



# **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** Twenty-ninth session

### **Summary record of the 401st meeting**

Held at the Palais des Nations, Geneva, on Wednesday, 5 September 2018, at 3 p.m.

*Chair:* Mr. Tall

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

### **Meeting with States**

1. **The Chair**, welcoming participants to the meeting, said that he would first like to take the opportunity to inform Committee members that Ms. Khedidja Ladjel, the Committee's Rapporteur, had passed away prior to the session. Ms. Ladjel had been a highly valued and extremely active member of the Committee since 2012 and her commitment and expertise would be greatly missed. The Government of Algeria had been asked to appoint an expert to replace her, as provided in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2. Migration was a daily reality, a fact that should be accepted. There were more than 258 million migrants throughout the world, of whom half were women, approximately 30 million were children and an estimated 20 per cent were in an irregular situation. Population ageing and low birth rates in many industrialized countries would lead to even greater international mobility and, in the future, migrants would play an even more pivotal role in addressing labour market needs and in achieving sustainable development.

3. International migration was a complex and multidimensional phenomenon requiring a comprehensive, human rights-based approach. It must be ensured that migrants and their families fully enjoyed their human rights, which were frequently violated in workplaces as a result of a range of abusive practices. Such abuses were worse for migrants in an irregular situation, who not only were denied the most basic rights and protections, but also ran the risk of being trafficked or enslaved.

4. Current migration crises across the globe highlighted the fundamental importance of the Convention, which set out the best strategy to prevent abuses and to address the challenges that migrant workers faced. It also provided guidance applicable at the international, regional and subregional levels, set minimum standards for protection, served as a helpful tool for migration governance and provided a framework for rights-based policies on migration, including irregular migration.

5. A quarter-century after it had been signed, the Convention was more relevant than ever, and yet it had been ratified by only 52 States, none of which was a major destination country. Gaining new ratifications remained an absolute priority. Since the previous meeting with States held in September 2016, there had been four new ratifications: Benin, the Congo, Sao Tome and Principe, and the Bolivarian Republic of Venezuela. In addition, there were currently 15 States that had signed but not yet ratified the Convention, and that were therefore encouraged to do so without delay. On the other hand, the initial and periodic reports of at least 14 members were overdue. In order to address that backlog, the Committee was increasingly making use of the simplified reporting procedure, under which a State party's replies to a list of questions from the Committee constituted its report. The simplified procedure automatically applied to those States parties whose reports were overdue.

6. The announcement of the Global Compact for Safe, Orderly and Regular Migration was a step towards an improved, human rights-based governance of migration at the global level. The Committee, in collaboration with its partners, had contributed to the consultation phase and welcomed the rights-based approach of the text. In particular, the Committee was pleased that the text stated that migration detention should be used only as a measure of last resort and that the practice of child detention in the context of international migration should be ended.

7. Referring lastly to his participation in the meeting of the Chairs of the human rights treaty bodies held in New York in June 2018, he said that the meeting served as an annual opportunity for the treaty bodies to work on improved harmonization of their working methods, including their systems of follow-up on concluding observations and the issue of reprisals. At the meeting, the Chairs and the Special Rapporteur on the situation of human rights defenders had issued a joint statement and press release drawing attention to the increasing pressure that human rights defenders faced around the world.

8. **Ms. Dzumhur** said that promotion, along with protection, prevention and partnership, was key to safeguarding human rights in the area of migration. As the Convention had been ratified by relatively few States, one form of promoting those rights was to call for the implementation of migrant rights-related obligations through communication with members of other treaty bodies. In addition, as partners in ensuring the rights of migrants and members of their families, and with the Convention as their key tool in that mission, the Committee and States parties must work together to raise awareness of the importance of the Convention with a view to increasing the number of ratifications, particularly within the European Union.

9. However, the Committee and States parties should work not only on strengthening cooperation between themselves but also on finding new ways to cooperate with civil society actors such as non-governmental organizations and, above all, the media. Partnerships with other international bodies were also crucial to the promotion of migrants' rights, as had been demonstrated by the general comments on the human rights of children in the context of international migration that the Committee had issued jointly with the Committee on the Rights of the Child (CMW/C/GC/3 and CMW/C/GC/4). The Committee intended to use a similar approach to raise awareness of State obligations in respect of women migrants and detained migrants.

10. **Ms. Landázuri de Mora** said that the Committee welcomed and encouraged the cooperation and support that it received from States parties, civil society organizations, national human rights institutions and other human rights treaty bodies. That cooperation had manifested itself in various ways over the previous year, most significantly in the adoption of the joint general comments issued with the Committee on the Rights of the Child. States were encouraged to implement the new general comments in order to promote and protect the rights of all migrant children. The Committee had also established, in partnership with UN-Women, the human rights treaty bodies, civil society and universities, an expert working group tasked with developing a gender-responsive global compact for migration. More generally, the Committee had continued to engage and hold meetings with both States parties and signatory and non-signatory States.

11. The Committee took the opportunity to thank its partners and to ask for their continued cooperation and support in working to achieve three specific goals. The first goal was to increase the number of ratifications of the Convention. A number of methods were already used to encourage States to ratify: notes were sent to signatory States every year; ratification was called for in resolutions and statements; the International Steering Committee for the Campaign for Ratification of the Migrant Workers Convention targeted specific States; and the Secretariat followed up on ratification recommendations issued to States parties during the universal periodic review process. Notes verbales had been transmitted to permanent missions since 2015; and the Committee frequently raised the issue in its concluding observations. Unfortunately, it should be noted that the Global Compact for Migration did not explicitly call for ratification of the Convention.

12. The Committee's second goal was to ensure dissemination of the Convention among all actors concerned with migration. Creating alliances with academic institutions for activities related to the implementation of the Convention was proving to be a challenge, and the Committee was also having difficulties developing a broader communication strategy to raise awareness of the Convention, for example through press articles and media interviews. The Committee would therefore welcome the support of States parties in order to achieve that objective.

13. The Committee's third goal was to prepare a joint general comment on freedom and the prevention of the arbitrary detention of migrants. In December 2017, the Committee had issued a statement condemning human rights violations against migrants in Libya and calling for an urgent response from the Governments concerned. During the present session, the Committee had endorsed a statement calling for the development of a regional response to the massive arrival of Venezuelans to the Americas.

14. **Mr. Ünver**, turning the focus to the Global Compact for Safe, Orderly and Regular Migration, said that migration was one of the oldest human phenomena, but that it showed no signs of slowing. Approximately 275 million people were currently on the move or

settled in a country other than that of their birth. Driven by diverse factors including globalization, economic problems, the changing international political climate and environmental degradation, the movement of migrants, refugees and asylum seekers, who sought to relocate for various reasons, including out of fear for their lives, had reached critical levels in some parts of the world.

15. By Governments throughout the world migration tended to be seen as a security risk, and also as a threat to national identity. Even though, from the perspective of destination countries, and especially those with ageing populations, labour migration was acknowledged as being necessary, migration was still resisted in many places, often making it a difficult, traumatic and dangerous experience for those involved. It was now widely accepted that cross-border migration had become a global problem that could not be adequately addressed at the national level.

16. The new migration and refugee patterns were compelling sending, transit and receiving countries alike to become more involved in global migration management processes. It was hoped that the Global Compact, which had been developed on the basis of the New York Declaration for Refugees and Migrants of 19 September 2016, would enhance global cooperation and concerted action for a rights-based solution to current problems regarding international migrants. Heads of State and High Representatives would meet in Morocco on 10 and 11 December 2018 to adopt the Global Compact, which rested on core United Nations legal instruments including the Migrant Workers Convention.

17. Recalling the content of the report of the Secretary-General on making migration work for all ([A/72/643](#)), which had provided input for the zero draft of the Global Compact, he said that the initiators of the Global Compact had recognized that migrants needed protection through international instruments and had expressed their collective commitment to improving governance and cooperation on international migration. The Global Compact would serve to raise the profile of migration as a phenomenon distinct from development, security and other matters and, although not legally binding, represented a milestone in the history of the global dialogue and international cooperation on migration. As the 23 objectives set out within the cooperative framework of the Global Compact were aligned with the provisions of the Convention, the new instrument was also expected to be a complementary tool that would lead to further ratifications and better implementation of the Convention.

18. **Mr. Botero Navarro** said it was the recognition that children increasingly formed part of mixed migration movements that had led the Committee to issue, with the Committee on the Rights of the Child, joint general comments Nos. 3 and 4 on the human rights of children in the context of international migration. The general comments explained to States and stakeholders how international human rights norms should be applied to children at different stages of the migration process. Although joint general comments were seldom issued in the human rights treaty body system, the joint approach had secured general comments Nos. 3 and 4 almost universal reach, as the Convention on the Rights of the Child had 196 States parties.

19. One of the pillars of the two general comments was the notion that migrant children's status as minors should take precedence over any other category to which they might belong. All migrant-related policies, practices and legislation that pertained to children should be based on the fundamental principles of non-discrimination, the best interests of the child, the child's right to life, survival and development, and respect for the views of the child. The general comments also addressed the issue of migration detention, which was one of the primary challenges associated with upholding the human rights of all migrants. Both Committees had concluded that migration detention was never in the best interests of the child and that there should be an absolute prohibition on the detention of children in migration contexts. As part of the Committee's efforts to raise awareness of general comments Nos. 3 and 4, States were being encouraged to come up with ways to give useful effect to the fundamental standards developed therein.

20. Although some States made widespread and sometimes automatic use of detention to deter migrants in an irregular situation from entering their territory, studies had shown that detention and family separation were generally unsuccessful as deterrents for those

who had good reason to migrate. In view of that situation, during its twenty-eighth session, the Committee had decided to draft a general comment on migrants' right to personal liberty, which would emphasize that the detention of migrants should be an exceptional measure of last resort, imposed for the shortest time possible, and that detention should not be based on discrimination of any form and should always be subject to judicial review.

21. The Committee aimed to use the new general comment to develop a number of new standards. It would establish, firstly, that irregular entry and irregular stay should not be deemed criminal offences, or should, at worst, be administrative offences, and, secondly, that detention should not be used to deter the entry of migrants in an irregular situation and there should be a blanket ban on the arbitrary detention of migrants. In those exceptional cases where the detention of migrants might be permitted, its use should be necessary, proportionate and underpinned by legitimate State objectives. In addition, migrants detained as an exceptional measure of last resort should never be placed in detention centres that resembled prisons or served punitive ends. The new general comment would also consider the procedural measures that should be introduced to national legislation in order to prevent the arbitrary use of deprivation of liberty of migrants. Lastly, the Committee intended to address specific circumstances in which the detention of migrants might violate other international standards, for example by constituting torture or other cruel, inhuman or degrading treatment or punishment.

22. A day of consultations would be held during the current session to mark the beginning of the preparation of general comment No. 5, and, over the coming year, the Committee planned to hold consultation meetings with all interested stakeholders, including States, civil society organizations, academics, international bodies and migrants themselves.

23. **Mr. Garcia** (the Philippines) said that he was grateful to the Committee for the work undertaken to increase the number of States parties to the Convention. The Government of the Philippines had been very active in promoting the rights and welfare of migrant workers and members of their families in regional and international contexts. During its chairmanship of the Association of South-East Asian Nations in 2017, it had steered the region towards adoption of the Consensus on the Protection and Promotion of the Rights of Migrant Workers, besides helping to formulate the guidelines of the Migrants in Countries in Crisis initiative, in collaboration with the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees. It hoped to remain closely engaged with the work of the new Special Rapporteur on the human rights of migrants.

24. The Global Compact placed the human rights of migrants at the forefront of the United Nations agenda and assigned welcome new mandates to the International Organization for Migration. The signing of the Global Compact, due to take place in Marrakesh in December 2018, would be historic. However, the real test would be ensuring its effective application, which would require a combination of national implementation and international cooperation. The new United Nations network on migration would be a source of advice and guidance to that end, and he fully expected the United Nations human rights treaty bodies to provide useful input as the new network took shape.

25. **Mr. González Mayagoitia** (Mexico) said that the Global Compact was a historic achievement and a triumph of multilateralism, particularly since it was being concluded in a climate somewhat averse to migrants. The strength of the Global Compact lay in its signatories' collective political commitment to making cooperation the rule rather than the exception. Working together was the only way to ensure that migration worked for States, societies and migrants alike. Together with the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change, the Global Compact was part of the road map for progress towards more effective management of migration in the twenty-first century. Proper implementation would be essential to its success as a central instrument for the defence of the human rights of all migrants. The United Nations human rights system would have an important role to play in supporting States and guiding migration policies at the national level.

26. **Ms. Landázuri de Mora** said that it was important for States parties to the Migrant Workers Convention to remain several steps ahead of the Global Compact with regard to the legal framework, services and policies for migrant workers both at home and abroad. Those States parties had an advantage when it came to implementation of the Global Compact, and should take the lead in promoting that instrument, as well as the Convention, in their regions, and in sharing lessons learned. Unlike the Global Compact, the Convention was a legally binding instrument. In addition, the issue of gender and the specific treatment of migrant women and girls was not explicitly addressed in the Global Compact. In their policies for the protection of migrant women and girls, States should therefore draw on the Convention on the Rights of the Child and the Convention on Migrant Workers. The Committee had developed tools to help States parties ensure the necessary gender focus in their work; since migration was a largely feminine phenomenon, States had a great deal of responsibility in that regard.

27. **Mr. Taghi-Zada**, noting that the Migrant Workers Convention differed from the other United Nations core conventions in that it covered not only a State party's nationals abroad but also migrants who had come to the State party to work, said that it was important to bear in mind the globalized context in which the Convention operated, and that migrant workers were subjected to xenophobia and other negative phenomena and did not participate in elections. It was no longer possible to focus solely on the rights of one's own nationals; the growing belief worldwide, in line with the Convention, was that all persons required protection. He appealed to States parties to the Convention to share the information they had acquired on the problems experienced by migrant workers and why certain destination countries were not upholding the rights of those workers. The Committee, in conjunction with the other United Nations human rights treaty bodies, would endeavour to ensure the protection of migrant workers' rights, including in countries that had not yet acceded to the Convention.

28. **Mr. El Jamri**, commending those States that had launched the negotiations to establish the Global Compact, said that the Committee had participated in most of the consultations and had contributed to the outcome. It was regrettable that the Convention was not cited as a reference in the Global Compact, since the Convention was an important pedagogical tool and offered solutions to many of the concerns that the Global Compact addressed. It would be useful for the international community to benefit from the Committee's expertise, built up over 15 years, in relevant areas such as health, education and detention. It was important to defend and promote the Convention, especially given the hostility sometimes shown towards the instrument, including by some States that had already ratified it. The Committee would be very interested in holding a side event at the Intergovernmental Conference to Adopt the Global Compact, to be held in Marrakesh in December 2018.

29. **Mr. Núñez-Melgar Maguiña**, recalling that labour migration accounted for 80 per cent of migration worldwide, said that migration governance was very important, not just for administering migration but for optimizing the ensuing benefits, which varied from region to region. Migration had three fundamental axes — human rights, "interculturality" and development — and entailed a considerable degree of shared responsibility, since States parties to the Convention were responsible for not only the rights of migrant workers entering their countries, but also those of their own nationals working abroad. In a multilateral setting, much was to be gained from all stakeholders working together. To that end, the Committee stood ready to contribute the expertise it had acquired in the implementation of the Convention, which was just one of the United Nations' many legally binding instruments. The Convention had an important role to play in addressing the challenging topic of employment, against the backdrop of the increasing "transnationalization" of work and family matters. While recipient countries had tended not to sign up to the Convention, the trend was changing as they became aware of the benefits migrant workers could bring. He therefore urged participants to encourage widespread accession to the Convention.

30. **Ms. Giovanoni Pérez** (Uruguay), thanking the Committee for its efforts to implement the Convention and increase the number of ratifications, said that she had been

very pleased to see the adoption of the joint general comments of the Committee on Migrant Workers and the Committee on the Rights of the Child.

31. **Mr. Ünver**, thanking those present at the meeting for their input, and thanking Switzerland and Mexico for facilitating the preparatory work for the Global Compact, said that the Global Compact would add value to the Migrant Workers Convention. The overarching common objective was to achieve widespread ratification of the Convention and ensure that the human rights of all migrants — not only migrant workers — and members of their families were upheld throughout the world.

32. **Ms. Dzumbur** said that the strength of the Global Compact, which was not legally binding, resided in the global consensus it enjoyed. Once the Global Compact had been adopted, all stakeholders had a responsibility to implement it. It was important to continue work on the main causes of migration, since preventing human rights violations was key to reducing migration.

33. **Mr. Nowosad** (Office of the United Nations High Commissioner for Human Rights), welcoming the opportunity for continuous engagement with Member States provided by interactive dialogues, said that cooperation between the different treaty bodies, as demonstrated by the joint general comments issued by the Committee on Migrant Workers and the Committee on the Rights of the Child, was very important. Such cooperation was taking place within the framework of General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, with a view to the overall review of the effectiveness of the measures taken pursuant to that resolution no later than 2020 (the “2020 review process”).

34. **The Chair**, thanking all those who had participated in the important interactive dialogue, said that while the Committee was responsible for ensuring compliance with the Convention, the Convention did not belong to the Committee: it belonged to the States parties themselves. He would also like to thank the States parties and United Nations entities that supported the Committee and the promotion of the Convention. Noting that it was especially important to promote ratification of the Convention in the current challenging climate, he encouraged those States parties that had signed but not ratified the Convention to do so. He looked forward to the adoption of the Global Compact, which would enrich the Committee’s work, and endorsed Mr. El Jamri’s request for the Committee to hold a side event at the Intergovernmental Conference to be held in December 2018 in Marrakesh.

*The meeting rose at 4.50 p.m.*