

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

Meeting of the fifth session (Geneva, 30 October – 3 November 2006)

Mexico (Initial Report)

Information submitted to the Committee

Mexico submitted its initial report¹ on the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (the Convention) to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee). Additionally, Mexico submitted written replies² to the Committee's list of issues.³ After preliminary remarks by Mr Prasad Kariyawasam, the Chairperson of the Committee, the members of the Committee provided updates on recent activities. The Committee was pleased with Mexico's report and stated that they view Mexico as a leader in defending migrant rights. The report is divided into two sections: the first provided a general overview of the constitutional, legislative, judicial and administrative framework; and the second, discusses the implementation of the Convention, article by article. The report was prepared with the involvement of civil society.

Two non-governmental organisations (NGOs) submitted alternative reports to the Committee. First, the parallel report submitted by The Migration Network (El Foro Migraciones) provided a general analysis of the Convention in Mexico while additionally providing recommendations to the Committee. The report noted that undocumented migrants are often persecuted, detained and held in detention centers in Mexico. The report cited the Mexican National Institute of Migration as being the main perpetrator of violations against migrants.⁴ It stated that there is little coherence between Mexico's migration policy and the General Law on Population. Further, the report argued that the migration policy of Mexico focuses on policing measure which seek to control, repress and contain migration. This allegation is supported by the fact that the National Institute of Migration (NIM) was integrated into the National Security System of Mexico in May 2005. The Migration Network report noted that this measure portrays migrants as a threat to national security. The report added that there are gaps in the General Law on Population, one of which enables security forces to over step their authority with negative consequences for migrants. The second parallel report, presented by the National Employment Law Project, suggested to the committee that Mexico should provide more detail on how it complies with each of the elements of Article 25 of the Convention, as it relates to migrants of irregular status. It highlighted many examples of judicial decisions which pointed out discrimination against irregular migrants workers in Mexico.

¹CMW/C/MEX/1

² Unofficial translation from Spanish, CMW/C/MEX/Q/1/add.1

³ CMW/C/MEX/Q/1

⁴ The report provided statistical evidence from the Human Rights Commission of Guatemala which showed that 25 percent of deported migrants reported being victims of abuse. 74 percent of these abuses occurred in Mexico while the authority most often cited as being responsible for these allegations was the Mexican National Institute of Migration (with 47 percent of all incidences).

Mexico has made a reservation to Article 22 (4)⁵ of the Convention, preventing arbitrary expulsion, in reference to Article 33 of the Mexican Constitution. Article 33 establishes that “the executive of the Union will have the exclusive authority to require immediate from the national territory, without prior judgment, of any foreigner whose presence shall be judged undesirable.” Additionally, Mexico has made an interpretive declaration which provides that the Constitution supersedes the Convention.

Themes and Issues⁶

This was the fifth session of the Committee and the first examination of Mexico. The Committee is at the initial stage of implementing its working methods, as a result the dialogue lacks in-depth analysis. The Committee approached the dialogue in a consensual and non-confrontational way, which led to a non-substantive examination of key migrant issues. On the other hand, the interaction between the Committee and the NGO Forum Migraciones was fruitful and provided the Committee with a wide range of information. These are set out below.

The legal framework of the migrants’ rights

Prompted by the Mexican government’s reservation which creates loopholes in the legislative framework for the protection of migrant rights, the Committee inquired if Mexico was considering retracting the reservation. The delegation explained that it was working to harmonize its national legislation with international human rights standards, however it also informed the Committee that migration law was in a process of flux and highlighted the difficulties in reforming the Constitution, especially in relation to Article 33 which restricts the rights of foreigners to hearing.⁷ Regarding article 22, paragraph 4 of the Convention, the delegation noted that the government was reviewing it. Nevertheless, the delegation underlined there was no additional law or amendment planned by the law-makers to address migrant rights.

The Committee raised the issue concerning migrants rights of ownership and hearing. The delegation asserted that there was no contradiction between the Convention and its national law regarding the right to ownership for migrants. Even though migrants were not allowed to own real estate along the border, they can use property and real estate and enjoy the right to ownership up to five miles from the border and are protected from expropriation.

The Committee addressed the criminalisation of migration in Mexico. In doing so the Committee agreed that the act of illegal trafficking should be criminalised but expressed deep concern about Mexico’s decision to criminalise particular offenses such as ‘repeat entrance of migrants’ which provides grounds for other abuses of migrants committed by officials. In response, the delegation recognized the need to establish a new migration law as a result of the migration growth.

The Committee enquired about the Mexican quota for skilled job migrants. The delegation responded by stating that labour codes contain a quota in which 10% of skilled positions should be set aside for Mexicans

⁵ Article 22(4) provides individuals with the right to submit reasons why they should not be expelled and also grants them the right to have their case heard by a competent authority. In the interim period before the review the person has the right to stay.

⁶ For a press release of the proceedings, please see [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/DF87FEA01C737E4FC125720A0053DC74?OpenDocument)

⁷ This article is the ground for the reservation made by Mexico of the Convention.

in order to protect the Mexican economy. They argues this should not be interpreted as a violation of the Convention.

National Human Rights Commission

During the session Mexico's National Human Rights Commission (the Commission) presented information to the Committee. The Commission noted that the migration phenomenon in Mexico had reached an enormous scale with women and children being particularly vulnerable to abuse. In over one year the Commission had examined 800 allegations of abuse from undocumented foreign migrants while a climate of impunity for officials and gangs that participated in the violations continued. The Commission stated that jails were used as holding facilities for undocumented migrants and that there was a lack of consular services for those being detained. In conclusion, The Commission noted that Mexico must reform its legal and constitutional framework; elaborate a migration state policy that addresses both migration and immigration; and adequately deal with the violence on Mexico's southern border.

The Committee said that the Commission's recommendations reflected their concerns and further enquired as to whether the Commission has the ability to make recommendations to local mayors or police regarding alleged violation against migrants. Due to procedural reasons the Chairperson of the Committee reminded the Committee that they should exclusively address its concerns to the State Party and not the Commission. Therefore, the delegation explained that the Commission receives complaints concerning alleged violations. However, they made the point that recommendations made by the Commission were not legally binding, but carried a moral weight. If the authorities did not agree with the recommendations of the Commission, they discussed the issue until an agreement was reached. The delegation reminded the Committee that the Commission was neither a prosecutor nor a court even though it is an autonomous body of constitutional rank.

The Committee raised concern about the difference between what the delegation and the Commission said. Mexico replied that it had provided an opportunity for international scrutiny and tried to ensure that its domestic legislation was compatible with human rights conventions. However, the Commission was not the single body entitled to receive complaints; it shares this competence with many other mechanisms including the National Institute for Migration.

Freedom of association and access to unions

Mr El Borai, a member of the Committee, asked the delegation if migrant workers have the right to join trade unions and existing associations. In response the delegation stated that all individuals, regardless of their migration status, enjoy all the rights set out in the Constitution. They pointed out that Article 9 of the Constitution allows foreigners to join an association except if it is political. Furthermore, migrants have the right to join unions but are unable to hold leadership positions, as written in federal labor law. This is an old provision dating back to 1931 and has not been changed since. Although the delegation was uncertain about the purpose of the provision they said that it may have been established to protect strategic industries from foreign control. They also informed the Committee that monitoring bodies for labor have been established and if a migrant is unsatisfied with his/her situation they have the ability to access the Mexican legal system.

In the next cluster of questions Mr El Borai further asked the delegation to define the legal value of a convention in the legal hierarchy, specifically referencing the International Labor Organization (ILO)

*Convention 87.*⁸ The delegation responded that international treaties fit into federal law but added that all Mexican authorities do not know about international law and treaties. They concluded by saying that the ILO convention can be applied in local courts and that conclusions could be drawn.

Protection Mexican migrants

The Committee enquired about how Mexico protects those citizen living abroad who may have suffered from enforced labour as well as violations at work. The delegation explained that their consular network in the United States of America (USA) has programmes which help Mexicans working there, with a focus on undocumented workers. Additionally, a new regulation has been instituted which requires hiring agencies to provide details relating to the working conditions proposed.

Regarding the right to vote for Mexican living overseas, the delegation explained that a Government Bill has been introduced which states that only those Mexicans living abroad who have credentials as electors and who were listed on the electoral rolls could vote. The delegation argued that the legislation should be seen as a mean to taking up a first step towards greater participation in the future.

Detention

The Committee asked the delegation to clarify the concept of “securing” migrants and how it differs from a detention system. In their written responses the Mexican delegation stated that in Mexican migration law, the term *aseguramiento* (securing) refers to an administrative measure applied by the migration authorities in migrant holding facilities or establishments adapted for that purpose, where migrants are held until a time when a foreigner’s migration status has been determined.⁹

The Committee inquired what entities are involved in the detention of migrants and asked the delegation to clarify the criteria used for the inspection of identities of individuals. In their oral presentation, the delegation noted that agents from the Migration Institute and the prevention police are the authorities who can secure migrants. This involves taking migrants to a migration facility and holding them until their status can be checked. The delegation made it clear that when a migrant is secured they are not considered a criminal. A migrant can additionally be ‘detained’ when a crime has been committed. The General Law on the Population allows regular police to detain people in circumstances when a law has been violated; authorities at all levels of protection can detain a migrant for a crime.

Irregular migrants and vulnerable groups (Women and Children)

Ms Cubas Medina, a member of the Committee, stated that she was concerned about the violation of undocumented migrant’s rights, especially those women, boys and girls who are traveling through Mexican territory on their way to the USA. In response to her concerns, the delegation noted that minors are separated from the adult population as a preventative measure and treated with great care when they are secured by Mexican authorities. When a minor is detained while entering into Mexico, migration officials determine what approach is to be taken. If a minor enters Mexico illegally and then commits a crime, the

⁸ Convention concerning freedom of association and protection of the rights to organize, Date entered into force 04/07/1950.

⁹ Unofficial translation from Spanish, CMW/C/MEX/Q/1/add.1

minor is treated under law as a juvenile offender. The delegation stated that there are specific institutions with multidisciplinary care involving social workers for juvenile offenders.

Mexico has signed agreements with the USA and various Central American countries¹⁰ which treats women and child migrants differently. The delegation noted that Mexico has improved its record dealing with vulnerable migrant groups. Specifically, the delegation noted that a majority of the Migration Institute's resources are being devoted toward women and children from Central American countries.

In response to the concern for irregular (undocumented) migrants raised by Ms Cubais-Medina, the delegation noted that although the NIM is not trusted by irregular migrants, over 15,000 of these have been 'regularised' through a Government program. Mexico is trying to spread information about this program to more individuals with the goal of improving its reputation among the population.

However the Committee reiterated its concern regarding the violation of the rights of trans-migrants and migrants coming from the south. The delegation asserted to be aware about those violations and gave rise to the Committee about the significant alteration happening in the mindset of the authorities. But migrants as well as the population are still afraid by the NIM, which is responsible for all matter related to migrants, due to its past abuse of human rights. The delegation ensured campaigns are undertaken to change its views, and it deserves the opportunity to be reviewed by the Committee to call on its help for that matter as well as from the NGOs.

Trafficking

Due to the increase in trafficking of persons in Mexico, particularly in the most populated cities, the delegation noted that a consensus exists in Mexico's legislative branch to move forward to a specific and comprehensive scheme to deal with trafficking. When trafficking is identified, the delegation said it goes beyond the sphere of migration alone. Mexico is dealing with the trafficking of persons in an integrated manner which has already produced a general directorate. Within this integrated approach the delegation noted two important realms: first, the prosecution of individuals who traffic persons which is covered by the public security office and second, adequate dealing with victims; the later handled by the general prosecutor and a specialised office.

Concerning the trafficking of persons and organized crime, including Maras¹¹, the delegation stated that this is a matter of public security for Mexico. Mexico is dealing with the problem of organized crime in different ways, one of which is the sharing of information with other countries (including USA and Central American countries). The delegation noted that they are trying to bring about better practices including the ending of ill-treatment and corruption on the southern border and with the Maras.

Conclusions and next steps

The Committee noted with satisfaction the change Mexico has undertaken to deal with the phenomenon of migration as a country of origin, transit and destination. Not withstanding this, the Committee stated that Mexico should not only reform the GPA but look at a possible new act. Additionally, Ms Cubais Media

¹⁰ Including: Guatemala, El Salvador, Nicaragua and Honduras.

¹¹ Mara is Spanish slang used in Mexico which means "gang".

stated that it is necessary to ensure the protection of the human rights of undocumented and transit migrants, and that a mechanism for responding to complaints needs to be established. Further, Ms Cubais Media continued by telling the delegation that the criminalization of illegal migrants needs to end to ensure that migrants are not placed in a situation where they can be exploited.

In its preliminary observations the Committee recommended to Mexico to adapt a Migration Act which would ensure the human rights of undocumented migrants and trans-migrants.