



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

Distr.
GENERAL

CMW/C/SR.42
8 December 2006

Original: ENGLISH

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

Fifth session

SUMMARY RECORD OF THE 42nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 31 October 2006, at 3 p.m.

Chairperson: Mr. KARIYAWASAM

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GE.06-45037 (E) 021106 081206

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (agenda item 3) (continued)

Initial report of Mexico (continued) (CMW/C/MEX/1; CMW/C/MEX/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Mexico resumed places at the Committee table.
2. The CHAIRPERSON invited Mr. Farah Gebara, a representative of the National Human Rights Commission of Mexico, to address the meeting.
3. Mr. FARAH GEBARA (National Human Rights Commission of Mexico) said that, despite a few isolated efforts by the Mexican Government to guarantee the protection of the human rights of migrants, much more needed to be done. Not only had the migration phenomenon in Mexico grown quantitatively - immigration had risen 25-fold and emigration 10-fold over the past 25 years - it had also changed qualitatively, with, in particular, a greater concentration of organized crime along Mexican borders and a higher number of cases of abuse against migrants and of trafficking in persons.
4. Since 2005, the National Human Rights Commission had recorded about 800 complaints concerning a much higher number of mostly illegal migrants. In 2006, the majority of the National Human Rights Commission's recommendations in relation to social groups concerned migrants. Most of those recommendations had been made to the National Institute for Migration, and dealt with, among other things: intimidation, extortion, beating, humiliation, assault and sexual abuse of migrants; the illegal arrest of migrants by private security guards - unreported, and sometimes even encouraged, by the migration authority; a tendency on the part of public servants to consider illegal migrants as a commodity to be exploited; sophisticated networks of people-traffickers able to evade ineffective or conniving officials; the assault and harassment of migrants by common criminals, who went unpunished; the arbitrary detention and expulsion of properly documented migrant workers; the continued use of prisons as migrant holding centres, where, despite the National Institute for Migration's efforts to improve conditions, migrants still suffered from overcrowding, cruel or degrading treatment, lack of medical assistance and denial of access to their consular authorities.
5. The National Human Rights Commission was also concerned about what happened to migrant workers travelling in freight trains in very dangerous conditions. They were often victims of assaults, thefts and violations by both criminal groups and railway employees. The latter were even known to throw migrants out of moving trains, sometimes causing their mutilation.
6. One of the most recurrent and serious violations of the human rights of migrants was the checking and detention of migrants by unauthorized federal, state and municipal authorities. The National Human Rights Commission had therefore drafted a general recommendation that it would soon be sending to the federal Government, governors of the 32 states of Mexico and

municipalities, asking them to issue specific instructions to the security forces they were in charge of to stop conducting migrant checks and detaining migrants for not having documentation. The goal was to reduce the number of illegal administrative detentions, and the abuses suffered by migrants as a result. Such detentions were based solely on the person's physical appearance, and were clear instances of discrimination.

7. Insofar as Mexico asked the United States of America not to penalize Mexicans who illegally entered its territory, there was no justification for maintaining laws that carried a sentence of two years' imprisonment for foreigners who illegally entered Mexico. The discrepancy between the 1974 General Population Act and the changed situation on the ground was the source of many violations of migrants' human rights. The legal framework for migration in Mexico needed to be reformed so that migrants were not treated as criminals; such treatment only fuelled the abuses and arbitrary acts perpetrated against migrants.

8. Mexico had not taken the necessary measures in terms of legislation and financial and human resources to ensure its restrictive policy for containing migration was applied while respecting the human rights of illegal migrants. Among other measures, the federal Government must reform the legislation and institutions dealing with migration, make sure the State protected all migrants in its territory regardless of their migration status, and support the adoption of the bill on trafficking of persons.

9. Furthermore, Mexico's migration policy must address both immigration and emigration issues and must be based on cooperation in the development of the areas migrants were leaving, while offering legal options for immigration and emigration, in particular to the United States of America. Policies of containment had only resulted in the spread of organized crime and in the death of migrants - between one and two a day, on average: the annual average number of deaths along Mexico's border between 2001 and 2005 was 380, as compared with 206 between 1994 and 2000.

10. Mr. EL JAMRI asked what the relationship was between the National Human Rights Commission and the Mexican authorities. He would be interested to know how many of the 800 complaints recorded by the National Human Rights Commission pertained to public authorities and how many to criminal groups. He also asked how Mexico explained the discrepancy between the values of democracy, human rights and rule of law that Mexico claimed as the basis for its migration policy and the reality of their application to migrant workers. In particular, he would like to have more information on the problems encountered by the authorities at the local level. He would like to know what steps Mexico had undertaken to promote the political participation of Mexicans abroad and of immigrants in Mexico. Lastly, he asked whether, in requiring high-security visas for nationals of Guatemala and Ecuador, Mexico was not applying the same kind of policy to countries to its south as the United States of America was to Mexico.

11. Ms. CUBIAS MEDINA asked if the National Human Rights Commission had made any recommendations to Mexico's legislature or to mayors or municipal police forces with a view to facilitating the debate on migration.

12. Mr. BRILLANTES expressed concern about the litany of corruption, abuse, degrading treatment, extortion, aggression, assaults and victimization to which the representative of the National Human Rights Commission had referred. He found that situation especially disappointing because throughout the 1990s the Mexican Government had been at the very forefront of efforts to draw up and adopt the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. How did the Government reconcile Mexico's valiant efforts to conclude the Convention with the very serious accusations made by the representative of the country's own National Human Rights Commission?

13. Mr. CARRIÓN-MENA noted the startling contrast between the report on the actual situation delivered by the representative of the National Human Rights Commission and the information provided by the delegation. The Committee would be interested to hear the delegation respond in general terms to the information provided by the National Human Rights Commission. More specifically, the representative of the National Human Rights Commission had cited a number of statistics, and he would be interested to know if the delegation considered them to be accurate. Could the delegation provide a breakdown by nationality of the number of migrants who had died along Mexico's borders?

14. Ms. GONZÁLEZ (Mexico) said that the National Human Rights Commission headed a system that existed in each of the federal states, the function of which was to receive complaints of alleged human rights violations. The system channelled such complaints to the authorities presumed to be responsible for following up on the cases. The recommendations issued by the human rights commissions had no legal value, but they did bear a good deal of moral weight, as they resulted from their own independent research and investigations. At the federal level, the National Human Rights Commission's recommendations were generally implemented. If one of the Commission's recommendations was contested by the authorities, a discussion was held to reach a compromise. The Commission, like the Federal Electoral Institute and a number of other institutions, was an autonomous body established under a constitutional provision that had started being invoked only recently; most such bodies had been set up only in the past 15 years or so. In the same period, the Mexican Government had opened up to international scrutiny, and had begun to receive and act on recommendations from United Nations bodies on ways to improve respect for human rights and to work with civil society organizations.

15. Her Government was committed to ensuring that its migration policy was consistent with its international human rights obligations. For example, it had presented a number of reports to treaty bodies. It had shown a genuine interest in furthering the cause of human rights, for example by ensuring that its legislation and regulations were in keeping with the provisions of international instruments. As for the question of how to reconcile such efforts with the failure to ensure full respect for human rights in practice, the Mexican administration had taken a number of initiatives to gradually strengthen Mexico's institutions and was committed to continuing such efforts.

16. The measure allowing Mexicans living overseas to vote had been adopted as a first step in a process that would open up future voting possibilities for Mexican emigrants. It was still unclear how many Mexicans lived overseas. Only Mexicans registered on the electoral roll had been permitted to vote. Approximately 40,000 Mexicans had fulfilled the criteria and voted from other countries, a participation rate of about 81 per cent of those eligible.

17. Mr. ANDRADE SALAVERRÍA (Mexico), noting that article 25 of the Convention called for migrants to receive treatment not less favourable than that applicable to nationals of the State of employment, said that articles 1 and 2 of the Constitution ensured equality of treatment, and that article 123 of the Constitution stipulated that there must be no discrimination in remuneration on the basis of sex or nationality. Article 123 also declared null and void the provisions of contracts that violated certain conditions. The labour inspectorates were responsible for ensuring compliance with constitutional provisions, international conventions, occupational health and safety regulations and labour laws and collective agreements at both the federal and state levels. Since 1998, a single set of general regulations for labour inspections and for penalties for labour law violations had been in effect throughout the country, and was applicable by both federal and state labour inspection services. During their inspections, the labour inspectors indicated the points that would be checked during subsequent visits, and also verified the number of foreign workers at the workplace. They were authorized to interview the foreign workers to verify their identities, nationalities and conditions of employment, with a view to ensuring that they were not victims of discriminatory practices.

18. As early as the 1960s, the Mexican Social Security Institute (IMSS) had signed social security agreements with its counterparts in some 25 countries, mainly in the Americas. A similar convention was being finalized with the Social Security Administration of the United States of America.

19. Article 133 of the Constitution placed international treaties on the same level as federal laws, but in 1999 a Supreme Court ruling had established that such treaties were to take precedence over domestic laws, although they must be considered subordinate to the provisions of the Constitution itself. The prohibition preventing non-citizens from serving in the leadership of trade unions could therefore be challenged on the basis of the Freedom of Association and Protection of the Right to Organise Convention, 1948, of the International Labour Organization (No. 87). An administrative decision rejecting such a challenge could be overturned by a judicial appeal under the procedure of amparo.

20. New regulations governing recruitment agencies had recently been adopted, replacing the old regulations that had dated back to 1982. Under the new regulations, recruitment agencies were able to recruit Mexican workers for work with foreign employers and also to recruit foreign workers for Mexican employers. There were two kinds of recruitment agencies: for-profit employment agencies and non-profit agencies. The former were required to meet certain conditions in order to obtain an operating licence from the Ministry of Labour and Social Security, while non-profit agencies simply had to declare their activities to the Ministry. All employment agencies were obliged regularly to report statistical information on their recruitment activities to the Ministry, which oversaw their operations and could apply penalties for failure to meet the required standards. In the event of recruitment for a job in another country, employment agencies must provide the worker with information on the living and working conditions there and on Mexican consular services in the country of employment.

21. Ms. SOSA (Mexico) said that the Mexican Government was active in the negotiations on multilateral human rights instruments, including those for the protection of victims of trafficking in persons, and considered that it was of the utmost importance to ensure that its domestic legislation was in line with international standards. It supported the activities of multilateral mechanisms dealing with such problems, and thus followed with great interest the work of the

Special Rapporteur on trafficking in persons, especially women and children. In the view of the Mexican Government, the solution to the problem must involve multilateral agreements based on the principles of shared responsibility and cooperation.

22. Mr. CUETO MARTÍNEZ (Mexico) said that there was currently no legislative procedure under way for the adoption of a law specifically devoted to migration. The General Population Act and its regulations set out the basic tenets of the Mexican legal system inter alia in respect of migration, population matters and demographics, and provided the positive law on the subject of migration. However, there were numerous initiatives currently under consideration in Congress for the amendment of the Act.

23. There had been no specific proposal to create high-security visas, but the issue had been discussed by the Ministry of the Interior, the National Institute for Migration and the Ministry of Foreign Affairs. Mexico was trying to emulate best practices, including the introduction of electronic visas in the form of printed visas stuck in passports rather than stamps. As part of that modernization process they were also aiming to establish three-year tourist visas and five-year working visas. The goal of those best practices was to give some legal security to foreigners, so they did not have to visit consulates frequently.

24. Three ways to obtain Mexican nationality were provided for in article 30 of the Constitution of Mexico: jus sanguinis, jus soli and naturalization. However, the system suffered from the lack of information in civil courts and municipal registry offices. The registration of births was the responsibility of municipalities. The National Institute for Migration needed to better publicize the migrant regularization programme so that judges would be aware of the possibility of regularizing irregular migrants. Basically, undocumented migrants should not be afraid to go to the Institute and ask to be regularized. Mexico had had a regularization programme in place since 2001, during which time approximately 15,000 migrants had been regularized.

25. Only a week earlier, a Guatemalan delegation had been to Mexico to carry out a study with representatives of the National Institute for Migration on the situation of children living in rubbish dumps in Chiapas, some of whom were with their parents and some of whom were unaccompanied. Their situation was being addressed on a case-by-case basis: the children would be regularized, where appropriate; or, if desired, they would be repatriated and, in coordination with the Guatemalan authorities, an agreement would be reached with the local authorities to look after the welfare of the family.

The meeting was suspended at 4.40 p.m. and resumed at 5 p.m.

26. Mr. BENAVIDES HERNÁNDEZ (Mexico) said that since 2004 the National Council for the Prevention of Discrimination had received two complaints of discrimination against migrants from the non-governmental organization Sin Fronteras.

27. Regarding paragraph 237 of the report, he said that the report honestly reflected the reality of the situation in Mexico but that national legislation needed to be brought into line with Mexico's international commitments, which was why a new migration law was being drafted. The Government had decided not to treat migrants as criminals, and so did not enforce the penalties in the current laws; the new law would include no such penalties.

28. The protection of the fundamental rights of migrants was one of the guiding principles of Mexican foreign policy. The large number of Mexican migrants meant that the bodies and programmes guaranteeing their human rights were being continually adapted. The Ministry of Foreign Affairs, through the Department of Consular Protection and Consular Affairs, coordinated various programmes for consular protection and assistance around the world, including for those who were unable to get to a consulate in person.

29. According to figures provided by the Public Prosecutor's Office, prosecutions had been brought in relation to 2,798 cases of human trafficking since 2005.

30. In accordance with article 27 of the Mexican Constitution, foreigners were not permitted to own land or waters within 100 kilometres of the border or 50 kilometres of the coast. However, there was no conflict between that article and article 15 of the International Convention on the Rights of All Migrant Workers and Members of Their Families. In accordance with the Foreign Investment Act, as long as they obtained a permit from the Ministry of Foreign Affairs, foreigners were permitted to have the use of property in those areas but not to own it directly.

31. Mr. CUETO MARTÍNEZ (Mexico), replying to a question on the training of migration officials and employees of the National Institute for Migration, said that the minimum level of education required for a job at the Institute was secondary level, but moves were being made to raise it to university level for certain types of job. In the past five years, the Institute and other State bodies had been collaborating with the International Organization for Migration and had held 170 training workshops. Half of those workshops had focused on human rights issues, including trafficking. The intention was to promote best practices and improve migration management policies.

32. Regarding the criteria used to detain or secure migrants, he said that the first step was to identify the migrants: for documented migrants, that was done at one of the 172 points of entry around the country; for undocumented migrants, the National Institute for Migration coordinated with other federal, state and municipal bodies in the identification process, in order to combat human trafficking. With a written order, the Institute could inspect establishments suspected of containing irregular migrants who had been linked to an offence. In Mexico, the migration authorities were not police and were not armed, but in some cases they called upon armed units to assist them in that type of operation. They always worked according to the principle of respect for the human rights of migrants.

33. The migration authority had a broad mandate to reunite young migrants with their families, even if they had reached the age of majority, if they so wished. The aim was to process such cases in an average of 30 days, although when no representatives were available from the country in question, it sometimes took longer. Computer documentation systems were being improved in an attempt to bring the average time down to two weeks.

34. The Institute was aware that discriminatory and xenophobic attitudes were sometimes displayed by local officials along the southern border of Mexico. Sometimes municipal police officers took it upon themselves to use powers which they had not been granted by law.

Attempts were being made to combat that kind of behaviour. The Institute had submitted specific complaints to the Public Prosecutor's Office about other bodies that had carried out migration-related activities without having been called upon to do so by the Institute. Other bodies liable to be cooperating with the Institute had been invited to participate in its training programmes, in an effort to coordinate with local communities and combat xenophobic behaviour.

35. Mr. CUETO MARTÍNEZ (Mexico) said that he could confirm that the National Institute for Migration's statistics concerning complaints received from migrants in Mexico tallied with those provided by the National Human Rights Commission. The Institute had an office in each of the 32 states, and migrants could file complaints through a variety of channels, anonymously if they wished, concerning all kinds of abuse or maltreatment. All complaints were taken seriously and virtually all received a response. He would make available to the Committee all of the Institute's official statistics in electronic form; they could also be consulted on the Institute's website.

36. Mexico's federal ombudsman, who also had a network of representatives in every state, was completely autonomous and was free to make recommendations to all levels of government and to bodies such as the National Institute for Migration. The ombudsman had made three specific recommendations to the Institute in 2005 and had made another five so far in 2006. The National Human Rights Commission had also made some important recommendations regarding migrants, concerning issues such as extortion, theft, sexual exploitation, deprivation of liberty, the use of prisons for holding migrants, the denial of access to consular services, acts of violence and the failure of the authorities to respond to complaints.

37. The Mexican Government strove to be coherent in the framing and execution of its migration policy. Accordingly, while it was entitled to demand protection for Mexican migrants living in the United States, it must also fully protect the rights of migrants from other countries in its own territory. That obligation was not only incumbent on the Mexican State, at all levels of government, but also on businesses, non-governmental organizations and civil society.

38. He agreed that Mexico's current legal framework for dealing with contemporary migration issues was inadequate. The General Population Act needed to be updated in order to comply with Mexico's international commitments and recent changes in migratory trends. According to the National Human Rights Commission, the number of migrants in transit through Mexico had increased tenfold in a few years, a fact the existing legislation did not take into account. There was therefore a need for Congress, non-governmental organizations and the ombudsman to cooperate in updating migration-related legislation. There already existed constitutional mechanisms for incorporating international instruments, including the Convention, into domestic law, but the process took time. In the meantime, international instruments such as the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, acted as a safety net for migrants: in theory Mexican legislation still authorized the migration authority to imprison migrants in an irregular situation for up to two years, but the Protocol prevented that.

39. Much remained to be done to address serious migration-related problems in Mexico. The Mexican authorities were doing all they could to update facilities, improve procedures, change

mindsets and establish a coherent culture of human rights, but the National Institute for Migration had a budget of only US\$ 180 million a year, which was intended to cover all its needs. He compared that with the huge budget of the United States Department of Homeland Security, which, with the support of the United States Congress, was ready to spend up to US\$ 30 billion on building a fence along the Mexican border to keep migrants out.

40. With regard to the problems along Mexico's southern border, he stressed that the federal authorities had cooperated extensively with the local authorities, police forces and non-governmental organizations, both in Mexico and in Central American countries, in particular Guatemala and El Salvador. Their aim was to find ways of improving living conditions for migrants in the border regions and increasing prosperity while maintaining the rule of law. Thanks to the best practices and expertise of the International Organization for Migration and contributions by donors, and his Government's emphasis on improving respect for migrants' human rights, he was confident that much progress could be made.

41. For legal reasons, Guatemalan inspectors had not been granted access to the coffee plantations in southern Mexico. The Mexican authorities were doing all they could, however, to ensure that all Guatemalan nationals working on the plantations were documented. It was hoped that the presence of Guatemalan officials at the new headquarters of the National Institute for Migration in Chiapas would help to guarantee the respect of Guatemalan workers' rights and eliminate corruption among officials dealing with them.

42. Ms. GONZÁLEZ (Mexico) said that there was a direct link between migrants' rights and democracy. Only two decades earlier, Mexico, like many other countries, had virtually no human rights culture. Yet, as a parliamentary democracy had taken root, Mexico had made a sustained effort to improve respect for human rights, thanks in part to the work of the National Human Rights Commission and other bodies. The Commission had made a number of recommendations directed at various institutions, including local police forces. It was true that legislation and practice with regard to migration did not always progress at the same rate. But all government officials, members of the armed forces and law enforcement officials had been given training in human rights, at all levels and in all fields, including migration. Mexico had also gradually opened itself up to international scrutiny, as it established a culture of human rights.

43. As for the reliability of national statistics, she said that all figures, including those on migration, were carefully researched prior to publication, thanks to a methodology developed by the National Institute of Statistics, Geography and Data Processing in conjunction with all federal government departments.

44. She pledged that her Government, in cooperation with the judiciary and all levels of administration, would do all it could to improve migrants' human rights at home and abroad.

45. Ms. CUBIAS MEDINA (Country Rapporteur) concluded that Mexico's domestic migration policy had to be coherent with its international policy, including in its emphasis on respect for human rights. Updating legislation such as the General Population Act would not be sufficient on its own: the Government should introduce specific legislation on migration, in particular to address the situation of undocumented migrants in transit towards the United States. Despite the progress made, the National Human Rights Commission had denounced a number of

malpractices on the part of the authorities, such as the use of prisons for holding migrants, which should be halted at once. The complaints mechanisms, in particular, needed improving. Furthermore, mayors and local police forces needed to be made more aware of the problems facing migrants in an irregular situation and needed to find ways of avoiding discrimination against them. Equally urgent was the need to eliminate all legal provisions that penalized undocumented migrants, even though in practice they were seldom applied, as many migrants were unaware of their rights and were open to extortion.

46. The CHAIRPERSON said that the Committee recognized the challenges facing Mexico, including the increasing numbers of migrants from the south and its relations with the United States. As a country of origin, transit and destination, it could be seen as a “laboratory” for all aspects of migration. It faced many problems in implementing the Convention, owing to gaps and loopholes in its legislation. There were still complaints of abuses, in particular with regard to migrant workers in an irregular situation and the victims of trafficking and smuggling, many of whom were women and minors. That said, some of the measures taken in Mexico could be regarded as best practice to be emulated by other countries, in particular the efforts to improve mindsets in the administration and among law enforcement officials.

The meeting rose at 6 p.m.