



**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  
Fifteenth session**

**Summary record of the 171st meeting**

Held at the Palais Wilson, Geneva, on Wednesday, 14 September 2011, at 3 p.m.

*Chairperson:* Mr. El Jamri

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*The meeting was called to order at 3.05 p.m.*

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

*Initial report of Guatemala (CMW/C/GTM/1; CMW/C/GTM/Q/1 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **Ms. del Valle** (Guatemala), introducing her country's initial report (CMW/C/GTM/1), said that it had been prepared with the participation of relevant Government institutions at the national and local levels and civil society organizations. The reporting process had contributed to a clearer understanding of the challenges facing Guatemala and the strategies required to address the gap between human rights standards and the actual situation of migrants.
3. As Guatemala was a country of origin, transit, destination and return, the protection of the rights of all migrant workers, regardless of their legal status, was a key priority for the current Government. It was important to bear in mind that all human beings were entitled to a number of rights and that under no circumstances should the enjoyment of those rights be affected by a person's status as a migrant. In view of the inherent international character of migration, efforts were required from the international community as well as Guatemala itself. However, the fact that most of the States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families were migrant-sending States rather than receiving States meant that the Convention was implemented unequally at the international level.
4. Despite progress in a number of areas, the Government recognized that it faced enormous challenges in implementing the Convention. It was necessary to speed up the process of bringing national legislation into line with the Convention and to develop a public policy on migration issues with a view to fulfilling Guatemala's obligations under the Convention. Strategies were needed for meeting the varying needs of migrant workers in Guatemala and abroad.
5. Since becoming party to the Convention, the Government had taken steps to protect the rights of Guatemalan nationals abroad and, in particular, to promote immigration reforms that would benefit Guatemalan migrants in the United States of America. The Government had expressed its concern at the potential negative impact of the recent Arizona immigration law, not only on migrants in general but on Guatemalan migrants in particular. Guatemala was also working to promote a Central American regional position on migration.
6. The report provided details of progress made in a number of areas. The main advances included the issuing of consular identification cards, the establishment of mobile consulates in the United States, the start of the process of bringing migration law into line with the Convention, improvements in the production of statistical data on migration, the development of a public policy on migration, improvements in the provision of services for Guatemalans returning home, the adoption of measures to eliminate trafficking in persons and the implementation of bilateral agreements with receiving States aimed at ensuring proper conditions for Guatemalan migrant workers. A Memorandum of Understanding had been signed with the United States on establishing a cooperation framework to prevent, monitor and punish trafficking in persons.
7. The Government recognized that much remained to be done in order to comply fully with the Convention and it was firmly committed to continuing its efforts to ensure that migrant workers' rights were respected. The main challenges it faced in that regard

included adopting measures to ensure access to basic rights for migrant workers, such as the rights to education and to join a trade union, reforming electoral legislation so as to allow Guatemalans abroad to exercise their right to vote, extending social security coverage, applying a human rights-based approach to the provision of services to migrants in Guatemala, improving the services provided in migrant shelters and establishing procedures to prevent mistreatment of migrants by police officers.

8. **Ms. Cubias Medina** commended the State party on its efforts to promote the rights of migrant workers and welcomed in particular its decision to recognize the competence of the Committee to receive and consider communications under articles 76 and 77 of the Convention. While acknowledging the progress made in many areas, the Committee was concerned about a number of aspects, including the rights of undocumented migrants in transit through Guatemala, the situation of unaccompanied migrant children and adolescents and the issue of trafficking in persons.

9. Noting the efforts undertaken by the National Migrant Support Board of Guatemala (CONAMIGUA) to assist Guatemalan migrants abroad, she asked what measures it had taken to protect those migrant workers who were in transit or resident in Guatemala. She requested details of the specific role the army played in controlling migration. It would be interesting to know what procedures officials from the Directorate-General of Migration employed to ensure respect for the labour rights of irregular migrants prior to their expulsion from the country. The Committee was concerned about the issue since a lack of coordination between the Ministry of Labour and the Directorate-General of Migration could lead to labour exploitation. Had any complaints been made to the Ministry of Labour by migrant workers in that connection?

10. She asked the delegation to provide more detailed information on the process for obtaining Guatemalan citizenship by persons born in the republics that formed the Central American Federation and on the number of individuals who had been granted nationality in that way. She asked the delegation for details of living conditions in migrant shelters and to comment on reports that persons housed in them had little opportunity to exercise. She wished to know whether any statistics were available concerning complaints made by migrants regarding corrupt practices involving public officials, in particular in connection with trafficking in persons.

11. Referring to paragraph 69 of the written replies to the list of issues, she asked the delegation to explain why irregular migrant workers did not choose to apply for a judicial review of their expulsion order. Lastly, she asked whether the State party had any clearly established policy to protect the rights of migrant workers in an irregular situation in transit through Guatemala.

12. **Ms. Miller-Stennett**, referring to paragraph 4 of the State party's report, asked what progress had been made regarding the development of the statistical and qualitative databases that were designed to enhance understanding of migration issues. She would like to know whether the Government had started to conduct the review of domestic legislation mentioned in paragraph 6 of the report. She asked whether the objectives of the migration programme established as part of the Social Development and Population Policy (report, para. 44) were currently being implemented and, if so, whether any data were available on the activities carried out so far and their outcomes. It would be interesting to know whether the Government had taken any measures to overcome the obstacles to the implementation of the Convention identified in the report (para. 130). Data provided in the report (para. 165) indicated that complaints relating to human trafficking were on the increase despite the introduction of a number of measures to combat the practice. She asked whether the delegation could explain the reasons for that increase. The provision in the Labour Code which required members of the executive committee of a trade union to be of Guatemalan origin (report, para. 175) was not consistent with the Convention. She would like to know

whether the Government had any plans to rectify that situation in the near future. She asked the delegation to provide further information on how migrants who had been deported to Guatemala in error were eventually repatriated, particularly with reference to cases where the migrant's country of origin had no consular representation in Guatemala.

13. **Mr. Alba** commended the State party on its participation in the Regional Conference on Migration, on its membership of the Central America 4 (CA-4) Agreement on border control and on its collaboration with the National Board on Migration in Guatemala.

14. With respect to the CA-4 Agreement, which provided for cross-border freedom of movement for citizens of member States but did not establish their right to work, he asked whether that situation had given rise to violations of immigration laws. It would be interesting to know what practical consequences stemmed from the fact that Guatemala considered nationals of the constituent republics of the Central American Federation as Guatemalans by birth.

15. Regarding the challenges facing Guatemala, he wondered whether the delegation could provide some specific examples of progress that had been made. In particular, he wondered what regulatory measures had been taken to ensure access to health-care services for migrant workers. Noting from the written response to question 11 of the list of issues, where it was indicated that currently no migrant workers were held in the shelter run by the Directorate-General of Migration for having violated the migratory provisions in force, he requested further details of the nature of the sanctions imposed for such offences and any statistical information in that regard.

16. **Mr. Kariyawasam**, referring to the large numbers of Guatemalan nationals who had been returned to their country from the United States and Mexico, asked whether those returns had been voluntary and whether the Government had held consultations with the returning countries in order to ensure the protection of migrants' rights. What measures had been taken to facilitate their reintegration into Guatemalan society? He expressed concern about the use of the term "illegal persons" ("*ilegales*") in the Migration Act, as it was not in accordance with the terminology used in the Convention. The Committee would appreciate further information on Migration Bill No. 4126, in particular as to whether it incorporated fully the provisions of the Convention. He would be interested to know whether nationals of republics constituting the Central American Federation, who were recognized as Guatemalan nationals under the Constitution, had an automatic right to work in the country. Lastly, he wondered whether there were any reported cases of discrimination and violence against migrants and, if so, what mechanisms existed to investigate such reports.

17. **Ms. Poussi Konsimbo** requested clarification of paragraph 20 of the report, which stated that, under article 26 of the Constitution, Guatemalans could enter or leave the country without a visa. Did that mean that Guatemalan nationals could leave the country without first completing the visa formalities required by the receiving State? Noting that the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) was responsible for coordinating the activities of executive institutions, she wished to know what measures were in place to ensure the proper coordination of the work of other bodies mentioned in the report, such as the Social Welfare Secretariat and the National Council for Assistance to Guatemalan Migrants. She asked what criteria were applied to determine the need for a mobile consulate in a particular area and whether such consulates were staffed by consular officials already present in the country concerned or by officials sent from Guatemala specifically for that purpose. Noting that the legend to table 8 in paragraph 107 of the French text of the report was ambiguous, she asked the delegation to clarify whether the complaints referred to concerned acts of discrimination against foreigners or acts of discrimination committed by foreigners.

18. **Mr. Sevim** asked whether migrants were able to join trade unions and whether regular migrants could form trade unions and hold office in them. Regarding voting rights, he enquired whether Guatemalans living abroad were entitled to vote in elections in Guatemala and, if not, whether there were any plans to allow them to do so.

19. **Mr. Taghizade** asked whether Guatemala had entered into bilateral and multilateral agreements to protect migrants' rights, in particular with the main receiving States for Guatemalan migrants. He also asked whether the Government provided assistance to Guatemalans living abroad in order to enable them to participate in national elections and to transfer money freely.

20. **Ms. Dicko** said that she would like to know whether the State party had any specific policies aimed at assisting the resettlement of returning migrants in Guatemalan society. She asked the delegation to comment on concerns expressed by NGOs that shelters for refugees and migrants in transit through Guatemala resembled detention centres.

21. **Mr. Tall** said that reports indicated that Guatemalan migrants working in the agricultural sector in Canada were often the victims of exploitation and rights violations. In 2010, hundreds of migrant workers had protested against their expulsion from Canada in front of the Canadian embassy in Guatemala. He asked what follow-up action the Government had taken regarding those workers and what measures it had adopted to ensure that the rights of its nationals were protected in Canada. Bearing in mind that the Committee on the Elimination of Racial Discrimination had expressed deep concern about entrenched racism in Guatemala (CERD/C/GTM/CO/11), he would like to know what measures the Government had taken to combat racial discrimination and whether the policy entitled "Towards harmonious intercultural coexistence" had been implemented and, if so, what results had been achieved.

*The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.*

22. **Ms. del Valle** (Guatemala) said that the Government was aware of the need to set up data collection systems in many areas. However, a comprehensive data system on migration was currently in place, which was facilitating progress in migration management. When an expulsion order was handed down against a migrant who was in an irregular situation, the individuals concerned were informed of their right to request a judicial review of that decision. The Government had no information on why no such requests had been received. The Public Defender's Office automatically provided free legal aid to all foreigners who were detained on account of their irregular migratory situation.

23. The Government was in the process of regulating several existing laws. In the case of the Migration Act, the policy which would implement the provisions of the Act was currently being drawn up through a process of consultation with the relevant government entities and other stakeholders, such as civil society. Migrant workers who were in a regular situation had the same right as Guatemalan citizens to join trade unions and become members of their executive bodies. Those in an irregular situation did not enjoy those rights.

24. The Directorate-General of Migration had no record of complaints against its staff. However, the Government was aware of a number of complaints concerning discriminatory treatment of foreigners by the police. Once those cases had been fully documented, the relevant information would be forwarded to the Committee, together with copies of the current legislation and policies on combating discrimination and racism.

25. The Directorate-General of Migration worked with the ministries of Labour and Social Security, Public Health and Social Assistance, and Foreign Affairs, as well as the Prosecutor-General's Office to provide care for Guatemalans who were deported, most of whom came from the United States of America. To date, some 30,000 Guatemalans had

been deported without any consultation with her Government. The Guatemalan authorities had not had the opportunity to negotiate with the United States Government, despite their attempts to do so. The Ministry of Labour and Social Security offered all deportees training programmes and assistance with contacting potential employers, but few of those concerned had made use of those services.

26. Third country nationals who were deported to Guatemala were given accommodation and food during their stay and the authorities contacted the consulates of the countries concerned. In some cases, it was difficult to identify where third country nationals were really from, since they were often deported with no documents. When Guatemala received third country deportees from countries that had no consular presence in Guatemala, contact was made with the consulate of the country closest to that of the third country national. Given the high cost of returning third country nationals home, the Government often requested financial assistance from the International Organization for Migration.

27. A bill to give Guatemalans living abroad the right to vote in Guatemalan elections was currently before the Congress. To date, no recruitment mechanism or bilateral agreement had been established for Guatemalan migrants who went to Canada to work on temporary contracts in the agricultural sector. Since the reform of the Canadian migration policy at the beginning of 2011, it had become more difficult for Guatemalan migrant workers to stay in Canada. The ministries of Labour and Social Security and Foreign Affairs had drawn up a proposal which would guarantee the rights of Guatemalan migrant workers while they were abroad. Details of the other agreements the Government had reached concerning migration were provided in paragraphs 81 to 91 of the initial report.

28. Migrants who were sent to the Directorate-General of Migration shelter spent an average of four days there. Between January and April 2011, some 60 individuals had been sent there. The shelter had been empty at times. Steps had been taken to improve living conditions for inmates. Foreigners who were detained solely on the grounds that they were in an irregular situation were requested either to regularize their situation or to return to their country of origin.

29. The initial report provided details of the progress that had been made in the fight against trafficking in persons. The Government was aware of the need to increase the budget allocated to that end. A new law had brought the Alba-Kenneth Alert System into effect, providing that searches for kidnapped children should begin from the moment the alert was received. The new system had proved effective in several cases, with children having been located before being taken abroad. The number of complaints related to trafficking had increased, but it was unclear whether that was an indication that the actual number of cases of human trafficking had increased. Separate shelters were available for child and adult victims of trafficking. The Social Welfare Secretariat accommodated unaccompanied child migrants at the “Nuestras Raíces” shelter in the Department of Quetzaltenango until they could be reunited with their families. They were provided with food, health care, counselling services and recreation facilities. It often proved difficult to identify their country of origin, as they rarely carried identity documents.

30. The army provided support for the police force when it had insufficient officers to deal with a situation. The police force had been reorganized in the wake of the internal armed conflict and the National Civil Police had been created. To date, the new force had been unable to fill all its vacant police officer posts, whence the need for army backup on occasion. The police was always in charge of such joint operations.

31. Information on their rights was disseminated to Guatemalan migrants living abroad by the National Council for Assistance to Guatemalan Migrants and the Ministry of Foreign Affairs, through the relevant consulates. The Government was aware that, to date, foreign

migrant workers living in Guatemala had been informed about their rights by NGOs. It had launched a project to disseminate information on its obligations under the international human rights instruments to which it was a party and to publish the reports it submitted to the United Nations treaty bodies.

32. **Ms. Gordillo** (Guatemala) drew the Committee's attention to the details on the National Council for Assistance to Guatemalan Migrants that were provided in paragraphs 50 and 51 of the initial report. The Council was in the process of drawing up the country's migration policy. It would cover migrants living abroad, migrants in transit, internal migration and the families of migrants and would include areas such as security, health, education, employment and human rights. The policy identified the programmes that should be implemented and the institutions that would be responsible for them. Consultations on the draft policy document had taken place with relevant government entities and were currently under way with representatives of the country's seven regions and the consular authorities in the United States who were on the Council's Advisory Board. Thereafter, civil society representatives would be consulted. While the Council was currently plugging several institutional gaps by conducting literacy programmes for migrants and providing some technical assistance, in future it would be a purely advisory body, which would coordinate and monitor activities.

33. **Mr. Martínez Alvarado** (Guatemala) said that each of the 11 Consulates General of Guatemala in the United States ran at least 1 mobile consulate every month, in order to reach all Guatemalans living in the United States. On Saturdays and Sundays, consular staff travelled to neighbouring cities or areas where many Guatemalans lived and set up their mobile consulates in churches, sports centres and community centres. The schedule of mobile consulates was published at the beginning of each year. Over the previous few years, an average of 150 mobile consulates had been opened each year. The mobile consulates mainly issued passports and consular identity cards, registered births, marriages and deaths, and provided advice on migration matters and legal assistance. A small number of mobile consulates were conducted by the Embassy of Guatemala in Canada and the Consulate General of Guatemala in Ciudad Hidalgo, Mexico.

34. The Single Central American Visa for the Free Movement of Aliens between El Salvador, Guatemala, Honduras and Nicaragua (CA-4) enabled citizens of the four countries to cross those countries' borders without a visa, the only requirement being that they carry at least one means of identification, such as their national identity document or driver's licence.

35. **Ms. Cubias Medina** asked if the migration authorities and the judiciary applied the Convention directly and, if so, how any inconsistencies between its provisions and domestic legislation were overcome. She would appreciate additional details on the migrant frontier worker pass scheme, under which Guatemalan migrants could live and work in Mexico. It would be interesting to hear what developments and challenges had arisen in the implementation of the scheme. She wished to know how the State party guaranteed irregular migrants' right to health and their children's right to continue and complete their education.

36. Given that the regularization process appeared to be relatively simple, she failed to understand why there were so many irregular migrants in the State party. It would be useful to learn what obstacles irregular migrants were facing, as it seemed that many of them were unable or unwilling to apply for legal status. She asked whether the Migration Act established a maximum period of time during which irregular migrants could be detained in shelters and whether they could appeal against an expulsion order. She enquired whether the draft amendment to the Migration Act included a separate category for self-employed workers, in line with the provisions of the Convention.

37. **Mr. Alba** asked what penalties and fines irregular migrants received, and whether they spent an average of only four days in the detention shelters because the regularization process was quick and easy. The Committee would appreciate additional details of the proposals contained in the draft amendment to the Migration Act. It would be useful to know how the State party achieved a balance between facilitating the free movement of people under the CA-4 regime and ensuring that Guatemala was not used as a point of transit to reach a third country.

38. **Mr. Sevim** requested further details on the nature of the legal assistance provided by Guatemalan consulates abroad. He asked whether the consulates employed legal counsel and supplied their services free of charge to Guatemalan migrants. In the case of the mobile consulates, how was continuity ensured in the case of protracted legal proceedings?

39. **Ms. Miller-Stennett** asked what arrangement the State party had made with the Canadian authorities to facilitate the employment of Guatemalan migrant workers, how binding it was, and whether it covered rates of pay and working conditions.

40. **Mr. Kariyawasam** asked what steps the Government took to protect unaccompanied child migrants who crossed the State party's borders. He would welcome any available data or details of data collection mechanisms on unaccompanied child migrants.

41. **Mr. Brillantes** asked if any private recruitment agencies had been involved in the State party's arrangement with the Canadian authorities on the employment of migrant workers. If so, any such agency had financial and other obligations to those workers, including their repatriation. He welcomed the provision in the Labour Code that established that a minimum of 90 per cent of any employer's workforce should be made up of Guatemalan workers and that at least 85 per cent of the total wage bill should go to Guatemalans. It was an example of good practice which could prove beneficial to other countries, particularly in the Middle East.

42. **Mr. Tall** said that the lack of statistical information provided by the State party was regrettable as it prevented the Committee from having a full picture of the situation on the ground, particularly the extent of human trafficking. In the light of the information provided in paragraph 102 of the initial report concerning children of migrant workers who travelled to the United States, he asked what measures the Government implemented to ensure that those children were not victims of trafficking.

43. He wished to know whether there was a minimum age at which children could work in the State party. It would be interesting to know whether all migrant workers in a regular situation were required to obtain authorization from the Ministry of Labour and Social Security in order to join a trade union. If so, he would welcome an explanation of how that complied with the provisions of the Convention.

44. He asked whether migrants automatically forfeited their legal status if they failed to pay their taxes. The fact that permits were granted to employers for foreigners to work in the State party, rather than to the migrant workers themselves, was a source of concern. In addition, it would appear that employers could invalidate those permits merely by dismissing an employee at any time, thereby removing the migrant's legal status. He asked whether that was not a clear violation of migrant workers' rights.

45. **The Chairperson** requested clarification of whether illegal entry into the State party was a crime or an offence, and whether the person entering the country was considered to be the victim or the perpetrator. It would be useful to have details of the State party's definition of a migrant worker in an irregular situation. Given that the concealment of illegal persons was considered a crime, he asked whether persons who provided accommodation for a migrant in an irregular situation were guilty of that crime, regardless

of whether they were aware of that person's legal status. He asked why article 43 of the Migration Act specified that migrant workers must be employed in lawful activities in order to obtain residency; did that imply that many migrant workers were employed in unlawful activities?

46. He would welcome an explanation of the procedure that was followed when the police detained a migrant who was in an irregular situation. The Committee had received reports of violations of migrant workers' rights by the police, such as cancelling their identity documents and demanding payments to allow them to enter or leave the State party. In addition, the regularization procedure was reportedly expensive, making it inaccessible to many unqualified migrant workers. He would welcome the delegation's comments in that regard. He asked whether the State party planned to ratify the International Labour Organization Migrant Workers (Supplementary Provisions) Convention (No. 143).

*The meeting rose at 6 p.m.*