



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**Excerpts of Concluding Observations and Recommendations from
UN Treaty Monitoring Bodies and from reports by UN Special Procedures
Mandate holders**

Universal Periodic Review:

GUATEMALA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the Human Rights Council's Special Procedure Reports, relating to issues of interest and persons of concern to UNHCR with regards to Guatemala.

1. Treaty Body Reports

CMW/C/GTM/CO/1

**COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES, 15th Session**

18 October 2011

Data collection

14. The Committee takes note of the efforts made to improve data collection and in particular the establishment of a migration statistics system by the Directorate-General of Migration. It regrets, however, the insufficient statistical information provided and also the lack of information on the different criteria required to evaluate the effective implementation of the Convention, in particular with regard to migrants in transit, migrant women, unaccompanied migrant children and cross-border and seasonal migrant workers.

15. The Committee recommends that the State party step up its efforts to ensure that the migration statistics system takes into account all aspects of the Convention and includes detailed information on migrant workers in the State party, those in transit and emigrants, and encourages the State party to gather information and statistics disaggregated by sex, age, reasons for entering and leaving the country and work performed. When it is not possible to obtain precise information, such as information on migrant workers whose status is irregular, the Committee would appreciate receiving data based on studies or approximate calculations.

Non-discrimination

18. The Committee is concerned about reports that migrant workers and members of their families sometimes suffer from discriminatory attitudes and social stigmatization.

19. The Committee encourages the State party to:

(a) Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;

(b) Take immediate and effective measures, in particular awareness-raising campaigns to combat prejudice and social stigmatization for public officials working in the main areas of immigration, including at the local level, and for the general public.

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

22. The Committee notes with concern that expulsion and deportation procedures are not regulated by domestic legislation in accordance with the Convention. In particular, it is concerned that the right to seek a stay of expulsion is not provided for in the law. The Committee is also concerned about reports that migrant workers and members of their families in an irregular situation from outside the region have been detained for long periods in the shelter run by the Directorate-General of Migration and about the failure to appoint interpreters.

23. The Committee recommends that the State party take the necessary measures to ensure that migration procedures, including deportation and expulsion, are in accordance with article 22 of the Convention and that they are exceptional procedures of an administrative nature. The Committee urges the State party to ensure that migrant workers and members of their families have the right to lodge an appeal against an expulsion order and to seek a stay of the expulsion until the appeal is heard. Likewise, the Committee urges the State party to carry out the necessary and effective investigations into irregularities committed by law enforcement officials who do not respect the migration procedures and to impose appropriate sanctions where necessary.

24. The Committee notes the information provided by the delegation of the State party on efforts to improve conditions at the shelter for migrants operated by the Directorate-General of Migration. Nevertheless, it is concerned at reports about inadequate conditions at the shelter, in particular the lack of open spaces and ventilation for migrants, as well as the limited access to basic social services. The Committee is also concerned about the limited information on the number of migrants housed in the shelter for violations of migration legislation, given the considerable number of migrants who transit through the State party every year.

25. The Committee recommends that the State party continue its efforts to improve conditions at the shelter for migrants, ensuring the provision of basic social services, including food, health care and hygienic conditions. It also encourages the State party to expedite exit procedures and to ensure that men and women are duly separated.

The Committee requests the State party to include in its next report data disaggregated by age, sex and nationality, as well as information on the number of migrants housed in the shelter run by the Directorate-General of Migration.

26. The Committee is concerned about reports confirming that migrant workers and members of their families are subjected, generally while in transit, to acts of abuse and violations of their rights by officials of the Directorate-General of Migration and the National Civil Police who claim their identity documents are invalid. These abuses include the retention and destruction of identity documents, as well as the imposition of unlawful charges for entry to or departure from the territory of the State party.

27. The Committee recommends that the State party take appropriate steps to put an end to acts of abuse and violations committed against migrant workers and members of their families. In particular, the Committee urges the State party to establish a mechanism for monitoring the work of officials of the Directorate-General of Migration and the National Civil Police in order to ensure that acts of abuse and violations committed against migrant workers and members of their families, including the retention and destruction of their identity documents, are investigated and that the culprits are brought to trial and punished, in accordance with article 21 of the Convention.

42. The Committee notes the implementation of the Migrant Children and Youth Programme, which is aimed at helping repatriated, unaccompanied minors. However, the Committee is concerned by the lack of information on measures to properly identify, and hence protect, unaccompanied migrant children and young people in transit and at risk of falling victim to abuse along migration routes. The Committee also regrets the lack of data and information on the situation of children and young people in Guatemala whose parents have emigrated, in particular with regard to their family situation and education.

43. The Committee encourages the State party to focus on developing policies that address the difficulties faced by unaccompanied migrant children and young people, and on setting up mechanisms for their identification and protection, taking into account the guidelines of the Regional Conference on Migration on assisting unaccompanied minors. It also recommends that the State party carry out studies on the situation of children and young people in Guatemala whose parents have emigrated, with a view to developing policies on care, protection and family reunion.

44. The Committee notes the efforts made by the State party to combat human trafficking. However, it is concerned by the apparent overlap and lack of coordination between the institutions whose task it is to combat human trafficking, especially between the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) and the Inter-agency Commission against Human Trafficking (CIT). It is equally concerned by the paucity of information available on the implementation of the Act against Sexual Violence, Exploitation and Human Trafficking, in particular with regard to the proper identification, protection and care of victims, as well as on the effective investigation, prosecution and punishment of the perpetrators of trafficking, especially in cases involving public officials in criminal acts of this kind. The Committee is also concerned by the lack of studies, analysis and disaggregated data with which to measure the extent of the problem of trafficking in, through and from the State party's territory.

45. The Committee recommends that the State party intensify its efforts to combat human trafficking, in particular by:

- (a) Adopting regulations to ensure that legislation aimed at combating human trafficking is applied;
- (b) Providing appropriate and intensive training to improve the ability of the National Civil Police to identify victims, along with ongoing training on the issue of human trafficking for public officials, especially the police, judges and criminal court officials, prosecutors, labour inspectors, teachers and health-care professionals at the national level, and representatives and officials of Guatemalan embassies and consulates;
- (c) Systematically collating disaggregated data with a view to combating human trafficking more effectively;
- (d) Taking measures to ensure that the perpetrators of human trafficking, including public officials, are tried and punished appropriately;
- (e) Intensifying campaigns to prevent irregular migration, including human trafficking;
- (f) Developing effective mechanisms for the identification and protection of victims of trafficking;
- (g) Formulating a strategy to ensure respect for victims' rights and the prevention of further abuse, as well as developing projects to help the victims of trafficking rebuild their lives, taking into account the physical, psychological and social consequences of their experience on them.

46. As far as the smuggling of migrants is concerned, the Committee recommends that the State party:

- (a) Carry out the necessary investigations and act to punish the perpetrators of migrant smuggling;
- (b) Step up local campaigns aimed at the general public on the risks of irregular migration.

CRC/C/GTM/CO/3-4

COMMITTEE ON THE RIGHTS OF THE CHILD, 55th Session

25 October 2010

Children in migration situations

82. The Committee is concerned about the extreme vulnerability of unaccompanied migrant children, who run the risk of becoming victims of crimes such as sale of and trafficking in persons.

83. The Committee recommends that the State party enact a migration law that addresses the situation faced by migrant children and create tools to address the existing problems, especially with regard to unaccompanied migrant children. The Committee brings to the State party's attention its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

CEDAW/C/GUA/CO/7

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 43rd Session

12 February 2009

Poverty and economic empowerment

33. The Committee recognizes the efforts made by the State party to initiate and support community projects which promote women's economic empowerment, but continues to have concerns about the effects and the sustainability of these programmes and the persistence of high levels of poverty and social exclusion of women, especially in rural areas. The Committee is also concerned about issues relating to access to land for women in general and in particular women belonging to indigenous communities, who can be displaced as a result of new economic development plans.

34. The Committee recommends that the State party ensure that economic and social policies and public investment take into specific account the situation of women and monitor the impact resulting from these programmes. The Committee urges the State party to strengthen initiatives aimed at encouraging women's economic sustainable empowerment, in particular promote women's access to land and credits.

2. Reports of Special Procedures mandate holders

A/HRC/11/7/Add.3

HUMAN RIGHTS COUNCIL, 11th Session

18 March 2009

Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante

Recomendaciones

124. El Relator Especial considera que la cooperación regional es fundamental en la promoción y protección de los derechos de los migrantes. En este sentido, invita al Gobierno a mantener su participación activa en los procesos regionales existentes.

125. El Relator Especial recomienda que se intensifiquen los esfuerzos conjuntos de los países de la región en la búsqueda de acuerdos multilaterales con los países de origen y destino, que refuercen la protección de los derechos humanos de los migrantes en concordancia con lo dispuesto en la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares.

127. El Relator Especial observa con preocupación cómo las medidas adoptadas por el Gobierno para luchar contra el tráfico ilícito de migrantes y la trata de seres humanos resultan aún insuficientes, dada la descoordinación existente entre las distintas instituciones y la falta de los recursos necesarios. El Relator Especial recomienda reforzar las instituciones y mecanismos establecidos.

128. El Relator Especial considera que el Estado debería garantizar que las víctimas de trata de personas, una vez hayan sido identificadas, no sean objeto de detención ni sean procesadas o sancionadas por el carácter irregular de su ingreso y permanencia en el país.

En este sentido, es necesario fortalecer los mecanismos actuales para la lucha contra la trata de personas con el fin de que las víctimas reciban la asistencia y

protección adecuada y se inicien las investigaciones que procedan contra aquellas personas responsables.

129. El Relator Especial recomienda que el Estado considere habilitar centros especiales para las víctimas de trata de personas, distintos de los centros de detención para migrantes, los cuales reúnan los requisitos necesarios para atender sus necesidades.

130. El Relator Especial constató los esfuerzos llevados a cabo por el Estado para combatir con firmeza los abusos cometidos contra los migrantes guatemaltecos que se encuentran en el exterior, y alienta al Gobierno a continuar trabajando en este sentido. El Relator Especial considera que es fundamental implementar políticas en la misma dirección respecto a la protección de los migrantes que se encuentran en tránsito en Guatemala.

131. El Relator Especial considera fundamental el establecimiento de mecanismos de denuncia ante los abusos cometidos en contra de los migrantes, efectivos y de fácil acceso, que se encuentren acompañados de sanciones efectivas.

132. El Relator Especial recomienda la creación de mecanismos de supervisión que regule el reclutamiento y las prácticas abusivas contra los trabajadores migrantes del sector agrícola y las trabajadoras del servicio doméstico que se encuentran en México.

133. El Relator Especial recomienda que se respeten y apliquen a los migrantes que se encuentran en situación de detención administrativa, los principios internacionales para la protección de todas las personas que se encuentran privadas de su libertad, respetándose el derecho de establecer comunicación con el exterior, tener acceso a un representante legal y consular, y a sus familiares, y ser informado de ser posible en un idioma que comprenda, de los motivos de su detención y los derechos procesales que le asisten.

137. Es imprescindible que el Estado lleve a cabo campañas de sensibilización e información sobre los riesgos de la migración irregular. En este sentido, dada la falta de información sobre las garantías y derechos, los migrantes se enfrentan a una situación de gran indefensión ante posibles abusos.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
February 2012**