

### **III.7 THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (CMW)**

The Committee is the monitoring body of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which was adopted by the General Assembly in resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003. As of 11 January 2010, 42 States parties had ratified the Convention, most of them from Latin America and Africa, none from Western or Central Europe (for details see annex VI.3).

Article 2, para. 1, of the Convention defines a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. This is the most comprehensive definition of migrant workers found in any international instrument concerned with migrants.

Members of the migrant worker’s family are “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependant children and other dependant persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned” (Article 4).

The Committee held its tenth session in April 2009 in Geneva. The Committee is composed of 14 members elected for a term of four years. Re-election is possible upon re-nomination.

If possible, due consideration is to be given to equitable geographical distribution which includes in particular the representation of both States of origin and States of employment of migrant workers and to the representation of the principle legal systems. As from 2009, two sessions per year in Geneva are foreseen, one of two weeks and one of one week.

#### ***Article 73: States Reports on Implementation***

According to Article 73, States parties are obliged to submit reports on the legislative, political, administrative and other measures they have taken to give effect to the provisions of the Convention (see chart 17). Their reports shall also indicate factors and difficulties affecting the implementation of the Convention and shall include information on the characteristics of migrant flows. States parties shall make their reports widely available to the public in their own countries.

Initial reports are to be submitted within one year after entry into force of the Convention for the State party concerned. Periodic reports are due every five years.

During the 10th session, the Committee noted with concern that until 1 May 2009 28 initial reports by the States parties had not been received. In addition, 11 second periodic reports were overdue. The Committee decided to send reminders to those States parties whose reports were overdue.

The Committee does request follow-up information to its recommendations made in the concluding observations on initial reports to be presented in the second periodic reports. In the case of follow-up replies from some States parties, it decided that the Committee member who has acted as rapporteur for the examination of the report concerned would study the follow-up replies received and make recommendations to the Committee for appropriate action.

#### ***Article 74: Cooperation with ILO***

A privileged relationship exists with the International Labour Office which will receive copies of the States reports in order to allow it to assist the Committee in the examination. The ILO will also be invited to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

During its first session, the Committee met with ILO representatives; they discussed possible ways of cooperation, bearing in mind the prominent role the Convention reserves for ILO and its various departments that deal with issues of migrant workers and their families.

The Committee may also invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to submit written information on matters dealt with in the Convention and falling within the scope of their activities; they also may be invited to be presented to be heard in its meetings (see chart 17).

#### ***Article 76: State Party vs. State Party***

A State party may declare that it recognizes the competence of the Committee to receive and consider communications of another State party claiming that it is not fulfilling its obligations under the present Convention. No communication can be received by the Committee if it concerns a State party which has not made such a declaration. Article 76 contains a detailed procedure describing the different steps to be undertaken. The provisions of Article 76 will enter into force when ten States parties have made the necessary declaration.

#### ***Article 77: Individual Complaints***

Article 77 of the Convention provides for an individual complaints procedure. A State party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the Convention have been violated by that State party. Communications from or on behalf of individuals will only be considered if

- the same matter has not been, or is not being, examined under another procedure of international investigation or settlement; and
- the individual has exhausted all available domestic remedies (this shall not be the rule where the Committee is of the opinion that the application of the remedies is unreasonably prolonged).

This individual complaints procedure is planned to become operational in the light of all information made available to the Committee by or on behalf of the

individual and by the State party concerned. The Committee will examine the communications in closed meetings.

This procedure will become operational when ten States parties have made such a declaration. Until 11 January 2010, only two States parties have made a declaration under Article 77.

### ***International Regulations of Migrant Workers and Migration***

As mentioned above, close cooperation with the International Labour Office is envisaged in the monitoring of the implementation of the International Convention. In fact, the International Labour Organization has a comprehensive system of standards with a unique tripartite supervisory mechanism (see IV.2) which includes two Conventions (No. 97 on migration for employment of 1949 and No. 143 on migrant workers of 1975) and two accompanying Recommendations addressing migrant workers' concerns.

Both ILO Conventions have similar overall aims; they cover issues concerning the whole migratory process and advocate the development of model contracts to govern the situation of migrant workers. As mentioned above, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families applies a broader definition of "migrant worker" as well as of "family". In its Part III (Articles 8-35), the civil, political, economic, social and cultural rights applicable to all migrant workers and members of their families are enumerated irrespective of whether they are documented or non-documented.

### ***Targeted Ratification Campaigns***

Until February 2010, the ILO Convention No. 97 has attracted a total of 49 ratifications, whereas the ILO Convention No. 143 reached only 23. The most often mentioned obstacle was non-conformity between national legislation and the Convention. Both ILO Conventions have not been the object of any targeted ratification campaign.

The International Convention attracted only nine ratifications until 1999; following promotional efforts for the ratification it has attracted a total of 42 ratifications as of 11 January 2011. In its Resolution A/RES/59/262 of 23 December 2004, the UN General Assembly once again called upon all Member States that had not yet become a party to the International Convention to consider urgently signing and ratifying or acceding to it. Also, UNESCO's Programme on Social Transformation Themes includes the topic: "International migration and multicultural policies". Within that project a series of country studies on the obstacles to the ratification of the International Convention as well as on the political and social impacts of ratification was undertaken. Afterwards, information and advocacy activities in specific regions are planned in order to make the International Convention better known.

## References

BAYEFSKY, Anne (Ed): Human Rights and Refugees, Internally Displaced Persons and Migrant Workers. Essays in Memory of Joan Fitzpatrick and Arthur Helton. Leiden / Boston: Martinus Nijhoff, 2006, XXX, 598.

CHOLEWINSKI, Ryszard: Migrant Workers in International Human Rights Law. Oxford: Clarendon Press, 1997, LXXII, 463.

GUCHTENEIRE, Paul de; PÉCOUD, Antoine; CHOLEWINSKI, Ryszard (Ed): Migration and Human Rights. The United Nations Convention on Migrant Workers' Rights. Paris: UNESCO; Cambridge: Cambridge University Press, 2009, 472.

INTERNATIONAL CATHOLIC MIGRATION COMMISSION: How to Strengthen Protection of Migrant Workers and Members of Their Families with International Human Rights Treaties. Geneva: ICMC, January 2004, 34.

ŞEN, Faruk; KORAY, Sedef: Migrant Workers' Rights. In: SYMONIDES, Janusz (Ed): Human Rights: Concept and Standards. Aldershot / Burlington, VT: Dartmouth; Ashgate, 2000, 327–341.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS: The International Convention on Migrant Workers and its Committee. New York and Geneva: UN, 2005, III, 62 (Fact Sheet No. 24 (Rev. 1)).

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ninth session (24–28 November 2008). Tenth session (20 April–1 May 2009). New York: UN, 2009, 51 (GAOR Sixty-fourth Session, Supplement No. 48 (A/64/48)).

*Chapter V contains the concluding observations of the Committee on the reports by five States parties under Article 73. Annex III offers a table showing the dates – as of 1 May 2009 – by which the reports should be submitted.*

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Seventh session (26–30 November 2007). Eighth session (14–25 April 2008). New York: UN, 2008, 39 (GAOR Sixty-third session, Supplement No. 48 (A/63/48)).

*Chapter V deals with the consideration of three States reports submitted in accordance with Article 74 of the Convention. In Annex V the guidelines for the periodic reports to be submitted by States parties under Article 73 are reproduced.*

VEDSTED-HANSEN, Jens: Refugees, Asylum-seekers and Migrant Workers. In: KRAUSE, Catarina; SCHEININ, Martin (Ed): International Protection of Human Rights: A Textbook. Turku / Åbo: Åbo Akademi University, Institute for Human Rights, 2009, 301-321.

VUCETIC, Srdjan: Democracies and International Human Rights: Why is There No Place for Migrant Workers? In: The International Journal of Human Rights 11/4: 403-428, December 2007.

### ***E-Resources***

General:

<http://www2.ohchr.org/english/bodies/cmw/index.htm>

States reports:

<http://www2.ohchr.org/english/bodies/cmw/sessions.htm>