication explaining the content of all the human rights conventions to which Algeria was a party, which had been distributed to all judges and other justice officials. The Convention had not to date been directly applied by Algerian courts or

administrative authorities, but other international instruments, such as the International Covenant on Civil and Political Rights, had been invoked in court cases.

59. **Mr. Jazaïry** (Algeria) said that civil society had participated in the preparation of the State party's initial report through its representatives on the Advisory Council on Human Rights.

60. **Mr. Kaci** (Algeria), responding to the question concerning marriage between a non-documented migrant and an Algerian national, said that foreigners were not permitted to marry in Algeria unless their immigration status was legal. Hence, marrying an Algerian would not enable a non-documented migrant to regularize his or her situation.

61. **Mr. Saadi** (Algeria) said that his capital had just confirmed that article 42 of the Finance Act had nothing to do with property owned by migrant workers in Algeria. It concerned property owned, for example, by companies operating in Algeria that had been vacated or abandoned. The Finance Act provided that such properties could be claimed by the State.

62. **Mr. Jazaïry** (Algeria) said that, while his Government might not have achieved perfect implementation of the Convention, it was firmly committed to ensuring respect for the human rights of all persons residing in Algeria, whether they were nationals or foreigners. It was to be hoped that Algerians working and living abroad would be treated as well as foreign nationals in Algeria and that other countries — particularly certain Western countries where Algerian migrants had been subjected to considerable discrimination — would ratify the Convention and adhere as strictly to its provisions as his Government did.

63. **Ms. Poussi Konsimbo** (Country Rapporteur) observed that Algeria was a country of origin, transit and destination for migrants and that the issue of migration was therefore relevant to it from several standpoints. It was clear that the Government had made substantial efforts to bring its laws into line with the Convention. She believed that its dialogue with the Committee would enable it to enhance both its legislation and its practices in respect of migrant workers and the protection of their rights. Several issues warranted particular attention by the State party. One was the proliferation of migrant-smuggling networks in the Sahara region. The State party should redouble its efforts to curb that phenomenon. It should also strive to improve its systems for the collection of data on migrants and on victims of trafficking. In that connection, the proposal for the creation of an observatory of migratory flows in the Mediterranean region should be pursued. Lastly, the State party should intensify its efforts to inform migrant workers in Algeria and Algerian migrants working abroad of their rights under the Convention and under Algerian law.

64. **The Chairperson** said that the Committee had thus concluded its consideration of the State party's initial report. He thanked the delegation for its written replies to the Committee's list of issues and for the additional clarifications provided in the course of the dialogue, particularly the information on how the Convention and Algerian legislation relating to migrant workers were being applied in practice. The dialogue had highlighted both the State party's successes in implementing the Convention and the challenges that it still faced. It had also underscored the importance of Algeria's role in regional cooperation on migration issues. Such cooperation was essential because no State could manage migratory flows entirely on its own. He encouraged the State party to promote the Convention in regional and international forums, especially among countries that received Algerian migrant workers.

The public part of the meeting rose at 12.35 p.m.