

Distr.: Restricted
6 April 2011
English
Original: Spanish

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Fourteenth session
4–8 April 2011

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

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

Mexico

1. The Committee considered the second periodic report of Mexico (CMW/C/MEX/2) at its 157th and 158th meetings (see CMW/C/SR.157 and 158), held on 4 and 5 April 2011, and adopted the following concluding observations at its [163rd meeting, held on 7 April 2011].

A. Introduction

2. The Committee welcomes the second periodic report of the State party and is gratified by the dialogue held with its diverse delegation. The Committee thanks the State party for its detailed replies to the list of issues and the additional information submitted by the delegation, which enabled the Committee to gain a clearer idea of the situation with regard to the implementation of the Convention in the State party.

3. The Committee recognizes that Mexico has significant numbers of all three types of migrants, as it is a country of origin, transit and destination for migrant workers.

4. The Committee notes that some of the countries in which Mexican migrant workers are located are not yet parties to the Convention, which constitutes an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

5. The Committee welcomes the contributions made by the National Human Rights Commission and non-governmental organizations in connection with the Committee's consideration of the second periodic report of Mexico.

B. Positive aspects

6. The Committee appreciates the fact that the State party continues to consider the question of migration to be a priority on its policy agenda and that it continues to actively promote the Convention at the regional and international levels.

7. The Committee welcomes the fact that the State party has recognized the Committee's competence to receive and consider communications from individuals under article 77 of the Convention by depositing the corresponding instrument on 15 September 2008, as recommended by the Committee in 2006.

8. The Committee welcomes the legislative measures, public policies and institution-building actions adopted by the State party to promote and protect the rights of migrant workers, which have included the following:

(a) The amendment, in force since 22 July 2008, of the Population Act to abrogate the provision for prison terms of from 18 months to 10 years for undocumented migrant workers;

(b) The adoption of the Act to Prevent and Punish Human Trafficking and the General Act on Women's Access to a Life Free of Violence; the incorporation of the offence of human trafficking in the Federal Penal Code, as recommended by the Committee; the establishment of the Special Prosecutor's Office for Violent Crimes against Women and Trafficking in Persons; the promulgation of the National Programme for the Prevention and Punishment of Trafficking in Persons; the adoption by the National Institute for Migration of protocols for detecting, identifying and assisting foreign crime victims and for the possibility of issuing visas to crime victims and witnesses so that they may remain in the country legally;

(c) The agreement in force since 8 October 2009 under which regulations governing the operation of migrant holding centres are issued and the publication by the National Institute for Migration of a manual on migration procedures and guidelines in January 2010;

(d) The adoption of a package of measures to improve conditions in migrant holding centres, to reduce overcrowding and the length of time that migrants remain in those centres, and to facilitate access to medical assistance and access for migrants in those centres to means of communication with persons outside them;

(e) The amendment, in force since 23 November 2010, of article 67 of the Population Act to ensure that the consideration of complaints lodged by foreigners regarding their human rights and their efforts to seek justice cannot be denied or restricted, regardless of their migratory status;

(f) The adoption of the Comprehensive Strategy for Preventing and Combating the Kidnapping of Migrants, the establishment of the Technical Group on the Kidnapping of Migrants, the conclusion of a framework cooperation agreement on preventing and combating the kidnapping of migrants and the adoption of the Act for the Prevention and Punishment of Kidnapping Offences;

(g) The creation and, since March 2008, implementation of the Southern Border Programme, under which border worker passes (FMTF) and local visitor passes (FMVL) may be issued to Guatemalan and Belizean migrant workers;

(h) The migrant regularization programme in effect since November 2008, which is to remain in force until May 2011;

(i) The implementation of a strategy of prevention and support for unaccompanied migrant and repatriated children and adolescents;

(j) The adoption of the Act on Refugees and Complementary Protection in January 2011;

(k) The various programmes established by the State to assist Mexican migrant workers in other countries and the measures adopted to facilitate the reintegration of migrant workers returning to Mexico, such as the e-Migrants portal, the Humane Repatriation Programme and the Voluntary Interior Repatriation Programme.

9. The Committee also welcomes the ratification by the State party of:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2007;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights in 2007;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance in 2008.

C. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

10. The Committee notes that article 33 of the Constitution is in the process of being amended and takes note of the State party's affirmation that, once that reform process has concluded, there will be no grounds for maintaining its reservation to paragraph 4 of article 22 of the Convention.

11. The Committee urges the State party to take measures without delay to withdraw its reservation to paragraph 4 of article 22 of the Convention. The State party should guarantee that migrant workers and their family members are expelled from Mexican territory only in compliance with a decision issued by a competent authority in accordance with the law and with the possibility of an effective appeal.

12. The Committee notes that the State party has still not made the declaration provided for in article 76 of the Convention.

13. The Committee encourages the State party to make the declaration provided for in article 76 of the Convention.

14. The Committee notes that the State party has still not acceded to the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), or the ILO Convention on Migrant Workers concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions), 1975 (No. 143).

15. The Committee once again invites the State party to consider acceding to ILO Conventions No. 97 and No. 143 on migrant workers as soon as possible.

16. The Committee notes that the migration bill, which will enhance the protection of migrant workers' rights, is still under review. The Committee is concerned, however, by reports that some aspects of the bill may not be wholly compatible with the Convention, such as its failure to establish adequate safeguards for the right to due process in the case of deportation, access to information, the gender perspective and the protection of unaccompanied children. It is aware that the civil society organizations represented on the Consultative Council of the National Institute for Migration have participated in the consultations held on the bill, but notes with concern the claims that other civil society

organizations working in the area of migration have not been included in the consultation process.

17. **The Committee recommends that adequate measures be taken to ensure that the migration bill is compatible with the provisions of the Convention and of other international human rights instruments. The Committee also recommends that the consultations on the bill be extended to include civil society organizations, especially those involved in migration issues, at the federal, state and municipal levels.**

Data collection

18. The Committee notes with concern the failure to systematically compile disaggregated data on migrants, especially on undocumented migrant workers along the southern border, and notes that the information provided by the State party on undocumented migrants refers only to those detained in migrant holding centres, who are subsequently repatriated or deported. The Committee is also concerned by the unevenness of data collection, as illustrated by the fact that there are records of migrants' deaths along the northern, but not the southern, border.

19. The Committee recommends that the State party take the necessary measures to establish a national information system on migration in order to obtain a better picture of migration flows and improve public policy design. It recommends that this database contain information on all matters covered by the Convention and include detailed data on the status of all migrant workers. The Committee urges the State party to collect information and statistics disaggregated by sex, age, and nationality and by reason for entry into the country, transit or departure.

Coordination

20. The Committee takes note of the efforts made by the State party to increase coordination between the various agencies concerned with migration issues and notes with satisfaction some state-level initiatives in that regard. It is concerned, however, that effective coordination has still not been achieved in practice among federal entities or between federal entities and state and municipal authorities.

21. **The Committee recommends that the State party intensify its efforts to establish effective coordination among the various authorities concerned with migration issues, both at the federal level and in relations between federal authorities and state and municipal authorities.**

Training in and dissemination of the Convention

22. The Committee welcomes the training given by various institutions to the officials of the National Institute for Migration, the Federal Preventive Police and other agencies working in the field of migration. It is concerned, however, that the handling of judicial proceedings by some public prosecutors and the judicial decisions of some judges reflect insufficient knowledge of the provisions of the Convention.

23. **The Committee encourages the State party to continue providing training on the Convention to the various officials involved in the protection of migrants' rights, particularly public prosecutors, judges, magistrates and personnel involved in the administration of justice, and to ensure that this training is provided on a permanent and continuous basis and is taken into account in the performance evaluations and promotion of those officials.**

2. General principles (arts. 7 and 83)

Non-discrimination

24. The Committee welcomes the decision of the Supreme Court of Justice of November 2008, which ruled that migrant workers, regardless of their migration status, have the same labour rights as nationals. It also takes note of the action of the Beta Group to disseminate information about migrants' rights. It is concerned, however, that migrant workers and their family members, especially indigenous and women migrants, continue to suffer various forms of discrimination and stigmatization in the media and in society at large.

25. **The Committee reiterates its recommendation that the State party intensify its efforts to ensure that all migrant workers and members of their families receive non-discriminatory treatment. It also encourages the State party to carry out campaigns to sensitize migration officials and the general public in order to combat discrimination against migrants and to include the media in these activities.**

Right to an effective remedy

26. The Committee welcomes the different measures adopted by the State party to guarantee access to justice for undocumented migrant workers, such as the creation of the Public Prosecution Service for Migrants in Chiapas State, as well as the protocols adopted by the National Institute for Migration in 2010 for the identification and assistance of crime victims. The Committee is concerned, however, by allegations that victims of abuses and violations of their rights under the Convention have not had proper access to judicial protection of those rights or the benefit of an effective remedy. The Committee notes that the shortness of the time period that undocumented Central American migrant workers who opt for voluntary repatriation stay in the country (particularly women migrants who have been victims of sexual violence) could, in practice, constitute a curtailment of their right to file and prosecute a complaint regarding violations of their rights.

27. **The Committee recommends that the State party intensify its efforts to adopt specific and effective measures so that all persons whose rights or freedoms under the Convention have been violated have access to effective remedies and appropriate redress, even if they opt for voluntary repatriation. Particular attention should be paid to ensuring access to justice for women migrants who have been victims of sexual assault.**

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

28. The Committee is deeply concerned by the alarming number of cases of kidnapping and extortion of undocumented migrant workers coming up from the southern border and by the acts of torture and cruel, inhuman and degrading treatment, disappearances and killings of these migrants, primarily at the hands of national and international organized crime groups. The Committee is also concerned by allegations that public authorities participate in these human rights violations, or that they are carried out with the complicity, consent and/or collusion of federal, state and municipal authorities. It is also concerned that violence against migrants has extended beyond the border areas and spans the main transit routes used by the migrant population. The Committee notes the various actions which the authorities have taken to combat the kidnapping of migrants. However, it is concerned that impunity for these crimes prevails, especially in paradigmatic cases such as the abduction and murder of 72 Central American and South American migrants in August 2010 in Tamaulipas and the kidnapping of 40 migrant workers in the State of Oaxaca in December 2010.

29. **The Committee recommends that the State party increase its efforts to prevent kidnappings of undocumented migrant workers and the other [serious] human rights violations and abuses they face and that it seriously and diligently investigate these acts and punish those responsible for these crimes with sentences that are commensurate with the seriousness of the offence. The Committee also recommends that adequate compensation be provided to the victims and/or their families. In cases where State officials are involved in these acts, the Committee recommends that, in addition to criminal sanctions, the relevant disciplinary proceedings also be pursued. The State party should take practical steps to clarify the circumstances surrounding the aforementioned paradigmatic cases, including any such cases in which there are indications that public officials were involved.**

30. The Committee is concerned that some operations to verify individuals' migration status have been carried out under circumstances that have endangered the lives or physical well-being of migrant workers in transit, either at night or in places where those who evade migration controls are at the mercy of criminal groups or gangs. The Committee is equally concerned by allegations that officials who perform migration controls and inspections have used excessive force, which has resulted in individuals being injured or wounded. The Committee notes that confidence checks are being conducted to verify the suitability and integrity of officials of the National Institute for Migration and other authorities. It is concerned, however, by the fact that no systematic data are available on incidents of abuse and ill-treatment by public authorities of migrant workers and that only a small percentage of cases of ill-treatment and abuse have led to disciplinary measures or criminal sanctions. The Committee also remains concerned by the alleged participation in these operations of authorities who are not authorized to do so under the Population Act and its accompanying regulations.

31. **The Committee recommends that the State party, and specifically the National Institute for Migration, ensure that: (a) migration controls and inspections are conducted with respect for the right to integrity of the person; (b) the personnel who conduct these inspections are trained in the application of the rules and standards regulating the use of force; and (c) inspections are carried out only by authorities expressly authorized to do so. The State party is encouraged to conduct serious investigations into incidents in which there have been complaints of excessive use of force by officials, and to punish those responsible.**

32. The Committee remains concerned by the poor conditions existing in some of the places where migrants are held or detained, where there are still cases of cruel, inhuman and degrading treatment being carried out with impunity, and by the lack of medical care and restrictions on contact with the outside world. It is particularly concerned by situations in which undocumented migrant workers who claim to have suffered acts of torture and ill-treatment in some cases live together with the perpetrators of these violations.

33. **The Committee recommends that: (a) further appropriate measures be taken to improve the conditions of detention in migrant holding centres in accordance with international standards; (b) complaints of ill-treatment and degrading treatment committed by public officials in migrant holding centres be investigated and those responsible be criminally sanctioned.**

34. The Committee is concerned by the information provided by the State party that migrant workers held in migrant holding centres who lodge appeals relating to their migration status or who make use of the procedure to determine refugee status remain detained in those centres for prolonged periods.

35. **The Committee recommends that the State party limit the detention of migrant workers in holding centres to the shortest time period possible.**

36. The Committee welcomes the various measures that the State party has adopted to improve the situation of undocumented women migrant workers, such as the inspections carried out by the Ministry of Labour and Social Security and the Office of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons, and the issuance of border worker passes and local visitor passes since 2008. The Committee regrets, however, that it has not received more specific information about the situation of undocumented women migrant workers in domestic service. In that regard, the Committee remains concerned by the situation of extreme vulnerability of those workers, who in most cases are subjected to poor working conditions and often suffer ill-treatment and even sexual harassment or rape by their employers.

37. The Committee recommends that specific measures be adopted to protect women domestic workers and that their access to complaint mechanisms against their employers be ensured. The Committee also recommends that the State party strengthen its supervision of their working conditions and that it investigate and punish those responsible for abuses against them. To this end, the Committee urges the State party to refer to its general comment No. 1 on migrant domestic workers, adopted in 2010.

38. The Committee notes that article 30 of the Mexican Constitution establishes that all individuals born in the State party are Mexican by birth, regardless of their parents' nationality. The Committee notes with concern that many Civil Registry officials refuse to register the births of children of undocumented migrant workers in the State party.

39. The Committee recommends that the State party adopt effective measures, including amendments to article 68 of the Population Act, to ensure that Civil Registry officials and other relevant authorities register all births of children of migrant workers in the State party on an entirely non-discriminatory basis, regardless of those workers' migration status.

40. The Committee notes the efforts made by the State party to inform undocumented migrant workers who are in migrant holding centres about their rights, how to obtain a humanitarian visa if they are victims or witnesses of trafficking in persons or migrant-smuggling, the right to consular assistance and the possibility of requesting asylum. However, the Committee is concerned about allegations that such information is not provided to migrant workers in some migrant holding centres, or not provided systematically, especially in the case of persons in such centres who opt for voluntary repatriation.

41. The Committee recommends that effective measures be taken to ensure that all migrant workers held in migrant holding centres, including those who opt for voluntary repatriation, are properly informed of their rights in a language they understand, especially with regard to their rights to consular assistance, to seek remedies concerning their migratory status, to request asylum and to receive information about the possibility of obtaining a humanitarian visa if they have been victims of and/or witnesses to trafficking in persons.

42. The Committee welcomes measures taken to extend consular assistance to Mexican migrant workers abroad. It is concerned, however, that many Mexican migrant workers are not systematically provided with information about their rights under the Convention. It is further concerned that, in many cases, they are at the mercy of groups or individuals offering to take them to destination countries in exchange for money and are at risk of abuse or ill-treatment, including commercial and sexual exploitation. The Committee also notes with concern that many repatriated Mexican migrant workers do not have sufficient legal assistance to enable them to file or follow up on complaints concerning working conditions in destination countries.

43. **The Committee recommends that the State party: (a) step up its efforts to properly inform Mexican migrant workers about their rights; (b) implement a system to monitor individuals or organizations involved in taking Mexican migrant workers to destination countries and take the necessary measures when offences are committed; (c) take adequate measures to provide legal assistance to Mexican migrant workers who have been repatriated by destination countries with regard to complaints concerning working conditions that they are attempting to file or follow up on in those countries. The Committee also recommends that a systematic training programme on the Convention be provided for foreign service officials.**

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

44. The Committee continues to be concerned by the fact that article 372 of the Federal Labour Act prohibits foreigners from forming part of the leadership of trade unions.

45. **The Committee reiterates its recommendation that the State party take the necessary measures, including legislative amendments, to guarantee to all migrant workers the right to form part of the leadership of unions, in accordance with article 40 of the Convention.**

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57–63)

46. The Committee is concerned that the Southern Border Programme applies only to Guatemalan and Belizean migrant workers and not to other nationals and that the working conditions of seasonal agricultural workers remain disadvantageous, with low wages, late payment of wages and long working hours.

47. **The Committee reiterates its recommendation that the State party make further efforts to improve the working conditions of seasonal agricultural workers, enhance monitoring of labour standards and investigate and punish those responsible for violations.**

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

48. The Committee is concerned that only a small proportion of the victims of trafficking who have been identified as such have received temporary visas and that many victims have been repatriated. It notes that convictions for trafficking in persons have been handed down in only a limited number of cases. The Committee also notes that the Office of the Special Prosecutor is not competent to follow up on complaints of trafficking in persons when the offence is committed by members of organized criminal groups and that there have been cases where judges have not recognized the competence of the Office of the Special Prosecutor to handle certain complaints. The Committee is concerned by allegations that public officials have been involved in some of those cases. It is further concerned that the State party does not systematically record disaggregated data with a view to combating the phenomenon of trafficking. The Committee regrets that there have been reports of cases of insufficient assistance, in particular medical and psychological care, being provided in migrant holding centres to victims of human trafficking and rape.

49. The Committee reiterates its recommendation that the State party:

(a) Step up its efforts to combat migrant-smuggling and trafficking in persons, especially women and children;

- (b) **Take measures to detect and combat the illegal or clandestine movement of migrant workers and their families;**
- (c) **Investigate and punish the individuals, groups or organizations, including public officials, found responsible;**
- (d) **Ensure that victims receive proper care and appropriate reparation;**
- (e) **Systematically collect disaggregated data in order to better combat trafficking in persons;**
- (f) **Promote regular, safe migration under decent conditions as part of a strategy to combat trafficking in persons and migrant-smuggling.**

50. The Committee welcomes the steps taken to implement precautionary measures issued by the National Human Rights Commission and the Inter-American Commission on Human Rights in favour of defenders of migrant workers' rights. However, it expresses concern about the harassment, attacks and death threats to which defenders of migrant workers' rights are subjected. The Committee is also concerned that most of the cases involving offences committed against defenders of migrant workers' rights have not been solved and that the perpetrators have not been punished.

51. **The Committee recommends the adoption of express and adequate measures to guarantee the life, liberty and integrity of the person of defenders of the human rights of migrant workers and their families and to ensure that they are not subjected to judicial prosecution, harassment, detention or investigation based solely on their advocacy of respect for migrant workers' rights. The Committee recommends that the State party adopt effective measures to prevent, investigate and punish attacks and other forms of abuse perpetrated against defenders of the human rights of migrant workers.**

52. The Committee welcomes the migrant regularization programme for foreigners who entered the country before 1 January 2007, which has been in effect since November 2008 and will remain in effect until May 2011. However, given the magnitude of migration flows into the country, it is concerned that the State party lacks a comprehensive migration regularization programme that takes into account the country's actual migration situation.

53. **The Committee encourages the State party to redouble its efforts to establish and implement a comprehensive migration regularization policy that is accessible to all migrant workers and members of their families in an irregular situation and satisfies the principle of non-discrimination.**

54. The Committee welcomes the measures adopted by the State party to protect the rights of unaccompanied migrant children, such as its strategy of prevention and support for unaccompanied migrant and repatriated children and adolescents, the establishment of transit units and shelters, and the training given to staff of the network of shelters and to child protection officers. However, it notes with concern the increase in the number of unaccompanied migrant children and adolescents who have been deported and remains concerned at the extreme vulnerability of a great many of these migrant children and adolescents and at allegations that they have been subjected to ill-treatment, abuse, and labour and sexual exploitation.

55. **The Committee encourages the State party to continue its efforts to pay adequate attention to the situation of unaccompanied migrant children and adolescents and to respect the principle of the best interests of the child. In particular, the State party should:**

- (a) **Strengthen the training given to State officials who work with or enter into contact with unaccompanied migrant children and adolescents;**

(b) Ensure that the detention of migrant children and adolescents is carried out in accordance with the law and used only as a last resort and for the shortest possible time;

(c) Strengthen the implementation of procedures that provide for the early identification of children and adolescents who have been the victims of crime;

(d) Ensure that unaccompanied migrant children and adolescents who have been victims of crime receive adequate protection and specialized care that is geared to their particular needs in each case;

(e) Ensure that the repatriation and/or deportation of unaccompanied migrant children and adolescents to their countries of origin takes place only in those cases in which it is in the best interests of the child and after ensuring the definite existence of secure conditions for their care and guardianship when they return to their country of origin;

(f) Strengthen its cooperation with civil society and international organizations in this area;

(g) Apply a proper legal framework for the protection and guardianship of unaccompanied minors.

7. Follow-up and dissemination

56. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented by, inter alia, transmitting them for consideration and action to members of the Government, congress and the judiciary, as well as to local authorities.

Dissemination

57. The Committee likewise requests the State party to disseminate these concluding observations widely to, inter alia, public agencies and the judiciary, universities, non-governmental organizations and other members of civil society. It also requests the State party to establish a formal mechanism to ensure that foreign migrant workers in transit or residing in Mexico, Mexican migrants abroad and Mexican diplomatic officials are informed of the rights that migrant workers and members of their families enjoy under the Convention.

Next periodic report

58. The Committee requests the State party to submit its third periodic report by 1 April 2016 and to include in it information on follow-up to these concluding observations.
