**THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES – AN ASSESSMENT FOR FUTURE ACTION**

**INTRODUCTION**

***General Framework***

On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (‘UDHR’). This document, prompted by the heinous atrocities committed during World War II, spearheaded the human rights movement. In the years following its entry into force, the drafting of several human rights conventions, usually referred to as “core human rights treaties,” took this movement further.

There are currently nine core human rights treaties covering an increasingly broader spectrum of rights (see table A), some of which have been subsequently expanded with optional protocols widening their reach and creating new protection mechanisms (see table B). States can sign, ratify, or access any of these conventions. If a state ratifies or accesses a core human rights treaty – thus becoming a State Party – is obliged to comply with all the provisions therein contained, unless expressed otherwise by submitting a reservation.

Each treaty, except for the International Convention for the Protection of All Persons from Enforced Disappearance, established a treaty monitoring body (TMB) to monitor the implementation of its provisions by States Parties. The Treaty Monitoring Bodies System comprises of eight committees of experts in the subject addressed by their respective convention (see table C). Their main role is to examine States Parties’ reports in order to assess if their conduct complies with their obligation under international human rights law. After examining a State Party’s report, the treaty body drafts “concluding observations” containing the “principal subjects of concern” as well as “suggestions and recommendations” on the measures the state should consider taking to align its conduct as well as it legislation with the provisions of the convention.

Within this framework, the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](http://www2.ohchr.org/english/law/cmw.htm) (‘MWC’ or ‘the Convention’) – adopted by the General Assembly on 18 December 1990 – provides the normative international standards to protect workers outside their countries of citizenship. The MWC is the seventh among the core human right treaties and the Committee on Migrant Workers (CMW or the Committee) is the treaty body designated to monitor its implementation by States Parties.

Entered into force in 2003, the Convention has a peculiar history characterized by distrust and misunderstanding but also by positive responses and encouraging trends. From the beginning of the drafting process in the early 1980s, it was clear that combining migrants and labor’s rights in the same instrument would have been a rather challenging endeavor.[[1]](#endnote-1) After its adoption, the stagnating ratification only confirmed the initial fears.

However, despite the wariness shown by governments in ratifying it – the MWC entered into force 13 years after its adoption – the Convention has grown in popularity. The fact that the Convention has the lowest number of States Parties among the core human rights treaties already entered into force, is being challenged by the increasing number of actors acknowledging its importance in setting the international standards for the protection of migrant workers’ rights.

Once considered “the best kept secret of the UN,”[[2]](#endnote-2) in recent years the MWC has gained momentum. Uplifted by the work of the Committee as well as by international advocacy networks, the Convention emerged from the shadow of the early days, claiming back its stance among the core human rights instruments.

***Objectives***

This document, drafted ahead of the 20th anniversary of the Migrant Workers Convention, represents an attempt to outline a comprehensive assessment of the Committee’s activities during its first 7 years. Its primary objective is to support the work of the Committee in upholding and promoting the rights enshrined in the Convention, as well as to suggest ways to optimize the work of NGOs and IGOs engaging with the Committee.

Ultimately, the analysis contained in this paper seeks to provide an exhaustive account on the status of implementation of the Migrant Workers Convention. This document rests on the belief that only a coordinated effort between all the actors dealing with migration issues – at local, national, and international level – will effectively enhance the protection of migrant workers’ rights. Hence, this paper is essentially a response to the need for an instrument that is at the same time a review of the Committee’s work and an advocacy tool.

The starting point of this research is the acknowledgment that the movement in support of the Migrant Workers Convention is gaining momentum thanks to the combination of two fundamental factors. Firstly, the work of the Committee on Migrant Workers, and secondly, the many advocacy initiatives carried out by international networks of NGOs and civil society groups, including migrant workers organizations. The progress in achieving ratifications of the Migrant Workers Convention made in the last ten years, spurred by the virtuous alignment of these two elements, is a rather encouraging sign.

Nevertheless, the MWC is still lagging behind in terms of diffusion if confronted with other core human rights treaties. The Committee, NGOs, IGOs, and civil society organizations (CSOs) must cooperate closely to promote the MWC in new and creative ways. Identifying best practices and inconsistencies, through the analysis of the many activities carried out by the Committee, is a step forward in the formulation of a new advocacy agenda.

Even though it could be argued that it is perhaps too soon to evaluate what the Committee has achieved so far, there are substantial reasons suggesting otherwise. Given the current situation, marked by the systematic violation of migrant workers’ fundamental rights, forms of involvement with international protection mechanisms hardly can be seen as superfluous. The troubled history of the MWC, which emerged only recently from over a decade of obscurity and neglect, as well as the worsening conditions of thousands of migrant workers affected by repressive state’s policies, if anything, call for further engagement with the CMW.

***Methodology***

In light of the objectives mentioned above, the core of this research is the qualitative analysis of the Committee’s activities.

* **Examination of States Parties’ Reports**
* **Promotion of the MWC**
* **Organization of the “Day of General Discussion”**

The possibility of a quantitative analysis has been deliberately excluded for three main reasons. Firstly, due to the very limited number of States Parties reports examined, only 14 so far, a quantitative analysis, for instance, of similarities and discrepancies between different sets of concluding observations, would have been meaningless. Secondly, at this particular stage of the life of the CMW, its methods and practices are still evolving, and therefore susceptible to being revised.

The paper is divided into four parts, which follow an introduction comprising of a brief description of the core human rights treaties and the treaty monitoring body system, a statement of the objectives, and methodology. The first part contains some background information on the main issues characterizing the political discourse around migration, such as the rhetoric of national security, the approach of the media when dealing with migration, the implementation of repressive migration control policies, and the impact this course of events has on migrant workers in the backdrop of the global economy.

The second part looks at the Migrant Workers Convention, giving a concise account of its genesis and scope, as well as underlying some of the reasons why governments, especially in the West, are unwilling to ratify it. The third part represents the bulk of the analysis. After introducing the Committee on Migrant Workers, providing an overview on its establishment and composition, this section aims at analyzing its activities highlighting best practices and shortcomings. In the fourth and final part are outlined two complementary sets of recommendations: the first directed to the Committee on Migrant Workers, the second to all those groups, organizations and networks engaging with the Committee.

**PART 1 – Background**

***Transnational Migration, National Security, and the Media***

Since the end of the Cold War and even more so after the events of September 11, the public discourse about migration has changed drastically. Especially in the North, voices from across the political spectrum and media establishment, have been indulging in depicting grim scenarios in which the very foundations of our civilization – its core-values – are being threatened by “hordes of illegal aliens.” In the wake of the War on Terror, states have implemented utterly repressive migration control policies. The emphasis on national security has overwhelmingly monopolized the policy debate on how to deal with flows of migrants. Politicians and pundits often exploit the prevailing perception of an international migration crisis to revamp nationalistic feelings, especially around election time.

Despite the fact that most irregular migrants enter legally, becoming irregular only after overstaying their visas, crackdown measures are systematically preferred to regularization and integration programmes. Furthermore, initiatives aimed at sealing the borders, in some cases carried out through the deployment of military means, have been for the most part ineffective in curbing irregular entries, exposing migrants and asylum seekers to gross violations of their fundamental rights. In the name of public order, governments have increased controls also within their borders.

The real crisis affecting migration policies, does not originate from the sheer number of those who, for example, cross the US-Mexico border or the Mediterranean hoping for a better future, but from the failure of states’ approaches to migration control. There is in fact a clear discrepancy between the state-centric perspective informing migration policies, the transnational nature of migration, and the evolution of global economy – with all its implications.

Treating a transnational issue as if it were a domestic matter of public order and national security – “securitizing” the issue – as well as overlooking the broader macro-economic context where migration takes place, is highly misleading and very likely to have disastrous results. Ideological analyses of the migration phenomenon translate into policies at odds with the principles of human rights protection, criminalizing migrants while empowering those who profit from irregular migration.

The consequences of States’ eagerness in reasserting their “nationness” through harsher, and yet ineffective migration policies, are best epitomized by the increasing number of migrations tragedies. Migrants and asylum-seekers escaping violence and destitution often face abuses and in some cases even death while entering a country through dangerous areas in order to avoid clampdown measures. Preying on these dramatic episodes, regularly making the headlines, mainstream media play a major role in shaping public opinion understanding of migration.

The sensationalism with which such tragedies are depicted and the extensive coverage they receive, *vis-à-vis*  other underreported and yet constitutive aspects of the migration phenomenon, contributes to fuel the “invasion syndrome” and gives a skewed and partial picture of the issue. The fact that the great majority of migrants worldwide live and work regularly in their countries of destination is overshadowed by images of desperate people trying to reach the North illegally.

Precarious rafts, overcrowded with dehydrated men and women dying of hypothermia – the so-called “boat people” – as well as empty water tanks and personal belongings scattered along crossing routes in the desert, are perhaps the most common examples of images usually associated to migration towards the North nowadays. However, only a limited number of migrants undertake such a costly and risky trip towards the rich countries in the North, while most of them enter and reside legally in their country of destination, becoming irregular mainly because of the lack of legal migration channels.

An outstanding example of media-led manipulation of reality is the blatant reversal in the causal relationship between measures aimed at sealing the borders and the empowerment of smugglers or traffickers. Enhanced border control is usually presented by mainstream media, in the furrow of state authorities’ position on the issue, as a necessary reaction to curb organized smuggling, and not as one of its causes. The fact that more and more migrants are forced to rely on intermediaries and smugglers – and often fall victims of trafficking – is usually presented to the public following an inverted cause-effect logic. According to the most popular narrative, migrants willingly choose to put themselves in the hands of illegal organizations. Little is said about the dire circumstances forcing them to leave their homeland, or that some of them are trafficked by criminal organizations.

Starting as early as in their countries of origins, continuing while travelling, and reaching its apex when they finally arrive in their destination, the indiscriminate criminalization of migrants and asylum-seekers extends during the entire migration process. In the current framing of the issue, measures such as interdiction at sea, expulsions, deportations, and the recourse to prolonged and arbitrary detention, seem to be the only available options to protect national interests. Even though studies carried out in the last years – on the US-Mexico border and on interdiction at sea in the Mediterranean – suggest that restrictive border control policies rather than having a deterrent effect, set afoot gross human rights violations, significant resources are regularly committed for their implementation.[[3]](#endnote-3) Because of the criminalization of irregular entry, stay, and exit, migrants are exposed to unnecessary and unjustifiable abuses.

States, unwilling to deal with migration from a human-rights perspective, availing of a wide array of propaganda tools, are able to back their fallacious political choices with aptly fabricated factual matter. Whether or not the purported evidence on which statements and practices affecting migration are based corresponds to the actual truth is of secondary importance. Anti-immigration propaganda jeopardizes the lives of migrants as much as states’ repressive policies do. The media should be held accountable for depicting migrants as undeserving criminals, images on which racism, xenophobia, and intolerance thrive.

***Migrant Workers, Exploitation, and the Migrant Workers Convention***

Treated as a national security threat, colluded with transnational criminal networks, and used as scapegoats for societal ills, migrants are mired in a web where threads of prejudice, hatred, and discrimination interweave viciously. Nevertheless, whatever the majority of the population might think, especially when surreptitiously prodded against them, migrants have become part of the social fabric of destination countries. Their contribution to the overall well-being is tangible and substantial. Far from embodying a destructive force, as the history of those nations built on immigration shows us, they are indeed a source of innovation, diversity, and dynamism.

Migrants, by taking up jobs that native workers are frequently no longer willing to do, contribute significantly to the economies of receiving countries. Even though we should be careful not to focus excessively on the economic argument, which is partial and can easily by subject to dangerous manipulations, ignoring the crucial role migrant workers play in covering labor shortages affecting key-sectors of our economy would be a mistake. Without going further deep into the analysis of economic push and pull factors, which is beyond the scope of this paper, it is sufficient to underscore the harsh conditions characterizing the so-called “3-D jobs” – dirty, dangerous, difficult – in which most migrant workers find employment. Meager wages for long working hours, poor hygiene, lack of safety, and harassment on the workplace, are only a few of the features repeatedly denounced by researchers and activists as structural to the industries where migrant workers are concentrated.

States, for reasons of competitiveness in the global economy, underhandedly welcome foreign workers, failing to acknowledge the perils of depending entirely on cheap, exploitable labor. On the other hand, employers in those industries affected by unmet labor demands are more than willing to hire migrant workers; they certainly are more docile, obedient, and exploitable than native workers. Denying their rights, thus forcing them to the underground of illegality, becomes a small price to pay if compared to a positive GDP growth.

Regular and irregular migrant workers are systematically put under strain, attacked from two complementary fronts. On one side, they endure employers’ exploitation, while on the other are discriminated against by the larger population and by the authorities. Needless to say that these two aspects are tightly interconnected, alternating in a continuum of hostility, rejection, and intolerance. Differentiating between the two levels of vulnerability, which might seem a redundant academic exercise, is indeed very important as the combination of these two elements expose them to a multi-layered set of violations. In other words, migrant workers’ precariousness extends seamlessly over every aspect of their lives.

A further distinction, which points directly to the content of the Migrant Workers Convention, is between regular and irregular migrant workers. If from a strictly legal point of view – as codified in the majority of domestic laws regulating migrations – regular migrant workers should be able to enjoy all the rights to which they are entitled by virtue of their legal status, in practice things look very differently. In fact, the degree of vulnerability affecting these two legally distinct categories tends to coincide. States’ clampdown policies and rhetoric foster an atmosphere of hostility, which *de facto* lowers protection standards not only for irregular, but also for regular migrant workers. Of course, irregulars are still the ones more exposed to violations and abuses.[[4]](#endnote-4)

Irregular migrant workers without legal status or protection are at risk of exploitation and abuse by both unscrupulous employers and government officials and are often reluctant to turn to the authorities fearful of drawing official attention to themselves, thereby risking arrest or deportation.[[5]](#endnote-5) The close connection between lack of legal status and the possibility of exploitation is the direct consequences of states’ unwillingness to respect their obligations under international law in ensuring the rights of irregular migrants.

However, being a regular migrant does not always guarantee the full enjoyment of basic human rights. Current approaches to migration management, based on the premises that migrants are potential threats to public order and national security, encouraging intolerance and suspicion, are at odds with the very concept of migrants’ rights protection. Insofar as regular and irregular migrant workers belong to the same communities, and very often to the same families, states’ policies granting a limited set of rights to the former while cracking down mercilessly on the latter can only be deemed as utterly schizophrenic. The discrepancies between international human rights law standards and state’s domestic legislations, one of the main concerns regularly highlighted by the Committee on Migrant Workers, are incontrovertible signs that something is structurally wrong in the current framing of migration management.

In light of the serious human rights violations currently taking place, the shift from a national security to a human rights-based approach, can no longer be avoided. The Migrant Workers Convention, invested with the onerous task of addressing the specific protection needs of regular and irregular migrant workers, as well as the members of their families, is essential for this radical approach change to become reality. States’ skepticism in becoming parties to it, given the general background outlined in the previous paragraphs, is anything but surprising. Their reluctance in accepting to be bounded by common norms addressing migration issues is matched only by their hypocrisy when half-heartedly recognizing the importance of migrant workers for the economy while denying their rights. Trying to subvert this attitude requires the intensification of the efforts for the promotion of international human rights law instruments such as the Migrant Workers Convention.

All migrants, regardless of their status and of whether or not they are actively participating to the economy of a receiving country, should be able to enjoy the fundamental human rights set out in the core human rights treaties. States, while deciding whether or not becoming parts of a binding human rights treaty, should at least try to understand its content. Unfortunately, this has not always been the case with regard to the Migrant Workers Convention.

**PART 2 – International Convention on the Protection of the Rights of All Migrant workers and Members of their Families**

***Overview***

The UN General Assembly adopted the International Convention on the Protection of the Rights of All Migrant workers and Members of their Families (MWC) on 18 December 1990 after an almost ten year-long-drafting process. The Convention entered into force on 1 July 2003, becoming the 7th core international human rights treaty. On 11 December 2003, in accordance with article 72, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) was established to monitor its implementation. So far, only 44 states ratified the Convention, which has the lowest number of ratifications among the core international human rights treaties already entered into force (see table C). However, its importance for the protection of the rights of migrant workers and members of their families goes far beyond its lack of popularity.

The MWC is the most comprehensive international instrument on migrant workers and contains the broadest definition of migrant worker.

Article 2:

*The term “migrant worker” refers to 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.*

The Convention promotes a human rights approach to migration aimed at avoiding the commodification of migrant workers and should be understood as an essential document within the context of advancing human rights. Together with ILO 1949 Migration for Employment Convention (Revised) C-097, and 1975 Migrant Workers Convention (Supplementary Provisions) C-143, the ICRMW sets a minimum standard of protection for migrants’ rights. The MWC integrates the provisions of the other international human rights treaties with migrant specific rights. The protection granted to migrant workers also extends to members of their families and covers the whole spectrum of the migration process.

***Main Issues***

Among the problems affecting the Convention, the low number of ratifications is perhaps the most outstanding one, a clear symptom of the prevailing attitude towards migration management. The reasons adduced by states to justify their unwillingness to ratify the MWC are varied and complex. Even though some of the arguments undoubtedly rest on shaky grounds, driven mainly by political consideration rather then by unbiased in-depth analyses into the content of the Convention, they nevertheless should not be dismissed on the assumption that the Convention is a flawless instrument. Three main arguments for not ratifying the MWC will be briefly discussed in the following paragraphs.[[6]](#endnote-6)

**1) The Convention by Giving Rights to Irregular Migrants Encourages Irregular Migration**

In light of the inclusiveness of the Convention – characterized by a broad principle of non-discrimination (Art. 7),[[7]](#endnote-7) and a list of rights pertaining to “all migrant workers and members of their families” regardless of their status (Art. 8-35) – states have depicted it as an instrument actively encouraging irregular immigration. Furthermore, “the overwhelming perception of the MWC among receiving countries is as an instrument for liberal immigration policies.”[[8]](#endnote-8) However, both conclusions are the product of a biased interpretation of the Convention.

The Convention “does not diminish the right of states to establish criteria for the admission of migrants; it does not provide escape routes to irregular migrants, as it only gives them humanitarian protection that they already enjoy on the basis of other UN instruments; it does not grant new standards, as it reflects what states were willing to concede in the 1990s.”[[9]](#endnote-9) Claiming that the MWC gives new rights to irregular migrants is simply inaccurate. In fact, the Convention more than creating new rights, details the application to migrant workers of the fundamental rights contained in the Bill of Rights and in other core international human rights treaties.[[10]](#endnote-10)

In addition, linking the ratification of the Convention with the possibility of an increase in the total inflow of migrants lacks of any empirical corroboration. Considering the ratification of the Migrant Workers Convention as a pull-factor is quite far-fetched to say the least. Migrants are not as attracted by the benefits of a generous welfare system as they are by the availability of jobs; at best, it is the combination of the two elements, even though the latter still carries more weight.

**2) The Convention is Superfluous and Redundant**

According to this argument, put forward mainly by receiving countries in the North, migrant workers’ rights would be sufficiently covered by the other core human rights treaties, to which the majority of states are already parties.[[11]](#endnote-11) In other words, the Migrant Worker Convention would not add anything new to the current international human rights framework as far as the protection of migrant workers and members of their families is concerned. Moreover, states justify their unwillingness in ratifying the Convention also by denouncing its redundancy.

However, the MWC’s specificity is in stark contrast with this argument. In fact, if it is certainly true that the Convention draws extensively from the Bill of Rights and other core international human rights treaties ratified by the vast majority of states, its reach in addressing migrant workers’ specific protection needs is indeed unprecedented. The Convention, without creating new rights, expands and details the rights contained in other international human rights treaties. More than redundant and unnecessarily long, the MWC should be characterized as a complementary and comprehensive document. A quick overview on its specific features is rather illuminating:

* The full recognition of the rights of regular as well as irregular migrant workers during the entire migration process – extending protection to all migrant workers regardless of their status
* The integration within the principle of non-discrimination of categories such as age, economic position, property, marital status, birth or other status – broadening its scope and comprehensiveness
* The identification of specific categories of migrant workers such as frontier worker, seasonal worker, project-tied worker, self-employed worker – absent from previous international human rights treaties[[12]](#endnote-12)

**3) The MWC Encourages Family Reunification Limiting State Sovereignty**

The Convention has been heavily criticised by states as encouraging family reunification by creating a right to family reunification, which would generate migration patterns that could eventually spiral out of control. However, the provision allegedly sanctioning such right, article 44 (1)(2), contains precise and well-defined safeguards.

Article 44 (1)(2):

*States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.*

*States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.*

States are left with a “wide margin of discretion” in “taking such measures ‘as they deem appropriate to facilitate the reunification of migrant workers with their spouses…as well with their minor dependent unmarried children’.”[[13]](#endnote-13) The wording of this article is indeed hard to misinterpret. Furthermore, the Convention contains a specific provision in article 79 (1), which reinstates the principle of state sovereignty in migration management issues.

Article 79 (1):

*Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families.*

The assertion that the Migrant Workers Convention would infringe upon state sovereignty is legally unsound. As long as they respect the standards set out by international human rights law and other legal sources, such as regional treaties, states can enact the measures they consider appropriate to regulate entry, stay, and exit of people from their territory. Arguments criticizing the Convention as an instrument severely limiting national sovereignty with respect to territorial or border control cunningly misrepresent its content.

**PART 3 – Committee on the Protection of the Rights of All Migrant Workers and Members of their Families**

***Overview***

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families is the treaty monitoring body of the International Convention on the Protection of the Rights of All Migrant workers and Members of their Families. The CMW, established on 11 December 2003 in accordance with article 72 of the Convention, which provides for the creation of a Committee of ten experts of “high moral standing, impartiality and recognized competence in the field covered by the Convention,” held its first meeting in Geneva from one to 5 March 2004. The CMW’s composition has recently changed following the 41st ratification, which allows the number of its members to rise to 14 (see table D).

The role of the Committee includes the consideration of State Parties’ reports, the consideration of communications received under articles 76 and 77,[[14]](#endnote-14) the drafting of annual reports to be presented to the UN General Assembly, the promotion of the MWC, and the organization of a Day of General Discussion. In general, the CMW is responsible to pursue and facilitate cooperation with other stakeholders such as IGOs, NGOs and national human rights institutions, on matters related to the Convention. This task, a sign of the multidirectional and multi-level approach characterizing the Committee, is extremely relevant if we consider the low number of ratifications of the MWC and its lack of popularity.

In fact, the importance afforded to the development of a constructive dialogue with the many different actors interacting on the international landscape in the field of migrant workers’ protection has always been a trademark of the CMW. It is noteworthy to register how the rapid increase in the number of ratifications of the Convention in the last seven years coincides with the establishment of CMW. This generated a sort of self-perpetuating cycle, which in turn had a positive effect on the status of the Committee itself, “recognized as a major player in international migration discussion.”[[15]](#endnote-15)

***Early Sessions: Appointments, Working Methods, and Reporting Guidelines***

**First Session –** [**1 - 5 March 2004**](http://www2.ohchr.org/english/bodies/cmw/cmws01.htm)

The Committee held its first session in Geneva. The ten appointed members were **Francisco Alba** (Mexico), **Francisco** [**Carrión**](http://www.facebook.com/people/Diego-Carrion-Mena/1273480212)**-Mena** (Ecuador), **Ana Elizabeth Cubias Medina** (El Salvador), **Azad Taghizadet** (Azerbaijan), **José S. Brillantes** (Philippines), **Prasad Kariyawasam** (Sri Lanka), **Abdelhamid El Jamri** (Morocco), **Arthur Shatto Gakwandi** (Uganda), **Ahmed Hassan El-Borai** (Egypt), **Ana María Dieguez** (Guatemala).[[16]](#endnote-16)

States Parties to the Convention were not the only interlocutors of the CMW at the inaugural meeting. The Special Rapporteur on the Human Rights of Migrants, the Special Rapporteur on the Rights of Non-citizens, UN agencies, IGOs, NGOs, and the Representative of the former United Nations Secretary-General Kofi Annan, **Maria Francisca Ize-Charrin**, were also present.[[17]](#endnote-17)

During the first days of the session, the CMW worked behind closed doors to elect its **Chairperson**, **Vice-Chairpersons**, and **Rapporteur**, and to develop provisional rules of procedure and State Party report guidelines. **Prasad Kariyawasam** was elected as Chairperson of the CMW; **José S. Brillantes**, **Ana María Dieguez**, and **Ahmed Hassan El-Borai**, were elected as Vice-Chairpersons, and **Francisco Alba** was appointed as Rapporteur. States Parties were invited later in the week to discuss the report format along with other organizational issues. A good number of NGOs attended a special session to address the nature and extent of their collaboration with the Committee.[[18]](#endnote-18)

***Highlights***

Adopt a simple format for State Party reports, drawing from the experience of other treaty bodies, in light of the efforts towards the harmonization of reporting procedures.

Engage in a dialogue with IGOs such as the IOM, ILO, and UNHCR; designate a representative of the CMW who will be responsible to attend their sessions and liaise with their members.

Develop a close partnership with NGOs paying heed to their submissions and contributions – such as alternative reports –when examining a State Party’s report.

Establish a group of NGOs whose main task would be advocating for the Convention and working with the Committee.

Following the first formal session, the CMW held an informal meeting in Geneva from 11 to 15 October 2004 in order to discuss the adoption of provisional guidelines for reporting, amend its rules of procedure, and propose ways to promote the Convention.

**Second Session –** [**25 - 29 April 2005**](http://www2.ohchr.org/english/bodies/cmw/cmws02.htm)

Drawing largely from the outcome of both the first session and the informal meeting, during the second session the CMW took further the discussion on its working methods. The Committee decided for two Country Rapporteurs to lead the examination of States Parties’ Initial Reports and that a List of Issues, drafted upon receiving a country report, will be sent to the submitting State Party for it to respond ahead of the report examination.

Furthermore, in result of a meeting with **Kamel Filali**, Rapporteur for the harmonization of reporting under the treaty bodies, the CMW agreed that the simplification of reporting procedures would have to follow the guidelines of a common core document as well as treaty-specific reports. The (former) High Commissioner for Human Rights, **Louise Arbour**, also attended the second session addressing the Committee on the importance to adopt a human-rights approach to migration management.[[19]](#endnote-19)

***Highlights***

An agreement was reached on the provisional reporting guidelines, emphasizing the need for a close cooperation between the Committee and States Parties’ delegations.

Mexico proposed that the CMW should attend regularly migration related United Nations fora as well as working closely with the whole gamut of international organizations on migration

The Committee engaged States Parties for the first time on how to structure follow-ups to the Concluding Observations.

The CMW had words of appreciation for the International NGO Platform on the Migrant Workers’ Convention, renovating its commitment towards a close collaboration with civil society. [[20]](#endnote-20)

Prasad Kariyawasam, Committee member from Sri Lanka, called for a plenary meeting between NGOs and Committee Members to be held for a first discussion of States Parties reports; the List of Issues would then be drafted in a closed meeting, taking into account NGOs’ inputs.

**Third Session –** [**12 - 16 December 2005**](http://www2.ohchr.org/english/bodies/cmw/cmws03.htm)

The agenda of the third session, adopted in accordance with rule 6 of the provisional rules of procedure, comprised of three main items. First, the consideration of Mali and Mexico Initial Reports and the drafting of list of issues to be sent to Mali and Mexico’s governments, whose reports were due to be examined respectively during the fourth and the fifth sessions of the Committee. Second, the discussion of working methods for the consideration of Initial Reports in the context of the proposed treaty body system’s reform. Third, a Day of General Discussion under the heading *“Protecting the Rights of All Migrant Workers as a Tool to Enhance Development.”*[[21]](#endnote-21)

***Highlights***

A good number of NGOs, UN agencies, and other institutions participated to the session held prior the consideration of Mali’s country report. Among them Amnesty International, ICMC, MIREDES International, Asia Pacific Forum on Women, Law and Development, Human Rights Watch, Arunodhaya Migrants Initiatives, ILO, National Employment Law Project of the American University and the Washington College of Law, and the Asia Research Institute of the University of Singapore.[[22]](#endnote-22)

Several issues relating to the harmonization of working methods were discussed during the session. Perhaps the most relevant achievement was the conclusion that an assessment of States Parties’ compliance with the provisional reporting guidelines would have been the first step towards a reform of reporting guidelines in the backdrop of the treaty bodies’ reform. This established a very important nexus between State Parties’ efforts in collaborating with the CMW and the evolution of its working methods, as well as between the Committee and other treaty bodies.

To deal with States Parties’ reservations, while keeping an updated record of their nature and number, the CMW envisaged the creation of a Working Group on Reservations.’ Taking further a proposal advanced during the first session, the Committee discussed the appointment of a focal point responsible to engage with other treaty bodies and agencies, providing substantial input on relevant cross cutting issues.

The organization of a Day of General Discussion has been one of the benchmarks of this session; its content and outcomes will be analyzed in more details in the following paragraphs.

***Examination of States Parties Reports***

The CMW examines reports that States Parties are requested to submit:

* Within one year from the entry into force of the Convention for the State Party concerned (Initial Report)
* Every 5 years since the submission of the first report (Periodic Report)

The consideration process takes place in two public meetings between the CMW and a delegation of the State Party, after which the Committee provides the State Party concerned with observations and recommendations. NGOs, IGOs, and CSOs and can sit in the public meetings. So far, the Committee examined the initial reports of 14 States Parties (see Table E).

**Fourth Session – 24 to 28 April 2006**

Participation of NGOs was very consistent during the whole session whereas among IGOs, only the International Labor Organization (ILO) and the Council of Europe (CoE) attended the session.Drawing from the outcome of the Day of General Discussion – held during the previous session – the CMW drafted a written submission to the High-Level Dialogue on Migration and Development held on 14-15 September 2006 by the United Nations General Assembly in New York.[[23]](#endnote-23)

**Mali Initial Report**

***Best Practices***

The CMW requested the delegation to provide information on the steps undertaken by the government to implement the Convention and incorporate its provisions into national legislation. Recognizing the difficulties in carrying out these tasks, the delegation explicitly invoked the Committee’s help, calling for further collaboration and assistance. It also expressed the intention to make a declaration under Art. 77.

The CMW engaged the delegation on the fact that other treaty bodies – HRC, CERD, and CRC – had already indicated the dearth of statistics as one of the main problems in Mali’s reporting record. The Committee suggested that a greater involvement of NGOs and CSOs during the preparation of reports, would contribute to the thoroughness of the information provided.

Given the substantial number of Malian migrant workers abroad, estimated to be around 4 million, the CMW asked what sort of protection they could avail of, raising questions also on the issue of remittances and return programmes. The delegation reminded the Committee that the government of Mali had created the Ministry for Malians Abroad specifically to assist Malian nationals living abroad. It also mentioned that Mali stipulated a series of bilateral agreements with the purpose to protect Malians abroad.

The delegation and the CMW discussed about migration from a regional perspective, focusing on the situation characterizing the Economic Community of West African States (ECOWAS). The conclusion was that flows of migrants departing from or transiting through Mali should be seen in the broader context of African integration.[[24]](#endnote-24)

***Areas of Improvement***

Mali’s Initial Report fell short in providing evidence about the measures adopted to implement the Convention outlining instead a list of relevant norms. The complete lack of statistics on migration was particularly striking. However, the CMW should have made explicit in its Concluding Observations what types of information and data were most urgent.

Considering that most of the answers were very brief and scarcely informative, the report was silent on the actual situation of migrants in Mali and did not provide information on flows of migrants from, through, and to Mali. Considering also that the issue of human trafficking was tackled only partially, focusing mainly on child trafficking, and some crucial questions remained completely unanswered, the Committee should have used a stronger language in the Concluding Observations.

**Fifth Session –** [**30 October - 3 November 2006**](http://www2.ohchr.org/english/bodies/cmw/cmws05.htm)

Mexico was one of the promoters of the Migrant Workers Convention and was very collaborative with the Committee from the beginning. The CMW praised the “detailed replies to the list of issues and the additional information” submitted by a “competent high-level delegation,” acknowledging at the same time the major difficulties Mexico is facing in implementing the Convention.[[25]](#endnote-25)

The Initial Report was thorough and well structured, benefiting from the contribution of CSOs and NGOs. In addition, two NGOs presented public alternative reports: the first, issued by The Forum of Migration (El Foro Migraciones), the second, drafted by the National Employment Law Project. Mexico’s National Human Rights Commission attended the session, submitting information to the Committee as well.[[26]](#endnote-26)

**Mexico Initial Report**

***Best Practices***

The CMW engaged in a constructive dialogue with the network of NGOs El Foro Migraciones, which had submitted a parallel report, resulted in a fruitful exchange of information on several issues.

The Committee focused on legal aspects related to the harmonization of domestic legislation with the Convention raising specific concerns about Mexico’s reservation to Article 22 (par. 4) as well as on a domestic law provision preventing migrants from owning real estate along the border. The CMW inquired further into the status of international law within Mexico’s federal law, making explicit reference not only to the MWC but also to ILO conventions on migrant workers, freedom of association and access to unions.[[27]](#endnote-27)

Criminalization of migrants was one of the issues the CMW dwelled on the most, expressing its concern about the detention of migrants. The Committee inquired on what the methods and criteria followed by state entities designated to manage immigration were. The CMW made reference to specific provisions of the General Law of Population (Ley General de Poblacion), affirming the need to reform key articles in order to address new immigration trends and a rapidly changing political context.

The CMW asked the delegation why information submitted by Mexico’s National Human Rights Commission was discordant with the content of the state report, restating its concern about the situation of migrants transiting trough Mexico, who often fall prey of gangs and traffickers. Ana Elizabeth Cubias Medina – the Committee member from El Salvador – building on this point, proposed the establishment of protection mechanisms for transit migrants, which would allow their access to complaint procedures.[[28]](#endnote-28)

***Areas of Improvement***

The CMW in drafting the Concluding Observations adopted a cautious approach; it avoided to highlight the fact that while Mexico has an impressive international record in terms of promoting migrants rights, at home violations and abuses are frequent and for the most part remain unpunished.

The language used in the Concluding Observation was quite weak and unchallenging. Furthermore, the Committee did not make specific suggestions on what measure Mexico should have adopted to implement the provisions of the Convention.

**Sixth Session –** [**23 - 27 April 2007**](http://www2.ohchr.org/english/bodies/cmw/cmws06.htm)

Egypt, along with Mexico, was one of the states who contributed the most to the drafting of the Migrant Workers Convention; it was also the first state to ratify it. Upon examining Egypt’s report, the CMW praised its comprehensiveness as well as the high profile of the delegation. The Committee also benefited from the information contained in four alternative reports – three of which had been submitted by NGOs, the other one by an Egyptian lawyer.[[29]](#endnote-29)

**Egypt Initial Report**

***Best Practices***

The CMW, before considering Egypt’s country report, gave the opportunity to the Egyptian Initiative for Personal Rights and the Hotline for Migrant Workers, two of the NGOs who had submitted alternative reports, to express their concerns about the situation of migrant workers.

The Committee reminded the delegation about Egypt’s central role within the region, especially in light of the fact that some of Egypt’s neighboring countries are not parties to the Convention and that Egypt is at the same time a sending, receiving, and transit state. Examining a State Party’s report from a regional perspective was one of the benchmarks of this session; welcoming the contribution of the Hotline for Migrant Workers, an Israel-based NGO, was a significant sign of this approach.

Abdel Hamid El Jamiri, Committee member from Morocco, was the designated Country Rapporteur. His in-depth engagement with the delegation was one of the highlights of this session, proving that for the CMW to work effectively the degree of preparation, thoroughness, and expertise of its members is essential. Among the concerns El Jamiri raised, four were conspicuously reflected in the Concluding Observations: the two reservations placed by Egypt on the Convention, the discrepancy between declarations of intent and state practice, the protection of Egyptians abroad, and of domestic migrant workers in Egypt.[[30]](#endnote-30)

The CMW mentioned both in the List of Issues and in the Concluding Observations the need to ensure the right to education for migrant children, calling for the harmonization of national law with the provisions of the Convention. The Committee pointed out how denying irregular migrants access to education, is in blatant contrast with the Convention.[[31]](#endnote-31)

***Areas of Improvement***

The main problem is that none of the recommendations are drafted stating clearly time bounds. Furthermore, considering the heinous situation of migrants in Egypt, subjected to detention, police brutality, discrimination and marginalization, the Committee should have adopted a less appeasing and more confrontational language.

**Seventh Session – 26 - 30 November 2007**

**Ecuador Initial Report**

***Best Practices***

The Committee, in its Concluding Observations, remarked that even though Ecuador was traditionally a sending country, current trends indicate that the situation is rapidly changing. In fact, more and more migrants settle in or transit through Ecuador – especially Colombians and Peruvians.

The CMW welcomed the in-depth report drafted by a network of NGOs, called the Inter-institutional Coalition for the Implementation and Diffusion of the Migrant Workers Convention (Coalicion Interinstitucional Para el Seguimiento y Difusion de la Convencion Internacional Sobre la Proteccion de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares), interacting substantially with the representative of the Coalition.

The Committee, commenting on article 131 of the Migration Law,[[32]](#endnote-32) recommended the delegation to “consider abolishing or amending it. This is particularly relevant due to the very content of the article and for the legal reasoning behind the explicit request to either abolish it or amend it, firmly grounded in key provisions of the Convention.[[33]](#endnote-33)

Migrant children as subjects of trafficking, sexual exploitation, and forced labor, as well as migrant domestic workers’ rights and access to basic services were the main issues of concern for the Committee, and were fully reflected in the Concluding Observations. The recommendations provided by the CMW referred directly to the specialized state agencies working on specific issues without being general and vague.

***Areas of Improvement***

Addressing the problem of detention of migrants for violating migration provisions, the CMW should have been more categorical in condemning such practice. Instead of denouncing the indiscriminate detention of migrants – emphasizing the need to adopt alternative measures to detention – the Committee recommended that migrants “be deprived of their liberty for as short as possible” and that “be held, in so far as practicable, separately for convicted persons.”[[34]](#endnote-34)

**Eighth Session –** [**14-25 April 2008**](http://www2.ohchr.org/english/bodies/cmw/cmws08.htm)

**Bolivia Initial Report**

***Best Practices***

The CMW appreciated the submission of alternative reports by the Ombudsman of Bolivia and the NGO Mesa Tecnica de Migraciones – which submitted two reports. The concerns raised in the reports informed the dialogue between the Committee and the delegation – emerging also in the Concluding Observations. The CMW, given the paucity of information in the official country report and the lack of expertise of the delegation, had to rely heavily on the alternative reports.

The two designated country Rapporteurs, Ana María Dieguez and José S. Brillantes, expressed their preoccupation at the dearth of information on key issues as well as at the incoherence of the data provided. They also insisted on the need to support declaration of intents with examples of concrete measures put in place to implement the Convention.

Among the concerns raised, four in particular are a clear sign of the consistency in the Committee’s examination of States Parties’ reports. First, the harmonization of national legislation with the provisions of the Convention; second, migrant workers’ access to services such as health and education; third, the close link between the lack of documentation with violation of migrant workers’ rights fourth, the situation of Bolivian nationals abroad

***Areas of Improvement***

The CMW had some difficulties in coping with a delegation of non-experts as well as in dealing with an incomplete and poorly drafted state report. Though it could be argued that the burden ultimately rests on the State Party, who must comply with the reporting guidelines and send a competent delegation, the Committee should be aware that this is not always the case. Ratification does not guarantee that the State will diligently comply with reporting obligations.

Hence, the CMW, in cases such as Bolivia’s report examination, should be more proactive in leading the State Party to conform its practices to the provisions of the Convention. In practical terms, this means that more than simply pointing out what the problems are the Committee should give the delegation specific suggestions on how to implement the Convention.

**Syrian Arab Republic Initial Report**

***Best Practices***

Abdelhamid El Jamri, from Morocco, and Ahmed Hassan El-Borai, from Egypt, were respectively the Committee Chairman and one of the two country Rapporteur – the other country Rapporteur was Azad Taghizadet, from Azerbaijan. It is worth noting how the examination of Syria’s report benefited from El jamri and El-Borai’s expertise on migration within the MENA regional context.[[35]](#endnote-35)

El Jamri emphasized the lack of statistical data and information on the rights of migrant workers, pointing to it as a major hindrance especially in light of future assessments and follow-ups on the implementation of the Convention. The CMW went on calling for the harmonization of national legislation with the Convention and offered its assistance during the reform process.

The Committee expressed its regret for a monetary policy provision, contrary to the Convention, allowing migrants to remit only up to 60 per cent of their earnings in foreign currency. In fact, article 47 of the Convention, establishes that “migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State.”

***Areas of Improvement***

Given that a good number of treaty monitoring bodies had already made recommendations to Syria on issues related to migration, the CMW should have linked its own recommendation to the previous ones. Furthermore, even though during the discussion of the report, issues such as the situation of female domestic migrant workers from Southeast Asia and access to health and education for children of migrant workers had been thoroughly inquired on, they were only reflected marginally in the Concluding Observations.

**Ninth Session – 24-28 November 2008**

**El Salvador Initial Report**

***Best Practices***

The CMW advocated for the organization of training activities on a regular basis for all officials working with migration. This responds to the need for a capillary dissemination of the Convention so that border patrols, police officers, and other relevant actors are provided with the necessary information to conform their conduct to its provisions. The Committee also requested the delegation to include information on new training activities in El Salvador’s first Periodic Report.

Deportation and expulsion of migrants were challenged from multiple fronts. The CMW highlighted the lack of effective mechanisms to appeal against such decisions and called for the abolition of a provision, contained in the Migration Law, establishing that if migrants whose work contract has expired fail from leaving the country within a maximum of 90 days, they will be subject to an expulsion order.

Agricultural seasonal workers – especially frontier workers – and domestic workers were among the CMW’s main concerns. The Committee invoked equality of treatment based on the principle of non-discrimination between nationals and migrant workers. The Committee, whose members represent the main Central American countries, addressing these specific categories of migrants proved to have a sound understanding of the dynamics characterizing migration flows within the region.

***Areas of Improvement***

The Committee, in suggesting the initiation of training activities on the Convention, should have expressly mentioned NGOs and civil society groups among the possible trainer. From the wording of the relevant concluding observation, it is not clear whether such trainings would be conducted by state officials alone or in close cooperation with NGOs and CSOs.

**Tenth Session –** [**20 April - 1 May 2009**](http://www2.ohchr.org/english/bodies/cmw/cmws10.htm)

**Azerbaijan Initial Report**

***Best Practices***

The Committee characterized Azerbaijan as a country undergoing a rapid transition as far as the nature of migration flows is concerned. Wary of the fact that in recent years, more and more migrants poured into the country, mainly due to employment opportunities, transforming Azerbaijan in a country of destination, the CMW brought to the attention of the delegation a series of issues directly linked to this new trend. Azerbaijan’s normative framework regulating migration was the first target; the Committee highlighted the lack of a definition of migrant worker in the current Migration Code, calling for its thorough revision and eventual replacement.[[36]](#endnote-36)

Other issues addressed by the CMW were access to health, housing, and education for irregular migrants, the dearth of information on recruitment agencies for Azerbaijani seeking employment abroad, and the need to improve coordination between state institutions dealing with migration. It is noteworthy how most of these issues had been mentioned in the alternative reports submitted by the NGOs Citizen Labor Rights Protection League and Education on Human Rights.

***Areas of Improvement***

The Committee seems to have ignored some of the findings included in the alternative report submitted by the NGO Citizen Labor Rights Protection League. There is no mention of detention and criminalization of migrants as well as information neither on the number nor on the entity of deportation and expulsions for violating entry, stay, and exit legislation in the Concluding Observations.

**Bosnia and Herzegovina Initial Report**

***Best Practices***

The CMW pointed out how to the peculiar institutional structure of Bosnia and Herzegovina has a direct effect on the successful implementation of the Convention. What was argued is that the ample autonomy granted to the two Entities – the Republika Srpska and the Federation of Bosnia Herzegovina – and the lack of coordination with regard to labor migration management may generate loopholes and inconsistencies, preventing migrants from enjoying the full protection of the Convention.

The Committee expressed its concerns at the conditions of detention in Bosnia and Herzegovina’s immigration holding center, highlighting the lack of information on aspects such as the maximum duration of detention and the type of services provided to detainees – especially to families. Moreover, the CMW underscored that detention of migrants must be carried out in conformity with the provisions of the Convention and that migrants must be granted access to legal assistance and consular services.

***Areas of Improvement***

The Committee should have emphasized more that the majority of Bosnia and Herzegovina’s nationals working abroad, do so in Western European countries not yet parties to the Convention. This could have been a way to pressurize the government to increase its efforts in order to on one hand protect Bosnia and Herzegovina citizens abroad, and on the other hand lobby receiving countries’ authorities to ratify the Convention.

**Colombia Initial Report**

***Best Practices***

The CMW questioned the delegation about the reservations to articles 15, 46, and 47, and asked for their removal. Abdelhamid El Jamri, chairperson of the Committee, engaged Clara Ines Vargas, head of the Colombian delegation, on the nature of the reservation, referring to them as the product of a misrepresentation of the Convention – therefore unjustified.[[37]](#endnote-37) The concerns raised during the discussion on reservations emerge in the Concluding Observations.

Francisco Alba – Committee member from Mexico – advanced a series of poignant questions on detention, expulsion, and deportation of migrants. Mr. Alba asked the Administrative Department of Security to provide information on detention of migrant workers and on procedures of expulsions and deportation, reiterating the need for the government to conform its conduct to the standards set out in the Convention. He also underscored the importance of granting access to redress and compensation mechanisms to those migrants unjustly punished with expulsion orders or unnecessarily detained.

Ana Elizabeth Cubias Medina – Committee member from El Salvador – expressed her preoccupation for the absence within Colombia’s legislative framework regulating migration, of a provision prohibiting collective expulsions. She also drew to the attention of the delegation the high degree of discretionary power afforded to judges when issuing deportation or expulsion orders, which goes very often unchallenged due to practical hurdles preventing migrants from appealing such decisions.

***Areas of Improvement***

The language used in the Concluding Observations is not particularly strong. The CMW refrained from explicitly urging the delegation to take the necessary steps to conform Colombia’s legislation and practices of migration management to the standards set out in the Convention. Recommendations, for the most part, are meted out in the form of suggestions and no reference to recommendations made by other treaty bodies on relevant issues are made. Additionally, there are no time bounds and therefore follow-ups to the Concluding Observation will be harder to assess.

**The Philippines Initial Report**

***Best Practices***

The country Rapporteurs Prasad Kariyawasam and Ahmed Hassan El-Borai led the discussion with the delegation, raising their concerns about the Philippines’ labor migration policy. Most of their questions targeted the national overseas employment programme; they asked clarifications as to whether the government was actually encouraging migration to cope with the high unemployment rates at home.

Furthermore, Mr. Kariyawasam inquired on the specific issue of pre-departure orientation seminars, which according to many NGOs do not provide would-be migrants with any information on their rights. He went on pointing out the need to frame labor migration policies adopting a human-rights-based approach envisaging protection mechanisms for Filipino workers abroad. The Concluding Observations clearly reflect the outcome of the discussion on overseas employment, comprising of several recommendations on pre-departure, support while abroad, and reintegration of Filipino migrant workers.

Another major issue brought up by the Committee was the feminization of migration. It is noteworthy that in the Concluding Observations the language used to address this issue is particularly strong. The CMW “urges” the government, as opposed to “encourages” or “recommends.” Considering that the majority of Filipino women find employment as domestic workers, a highly unregulated sector exposing them to heinous violations of their fundamental rights, the urgency to protect their rights is an utmost priority.[[38]](#endnote-38)

***Areas of Improvement***

It is quite striking to notice how despite the fact that the delegation deliberately refrained from engaging in a constructive dialogue with NGOs, in the Concluding Observations the Committee barely acknowledges this. In fact, the recommendation to adopt a more open attitude towards civil society organizations is very general and does not contain a compelling critique of the delegation’s reluctance in collaborating with NGOs.[[39]](#endnote-39)

**Eleventh Session –** [**12-16 October 2009**](http://www2.ohchr.org/english/bodies/cmw/cmws11.htm)

[**Sri Lanka**](http://www2.ohchr.org/english/bodies/cmw/cmws11.htm) **Initial Report**

***Best Practices***

The Committee explicitly referred to recommendations issued more than ten years ago by the Committee on Cultural, Economic, and Social Rights regarding the situation of women employed as domestic helpers (E/C.12/1/Add.24).[[40]](#endnote-40) This was very significant for two main reasons. Firstly, it showed how the systematic violation of the rights of Sri Lankan women employed as domestic workers abroad remains a major issue.

Secondly, the CMW, linking strategically the work of the CESCR with its own, was able to provide recommendations using a stronger language – similar to the one used in the Philippines Concluding Observations on the same topic. Moreover, the Committee urged the delegation to “strictly monitor the activities of recruitment agencies,”[[41]](#endnote-41) which are often involved in violations of migrant workers’ rights.

Addressing the issue of remittances, which in the case of Sri Lanka constitute considerable portion of national GDP, the Committee expressed its concerns about the high transaction costs allegedly at the root of widespread irregular money transfers. The CMW suggested the delegation to undertake a comprehensive study of the phenomenon in order to gather detailed information on “patterns of remittances” as well as on the “volumes and the motivations for using informal channels to send remittances.”[[42]](#endnote-42)

Considering that the National Action Plan for the Promotion and Protection of Human Rights, which the Sri Lankan government was in the process of developing, would have tackled migration-related issues, the Committee made a groundbreaking recommendation. It urged the delegation to make sure that the National Plan be drafted according both to the Concluding Observations and paying heed to the contribution of civil society organizations.

***Areas of Improvement***

The Committee does not explicitly mention in the Concluding Observations whether or not the report was drafted in collaboration with civil society organizations. Assessing to what extent NGOs were involved in the preparation of the country report, and highlighting it in the Concluding Observation in the form of a compelling recommendation, should be one of the CMW’s utmost priorities. Furthermore, the CMW falls short in providing strong recommendations with regard to the impact of migration on children and the criminalization of migrants for irregular entry or exit.

**Twelfth Session – 26 - 30 April 2010**

States Parties met in New York ahead of the twelfth session, on 3 December 2009, to elect the replacements for five outgoing Committee members – whose mandate would have expired at the end of the year. Furthermore, States Parties elected four additional members in accordance with article 72 of the Convention, which allows the size of the CMW to be increased to 14 members after the forty-first ratification.

**Algeria Initial Report**

***Best Practices***

The Committee, in the Concluding Observations to Algeria’s Initial Report, not only used a particularly strong language, but also provided more detailed recommendations than in the previous report examinations. It is worth to have a look at how the CMW dealt with some of the key issues emerged form the discussion with the delegation.

Redress mechanisms: The CMW urged the State Party to grant migrants, irrespective of their status, access to effective redress mechanisms; the CMW highlighted that, despite widespread human rights violations, no complaints had been filed with the competent authorities.

Criminalization and detention of migrants: the CMW expressed its concerns about the “association of irregular migration with criminality,” and the fact that according to the current legislation staying irregularly in Algeria is a criminal offence “punishable by imprisonment and/or fines.”[[43]](#endnote-43) The Committee urged the delegation to reform the legislation in conformity with the Convention, reiterating its concerns for the criminalization of irregular migration. Furthermore, the CMW emphasized the need to protect the rights of migrant workers in an irregular situation, especially women and children.

Collective expulsions: the CMW called for an investigation into the collective expulsions of sub-Saharan migrants – which are in blatant contrast with articles 22 and 23 of the Convention – emphasizing the need to prosecute those who ordered and executed them as well as providing compensation to the victims. Additionally, the Committee expressed its concerns for the indefinite detention of “irregular migrant workers awaiting deportation.”[[44]](#endnote-44)

Family reunification: the CMW commented on the norms regulating family reunification for migrant workers, raising doubts on their compliance with articles 4 and 44 of the Convention. The Committee, addressing this issue by making explicit reference to relevant norms enshrined in the Convention, underscored its specificity in protecting the rights of migrant workers.

Victims of trafficking: the CMW, noting the lack of provisions for the protection of victims, urged the delegation to reform the anti-trafficking legislation in this respect, suggesting the State Party to follow the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights.

***Areas of Improvement***

The Concluding Observations to Algeria’s country report contain many positive examples of how the CMW should engage with States Parties during the country report’s examination process. Nevertheless, the Committee did not emphasize enough that civil society groups were not involved in the preparation of the report.

***Promotion of the MWC***

One of the key-functions of the CMW is to promote awareness of the Migrant Workers Convention, pushing for its ratification. Given the low number of States Parties, this task is even more compelling and calls for a greater cooperation between the Committee, IGOs, NGOs, and civil society groups.

The CMW had its first discussion on ways and means of promoting the Convention during an informal meeting held from 11 to 15 October 2004 in Geneva. The proposals made on this occasion, set the agenda for the promotion of the MWC. The Committee discussed about what activities should be undertaken to promote the Convention during each of the sessions following the second session, including also follow-up information on its achievement in this regard.

* The CMW should invite representatives of regional organization, NGOs, and IGOs to its meetings; its members should attend international fora on migration-related issues
* Committee members should prompt their respective governments to engage non-party neighboring states in a dialogue on ratification of the Convention
* The Committee Chairperson should liaise with the UN High Commissioner for Human Rights so that migration-related issues are regularly brought to the attention of the international community
* To assist the members of the Committee in their work, a Power Point presentation on the Migrant Workers Convention should be prepared and made available in the relevant languages
* The CMW should involve media outlets in the promotion of the Convention

*Second Session*: a Power Point presentation on the Migrant Workers Convention to help in organizing promotion activities was distributed to Committee members.

*Third Session*: the CMW held the first Day of General Discussion with the title “Protecting the Rights of All Migrant Workers as a Tool to Enhance Development,” open to IGOs, NGOs, and civil society groups.

*Fourth Session*: the CMW drafted a written contribution to the General Assembly’s High-Level Dialogue, reflecting the outcomes of the Day of General Discussion.

*Fifth Session*: the CMW acknowledged the importance of working with NGOs to promote the Convention and followed-up on the High-Level Dialogue.

*Sixth Session*: the CMW asked support to the OHCHR ahead of the Global Forum on Migration and Development held in Belgium in July 2007.

*Seventh Session*: the CMW drafted a letter for the coordinator of the Global Forum on Migration and Development – Esteban Conejos – held in the Philippines in October 2008.

*Eighth Session*: the CMW drafted a memo on migration, development, and human rights for the Chairman of the Global Forum on Migration and Development. In occasion of the fifth anniversary of the entry into force of the Convention, the Committee organized a roundtable attended by ILO, IOM, UN agencies, States Parties, and NGOs representatives.

*Ninth Session*: the CMW held a meeting with the Committee on Migration, Refugee, and Population of the Council of Europe, in order to discuss the ratification of the Convention by Council of Europe’s member states.[[45]](#endnote-45)

*Tenth Session*: the Steering Committee for the Ratification of the Migrant Workers Convention presented a publication titled “Guide on Ratification,” which was made available on the OHCHR website. The CMW organized a roundtable on the right of migrant workers to freedom of association and establishing trade unions, attended by States Parties, IGOs, NGOs, and UN agencies.

*Eleventh Session:* the Committee discussed about possible initiatives to commemorate the twentieth anniversary of the Migrant Workers Convention.[[46]](#endnote-46)

*Twelfth Session:* the Committee discussed its draft General Comment on migrant domestic workers, highlighting how many NGOs and CSOs have already produced significant studies and reports on the subject.[[47]](#endnote-47)

***Organization of the “Day of General Discussion.”***

The CMW held two Days of General Discussion. The First on 15 December 2005 – during the third session – under the title “Protecting the Rights of All Migrant Workers as a Tool to Enhance Development” and the second one on 14 October 2009 – during the eleventh session – dedicated to the issue of “Migrant Domestic Workers.”

The Days of General Discussion were planned, respectively, ahead of two correlated events: the “High Level Dialogue on International Migration and Development,” held at the 61st session of the General Assembly on 14-15 September 2006, and the 99th session of the International Labor Conference on “Decent Work for Domestic Workers” held on 24 May 2010. Given the expertise of the Committee members, the main objective of the Days of General Discussion was to provide specific inputs to the debate that would have taken place during the international fora mentioned above.

**Protecting the Rights of All Migrant Workers as a Tool to Enhance Development – 15 December 2005**

Representatives of States Parties to the Convention, IGOs, NGOs, United Nations Agencies, and Universities, were amongst the participant to the first Day of General Discussion, whose aim was to discuss the relation between the protection of migrant workers’ rights and development. After Prasad Kariyawasam (CMW), Jorge Bustamante (SR on Migration), Patrick Taran (ILO), and Abdelhamid El-Jamri (CMW), made their introductory statements, the panel opened the floor for discussion – divided in two sessions. Francisco Alba and Arthur Gakwandi, Rapporteurs respectively for the first and second debate, closed the panel with some final comments.[[48]](#endnote-48)

*Prasad Kariyawasam* – Chairman of the Committee – stated that the principle of non-discrimination should frame the discussion, and recalled how in a globalized world dominated by the forces of free market migrant workers are often de-humanized. He also reminded the importance for states to become parties to the Migrant Workers Convention in light of increasing trans-frontier movements.

*Jorge Bustamante* – UN Special Rapporteur on the Human Rights of Migrants – emphasized how the Convention had made explicit the division between sending and receiving countries, and that the latter are reluctant to ratify it. However – he pointed out – receiving countries as well as countries of origin should acknowledge the principle of co-responsibility when dealing with migration-related issues.

*Patrick Taran* – Senior ILO Migration Specialist – highlighted how migration, due to its global scale, has major repercussions not only on development, but also on social identity, governance, and the social cohesion of societies across the world.[[49]](#endnote-49) Mr. Taran linked inequality of treatment between nationals and non-nationals with social conflict, reiterating the need to recognize migrant workers’ contribution to the well-being of host countries.

*Abdelhamid El-Jamri* – Committee Member – focused its statement on the Convention, which if implemented thoroughly, can foster development without compromising the rights of migrant workers. El-Jamri called for states both in the South and in the North to adopt a new human rights-based migratory policy.

*1) Protection of Migrant Workers’ Rights and its Impact on Development in the Country of Origin*

The keynote speaker for this session was Mhedi Lahlou, from the National Institute of Applied Statistic and Economics in Rabat, Morocco; speakers from NGOs and representatives of Permanent Missions contributed to the discussion by raising crucial issues, as summarized below.

* Implementation of projects and creation of funds to improve the conditions in countries of origin
* Exploitation of women migrant workers, and of irregular migrants in general
* Cooperation between sending and receiving countries in protecting migrant workers’ rights
* Streamlining of consultations with migrants’ rights organizations

*2) Protection of Migrant Workers’ Rights and its Impact on Development in the Country of Employment*

Ryszard Cholewinski, from the University of Leicester, was the keynote speaker for the second session; his presentation, centered on inter-state cooperation and equal-treatment, ignited the discussion on some of the issues summarized below.

* France unwillingness to ratify the Convention; contribution of Mexican migrating to the United States and difficulties they must endure
* Border control and expulsion measures in violation of migrant workers’ human rights
* Labor rights of irregular migrant workers in light of the principle of non-discrimination; access to basic services
* Creation of a permanent forum to elaborate long-term solutions to labor migration-related problems

**Migrant Domestic Workers – 14 October 2009**

Attendants to the second Day of General Discussion represented both civil society groups and inter-governmental organizations. The majority of the 50 participants belonged to national, regional, and international NGOs and CSOs, which contributed to the discussion with written submissions.[[50]](#endnote-50)

During the morning, panelists from the CMW, ILO, OHCHR, and civil society organizations, made presentations highlighting the challenges domestic migrant workers faces on a daily basis as well as the need to address their situation from a legislative point of view. The main topics were:

* The perception of domestic work as an inferior form of work which should be dealt with differently from other forms of work – i.e. keeping it virtually unregulated and unchecked
* Difficult working conditions of domestic work, such as long working hours, abuses, withholding of identity documents, lack of access to complaint mechanisms, and the nullification of private life
* The predominance of women employed as domestic workers and the fact that the very nature of this type of work exposes them to sexual abuse and exploitation which often go unpunished – and unreported
* Acknowledging the current framework for the protection of migrant domestic workers in order to contribute to the discussion on a new ILO international instrument on domestic workers
* The recognition of the work of treaty bodies – especially CEDAW and the CMW – in issuing recommendations on migrant domestic workers.

In the afternoon, the participant were divided into two groups, each assigned to a specific thematic. The first group addressed the issue of “Recruitment and employment of migrant domestic workers,” the second focused on the “Effective protection of migrant domestic workers.” The main points of discussion are summarized below.

*1) Recruitment and employment of migrant domestic workers*

* Pushing for the inclusion in national labor codes of specific norms on domestic workers, covering not only conditions on the workplace but also the recruitment process
* The lack of regulation of the recruiting system – in particular written contracts – and the widespread practices of informal employment – such as the *kafalah* system.
* Discussion of Singapore’s state managed recruitment system, presented as an example of how agencies should be regulated when recruiting migrant domestic workers

*2) Effective protection of migrant domestic workers*

* Incorporating a gender perspective into the new ILO international instrument on domestic workers; the degree of vulnerability is different for women employed as domestic workers;
* Linking restrictive immigration policies with the fact that many migrant domestic workers fall victims of trafficking organizations; linking the lack of regularization programmes with domestic workers’ exploitation
* Lack of enforcement on the workplace and during the recruiting process as well as of efficient complaint mechanisms –creation of an ombudsman

**PART 4 – The Way Forward**

***Recommendations to the Committee on Migrant Workers***

**Methodology**

The CMW in the list of issues should formulate very specific questions, reflecting the information provided by NGOs and civil society groups with a presence on the ground.

The language used in the concluding observations should be firmly grounded in international law, providing evidence of the discrepancies between domestic legislation and the Convention and other international human rights documents. In the context of States Parties’ reports examination, it is essential for the language to be as strong, direct, and specific as possible. Instead of merely “recommending” or “suggesting,” the CMW should strongly urge State Parties to take the necessary measure to implement the Convention, setting clear time bounds for follow-up.

The MWC does not stand alone in the backdrop of a barren legal landscape. Developments in international human rights law point towards the creation of an integrated protection system. Therefore, Committee members should make cross-references, where appropriate, not only to other human rights treaties, but also to the other treaty bodies’ concluding observations and general comments.

The Committee should emphasize whether a State Party complies with the more specific provisions characterizing the Convention. This is important for two reasons: first, to shed a light on its peculiarities and innovative nature, and second, to elaborate a sort of internal jurisprudence clarifying the meaning of these provisions.

The CMW, in order to guide States Parties’ reporting practice, should inquire on the methodology followed by states in drafting country reports.

The Committee should ask information on the NGOs who collaborated in drafting a State Party in order to assess the extent of their independence. Without a clear picture of all the actors who concurred in the elaboration of the report.

**Implementation**

The Committee, in the list of issues, should ask for concrete examples of measures taken to implement the Convention; such questions should not be generic and should provide time bounds for follow-up. States Parties, if asked generic questions, will respond with equally generic declarations of intents.

In the concluding observations, the CMW should provide the state delegation with indication on how to implement the Convention drawing from best practices.

When asking the delegation for more information on the implementation of the Convention, the Committee should refer directly to specialized state institutions working on migration. It should avoid addressing “the Government” in a nondescript way, but rather target a specific institution or agency. When asking for data and statistics, the Committee should formulate a request directly to the specialized body, including a list of the statistical variables.

The CMW should focus on obtaining detailed information about detention centers for migrants, inquiring on the reasons why a State Party considers detention of migrants a necessary measure of migration control. Given the dearth of disaggregate data especially on the number of asylum-seekers and migrants detained, as well as on their conditions in detention, the Committee should make this a priority.

In light of the difficulties that migrant workers experience in seeking redress for violations of the rights protected by the Convention, the Committee should pay heed to issues such as access to redress mechanisms before the courts, availability of legal representation, and of compensation and other forms of reparation for victims.

The CMW should prompt a State Party to launch training programmes on migrant workers’ rights for state employees dealing with migration and labor issues – i.e. police officer, border patrol, workplace enforcement officials, social workers, lawyers, judges, and so forth. Such programmes should ideally be open, if not led, to the participation of NGOs specialized in migration.

**Regional Approach**

Although migration is to a certain extent country specific, in general it affects entire regions. Hence, the CMW should adopt a regional approach when dealing with States Parties delegations and while drafting concluding observations.

The CMW should request States Parties to provide a list of bilateral and multilateral agreements concluded in the field of migration with neighboring countries.

**Engaging with NGOs, IGOs, and CSOs**

The Committee should make sure that the information contained in NGOs and CSOs alternative reports are always reflected in the lists of issues and concluding observations.

NGOs and CSOs are particularly relevant in the follow-up of the Committee’s concluding observations. Due to their presence on the ground, the CMW should think of a strategy that goes beyond the Geneva official sessions.

**Developing an Outreach Strategy**

The CMW should adopt a broad approach to media relations, which should be viewed in the broader context of relations with the public. The public should be aware of the work of the CMW since it focuses on such a sensitive topic. The activities undertaken by the Committee to uphold the Migrant Workers Convention should be common knowledge.[[51]](#footnote-1)

Committee members should disseminate their work, directly among members of national parliaments and universities. Since 13 out of 14 members have ties with their respective governments, promoting the knowledge of the MWC at a governmental level should be a rather straightforward process. Furthermore, some of them have been collaborating over the years with many research institutions, universities, think tanks, and *ad hoc* committees, which should be involved in the promotion of the Convention (see Table D).

The CMW should develop a profile for each State Party, whose report has been examined, tracing its overall attitude towards reporting, underlying if the sate respects deadlines, follows reporting guidelines, provides detailed information, collaborates with NGOs or other actors, and so forth. The profile should be made public.

***Recommendations to NGOs, IGOs, and CSOs***

**States Parties Reports Examination**

NGOs should coordinate their submissions and written contributions to the drafting of the list of issues to avoid possible conflicts. Given States Parties’ reluctance in providing statistics, parallel reports should include disaggregated data – to the extent possible.

**Developing an Outreach Strategy**

NGOs, IGOs, and CSOs, should develop a media strategy including forms of communication other than the internet. It is not desirable to rely exclusively on the internet. The financial burden should be distributed proportionally between several organizations according to capacities and resources.To facilitate and optimize the channeling of funds towards activities for the promotion of the Convention, NGOs should adopt a regional approach as well as establishing trans-regional networks.

This strategy could benefit from the Committee direct engagement in NGOs’ outreach efforts. On the other hand, NGOs, IGOs, and CSOs should cooperate with the CMW in creating a concerted media strategy.

The final result should be the creation of permanent structures for a dissemination of the work of the CMW and the MWC as capillary as possible. Permanent structures, as opposed to *ad hoc* initiatives, guarantee the necessary continuity.

**CONCLUSION**

Despite the low ratification, the movement in support of the Migrant Worker Convention has gained momentum. Since its entry into force – and due to the cross-cutting nature of migration related issues – more and more NGOs and civil society groups have channeled their resources towards its promotion, which is no longer an exclusive prerogative of few specialized Geneva-based NGOs. The work of the Committee on Migrant Workers, especially in those instances where civil society had the opportunity to provide substantial input, has been pivotal in fostering awareness of the Convention. As a result, an increasing number of actors regard it as a fundamental tool for the protection of the fundamental human rights of migrant workers.

However, the attitude shown by Western states, utterly reluctant not only in ratifying it, but also in recognizing its stance among the core human rights treaties, is a major threat to the Convention’s credibility. To counter this tendency, new and more comprehensive campaigning strategies are needed. Civil society groups must concentrate their efforts at multiple levels; a broader inclusion of grassroots migrants groups should not exclude a stronger engagement with governmental actors such as the Committee on Migrant Workers – and vice versa. In fact, as we have seen, it was precisely because of the virtuous alignment of these two elements that the Convention emerged from the obscurity of its early years.

The Committee on Migrant Workers, in the last seven years, if anything, demonstrated to be flexible enough to amend its own mistakes. If at the beginning of its activity, the Committee adopted a cautious approach towards States Parties reports’ examination – resulting in generic Concluding Observations and vague recommendations – the latest development are rather encouraging. For example, Algeria’s report examination is a good example of how the CMW should operate in the future. Strong Concluding Observations, solidly anchored in international law and supported by factual evidence of states’ malpractices, could facilitate NGOs and civil society in their advocacy activities.

Of course, the Committee has a long way to go and the crucial issue of the independence if its members, has yet to be addressed. In particular, in the years to come, it will be interesting to assess to what extent the CMW has been effective in advancing the implementation of the MWC by States Parties once follow-up information will be available. In this process, international NGOs as well as national CSOs are of paramount importance and the Committee must activate mechanisms to widen the dialogue with such actors. Given their capillary presence on the ground, their support in determining if government authorities are adopting the necessary measures to comply with the MWC is essential.

On the other hand, the question NGOs and civil society groups must cope with is not whether supporting the Convention and the Committee is worth the effort but how to do so. Skepticism based on the assumption that none of the Western states will ever become parties to the Convention generates a vicious cycle, which ultimately will further undermine the MWC. Perhaps, the most urgent priority is to create streamlined mechanisms linking civil society groups active locally with policy-oriented NGOs based in European headquarters such as Brussels and Geneva.

In conclusion, the Migrant Workers Convention and more precisely its codification into national legislation is the first step towards the substitution of the current framework – centered on national security and migration management – with a rights-based approach to migrant workers issues.

**ANNEXES**

**Table A.**

|  |  |
| --- | --- |
| **CORE HUMAN RIGHTS TREATIES**(Acronym and Number of Ratifications) | **DATE OF ADOPTION** |
| [**International Convention on the Elimination of All Forms of Racial Discrimination**](http://www2.ohchr.org/english/law/cerd.htm) **– ICERD (173)** | 21 Dec 1965  |
| [**International Covenant on Civil and Political Rights**](http://www2.ohchr.org/english/law/ccpr.htm) **– ICCPR (166)** | 16 Dec 1966  |
| [**International Covenant on Economic, Social and Cultural Rights**](http://www2.ohchr.org/english/law/cescr.htm) **– ICESCR (160)** | 16 Dec 1966 |
| [**Convention on the Elimination of All Forms of Discrimination against Women**](http://www2.ohchr.org/english/law/cedaw.htm) **– CEDAW (186)** | 18 Dec 1979 |
| [**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**](http://www2.ohchr.org/english/law/cat.htm) **– CAT (147)** | 10 Dec 1984 |
| [**Convention on the Rights of the Child**](http://www2.ohchr.org/english/law/crc.htm) **– CRC (193)** | 20 Nov 1989 |
| [**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**](http://www2.ohchr.org/english/law/cmw.htm) **– ICRMW (43)** | 18 Dec 1990  |
| [**International Convention for the Protection of All Persons from Enforced Disappearance**](http://www2.ohchr.org/english/law/disappearance-convention.htm) **(18)** | 20 Dec 2006 |
| [**Convention on the Rights of Persons with Disabilities**](http://www2.ohchr.org/english/law/disabilities-convention.htm) **– CRPD (87)** | 13 Dec 2006 |

**Table B.**

|  |  |
| --- | --- |
| **OPTIONAL PROTOCOLS****TO THE CORE HUMAN RIGHTS TREATIES** | **DATE OF ADOPTION** |
| [**Optional Protocol to the International Covenant on Civil and Political Rights**](http://www2.ohchr.org/english/law/ccpr-one.htm) **–** [**ICCPR OP1**](http://www2.ohchr.org/english/law/ccpr-one.htm) | 16 Dec 1966 |
| [**Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**](http://www2.ohchr.org/english/law/ccpr-death.htm) **–** [**ICCPR OP2**](http://www2.ohchr.org/english/law/ccpr-death.htm) | 15 Dec 1989 |
| [**Optional Protocol to the Convention on the Elimination of Discrimination against Women**](http://www2.ohchr.org/english/law/cedaw-one.htm) **–** [**OP – CEDAW**](http://www2.ohchr.org/english/law/cedaw-one.htm) | 10 Dec 1999 |
| [**Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**](http://www2.ohchr.org/english/law/crc-conflict.htm) **–** [**OP CRC – AC**](http://www2.ohchr.org/english/law/crc-conflict.htm) | 25 May 2000 |
| [**Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**](http://www2.ohchr.org/english/law/crc-sale.htm) **–** [**OP CRC – SC**](http://www2.ohchr.org/english/law/crc-sale.htm) | 25 May 2000 |
| [**Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**](http://www2.ohchr.org/english/law/cat-one.htm) **–** [**OP – CAT**](http://www2.ohchr.org/english/law/cat-one.htm) | 18 Dec 2002 |
| [**Optional Protocol to the Convention on the Rights of Persons with Disabilities**](http://www2.ohchr.org/english/law/disabilities-op.htm) **–** [**OP – CRPD**](http://www2.ohchr.org/english/law/disabilities-op.htm) | 12 Dec 2006 |
| [**Optional Protocol of the Covenant on Economic, Social and Cultural Rights**](http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf) **–** [**ICESCR – OP**](http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf) | 10 Dec 2008 |

**Table C.**

|  |  |
| --- | --- |
| **TREATY MONITORING BODIES**  | **CORE HUMAN RIGHTS TREATIES** |
| **Human Rights Committee - CCPR** | ICCPR |
| **Committee on Economic, Social, and Cultural Rights – CESCR** | ICESCR |
| **Committee on the Elimination of Racial Discrimination – CERD** | ICERD |
| **Committee on the Elimination of Discrimination Against Women – CEDAW** | ICEDAW |
| [**Committee Against Torture**](http://www2.ohchr.org/english/bodies/cat/index.htm) **– CAT****Subcommittee on Prevention of Torture – SPT** | CATOPCAT |
| **Committee on the Rights of the Child – CRC** | CRC |
| **Committee on Migrant Workers – CMW** | ICRMW |
| **Committee on the Rights of Persons with Disabilities – CRPD** | ICRPD |

**Table D.**

|  |  |
| --- | --- |
| **MEMBERS OF THE COMMITTEE ON MIGRANT WORKERS**(Nationality and Date when Term Expires) | **PROFESSION** |
| **Francisco Alba – Mexico**31/12/2011 | Researcher and Lecturer, College of Mexico |
| **José S. Brillantes – Philippines**31/12/2013 | Ambassador to Canada |
| **Francisco Carrion Mena – Ecuador**31/12/2011 | Ambassador, Ecuadorian Foreign Service; Former Minister of Foreign Affairs |
| **Ana Elizabeth Cubias Medina – El Salvador**31/12/2011 | Deputy Director-General for Social Development, Ministry of Foreign Affairs |
| **Fatoumata Abdourhamana Dicko – Mali**31/12/2013 | Director, Programme for the Improvement of Institutional Capacity for the Governance of Labor Migration in North and East Africa (ILO) |
| **Ahmed Hassan El-Borai – Egypt**31/12/2011 | Member, Committee of Legal Experts of the Arab Labor Organization (ALO),Member, Committee of Experts-counselors of the International Labor Organization (ILO) |
| **Abdelhamid El Jamri – Morocco**31/12/2011 | Expert on Economic Development, European Union;Director of the Higher Institute of Training and Development, France |
| **Miguel Ángel Ibarra Gonzales – Guatemala**31/12/2013 | Deputy Minister for Foreign Affairs,Responsible for the Migrant Support Center |
| **Prasad Kariyawasam – Sri Lanka**31/12/2013 | Additional Foreign Secretary, Ministry of Foreign Affairs |
| **Andrea Mller-Stennett – Jamaica**31/12/2013 | Director, Manpower Services |
| **Myriam Poussi Konsimbo – Burkina Faso**31/12/2011 | Director, Human Rights Promotion and Awareness, Ministry for the Promotion of Human Rights |
| **Mehmet Sevim – Turkey**31/12/2013 | Head of Department for International Organizations, Ministry of Labor and Social Security |
| **Azad Taghizadet – Azerbaijan**31/12/2011 | Ministry of Labor and Social Protection of Population |
| **Ahmadou Tall – Senegal**31/12/2013 | Technical Counselor of the Ministry of Justice |

**Table E.**

|  |  |  |
| --- | --- | --- |
| **PAST SESSIONS** | **STATE REPORT(S)** | **DATE** |
| 1st | **Inaugural Session – Geneva** | [1 - 5 March 2004](http://www2.ohchr.org/english/bodies/cmw/cmws01.htm)  |
| 2nd | **General Rules, Rules of Procedures etc. – Geneva** | [25 - 29 April 2005](http://www2.ohchr.org/english/bodies/cmw/cmws02.htm) |
| 3rd | **General Rules, Rules of Procedures etc. – Geneva** | [12 - 16 December 2005](http://www2.ohchr.org/english/bodies/cmw/cmws03.htm) |
| 4th | **Mali** | [24 - 28 April 2006](http://www2.ohchr.org/english/bodies/cmw/cmws04.htm) |
| 5th | **Mexico** | [30 October - 3 November 2006](http://www2.ohchr.org/english/bodies/cmw/cmws05.htm) |
| 6th | **Egypt** | [23 - 27 April 2007](http://www2.ohchr.org/english/bodies/cmw/cmws06.htm) |
| 7th | **Ecuador**  | 26 - 30 November 2007 |
| 8th | [**Bolivia and Syrian Arab Republic**](http://www2.ohchr.org/english/bodies/cmw/cmws08.htm) | [14-25 April 2008](http://www2.ohchr.org/english/bodies/cmw/cmws08.htm)  |
| 9th | **El Salvador** | [24-28 November 2008](http://www2.ohchr.org/english/bodies/cmw/cmws09.htm)  |
| 10th | **Azerbaijan, Bosnia and Herzegovina, Colombia and the Philippines** | [20 April - 1 May 2009](http://www2.ohchr.org/english/bodies/cmw/cmws10.htm) |
| 11th | [**Sri Lanka**](http://www2.ohchr.org/english/bodies/cmw/cmws11.htm) | [12-16 October 2009](http://www2.ohchr.org/english/bodies/cmw/cmws11.htm) |
| 12th | **Algeria** | 26 - 30 April 2010 |

**Table F.**

|  |  |  |
| --- | --- | --- |
| **FUTURE SESSIONS** | **STATE REPORT(S)** | **DATE**  |
| 13th | [**Albania, Ecuador, Senegal**](http://www2.ohchr.org/english/bodies/cmw/cmws13.htm) | [22 November - 3 December 2010](http://www2.ohchr.org/english/bodies/cmw/cmws13.htm) |
| N.A. | [**Argentina, Chile, Guatemala, Mexico**](http://www2.ohchr.org/english/bodies/cmw/cmw_future.htm) | N.A. |

1. As Graziano Battistella aptly noted, “There are two related perspectives to the migration dilemma: the human rights perspective and the labor perspective.” “Migration and Human Rights: the Uneasy but Essential Relationship”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009. [↑](#endnote-ref-1)
2. Graziano Battistella, “Migration and Human Rights: the Uneasy but Essential Relationship”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009. [↑](#endnote-ref-2)
3. The construction of barriers, the deployment of border patrols, the experimentation of new technological devices to track down irregular crossers, and the establishment of detention centers for migrants, are top priorities on the agenda of immigration authorities in many countries. [↑](#endnote-ref-3)
4. ILO, “Given their precarious legal position in the host country, irregular migrant workers easily fall prey to extortion and are highly vulnerable to abuse and exploitation by employers, migration agents, corrupt bureaucrats and criminal gangs”. *Towards a fair deal for migrant workers in the global economy*, Report IV, International Labour Conference, 92nd Session,2004. [↑](#endnote-ref-4)
5. Amnesty International, *Living in the Shadows: A primer on the human rights of migrants* (Index: POL 33/006/2006) [↑](#endnote-ref-5)
6. For a complete analysis of the arguments for non-ratification see The International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, *Guide on Ratification: International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, 2007. [↑](#endnote-ref-6)
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7: “*States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”* [↑](#endnote-ref-7)
8. Nicola Piper“Ratification of the ICRMW in Asia”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009, p. 176. [↑](#endnote-ref-8)
9. Graziano Battistella,“Migration and Human Rights: the Uneasy but Essential Relationship”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009*,* p. 58. [↑](#endnote-ref-9)
10. The International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, “One of the Convention’s main values is making explicit that the set of fundamental rights contained in the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, and other core international human rights instruments, need to be articulated in national law for migrants as well, in order to ensure that these rights are indeed applied universally.” *Guide on Ratification: International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, 2007, p. 32. [↑](#endnote-ref-10)
11. Isabelle Slinckx, “Migrants’ Rights in Human Rights Conventions”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009, p. 146-149. [↑](#endnote-ref-11)
12. The International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention, *Guide on Ratification: International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, 2007, p. 32. [↑](#endnote-ref-12)
13. Euan MacDonald and Ryszard Cholewinski,“The ICRMW and the European Union”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009, p. 364. [↑](#endnote-ref-13)
14. Articles 76 and 77 are optional, referring respectively to the possibility of inter-state communications and individual petitions to the CMW. Guatemala is the only State Party to have declared its willingness in complying with both articles; Mexico made the declaration under article 77 but not article 76. However, the procedure has not entered into force since less than 10 State Parties made the declaration of compliance. [↑](#endnote-ref-14)
15. Graziano Battistella, “Migration and Human Rights: the Uneasy but Essential Relationship”, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, UNESCO Publishing, 2009, p. 120. [↑](#endnote-ref-15)
16. www.ishr.ch, accessed 1 July 2010. [↑](#endnote-ref-16)
17. www.ishr.ch, accessed 1 July 2010. [↑](#endnote-ref-17)
18. Amnesty International, December 18, Friends World Committee for consultation, Human Rights Watch, Migrant Workers International, International Federation for Human Rights, International Catholic Migration Commission, International Centre for Migration and Health, Migrant Forum in Asia, NGO Group for the Convention on the Rights of the Child, Women’s International League for Peace and Freedom, World Organization Against Torture. www.ishr.ch, accessed 1 July 2010. [↑](#endnote-ref-18)
19. www.ishr.ch, accessed 1 July 2010. [↑](#endnote-ref-19)
20. The members of the platform are: Amnesty International, Action Canada for Population and Development, Anti-Slavery International, December 18, Fédération Internationale des Ligues des Droits de l'Homme, Franciscans International, Human Rights Watch, International Catholic Migration Commission, International Centre for Migration, Health and Development, International Movement Against All Forms of Discrimination and Racism, Jesuit Refugee Service, Kav LaOved, Migrant CARE, Migrants Rights International, National Employment Law Project, Organisation mondiale contre la torture, Public Services International, The English International Association of Lund, WARBE Development Foundation, World Council of Churches,. [↑](#endnote-ref-20)
21. www.december18.net/article/3rd-session-committee, accessed 3 July 2010. [↑](#endnote-ref-21)
22. www.ishr.ch, accessed 3 July 2010. [↑](#endnote-ref-22)
23. www.ishr.ch, accessed 3 July 2010. [↑](#endnote-ref-23)
24. www2.ohchr.org/english/bodies/cmw/docs/CMW.C.MLI.CO.1\_En.pdf, accessed 4 July 2007. [↑](#endnote-ref-24)
25. www2.ohchr.org/english/bodies/cmw/cmws05.htm, accessed 18 July 2010. [↑](#endnote-ref-25)
26. www.ohchr.org, accessed 15 July 2010. [↑](#endnote-ref-26)
27. www.unog.ch/unog/website/news\_media\_archive.nsf/%28httpNewsByYear\_en%29/80257631003154D9C125721B00570229?OpenDocument, accessed 15 July 2010. [↑](#endnote-ref-27)
28. www.ishr.ch, accessed 15 July 2010. [↑](#endnote-ref-28)
29. The Hotline for Migrant Workers, an Israeli NGO, submitted a report titled *Egyptians Staying in Israel Illegally and Egyptian Authorities in 2006*; Egypt-based The National Council for Human Rights submitted a report titled *The rights of migrant labor and members of their families according to both, the 2006/2007 Council’s annual report and the National Plan of the Council to enforce and protect human rights*; The Egyptian Initiative for Personal Rights in collaboration with the International Federation for Human Rights submitted a report titled *Egypt: Protection of the Rights of All Migrant Workers and Members of Their Families*. www2.ohchr.org/english/bodies/cmw/cmws06.htm, accessed 27 July 2010. [↑](#endnote-ref-29)
30. http://www.unog.ch/unog/website/news\_media\_archive.nsf/%28httpNewsByYear\_en%29/80257631003154D9C12572C700440485?OpenDocument, accessed 27 July 2010. [↑](#endnote-ref-30)
31. www2.ohchr.org/english/bodies/cmw/cmws06.htm, accessed 27 July 2010. [↑](#endnote-ref-31)
32. “Article 131 of the Migration Law provides that when a deportation/expulsion order cannot be executed because it has been issued against a stateless person or a person lacking identity papers, or for any other justifiable reason, the Police Commissioner refers the concerned person to a penal judge and this person may end up in prison for up to three years, pending execution of the expulsion/deportation order.”

http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/456/65/PDF/G0745665.pdf?OpenElement, accessed 19 July 2010. [↑](#endnote-ref-32)
33. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=1473&LangID=E, accessed 6 July 2010. [↑](#endnote-ref-33)
34. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=1473&LangID=E, accessed 6 July 2010. [↑](#endnote-ref-34)
35. www.unhchr.ch/huricane/huricane.nsf/view01/638269BA9CEED8B7C125742D004551D2?opendocument, accessed 3 August 2010. [↑](#endnote-ref-35)
36. www.december18.net/article/10th-session-committee, access 6 August 2010. [↑](#endnote-ref-36)
37. “Reservation: Articles 15, 46 and 47 of the [said Convention], which was adopted by means of Act No. 146 of 1994, shall be executed with the understanding that the State of Colombia retains the right to promulgate taxation, exchange and monetary regulations establishing equality of treatment of migrant workers and their families with that of nationals in respect of the import and export of personal and household effects and the transfer of earnings and savings abroad, and in respect of expropriation for reasons of equity and the nullification of ownership of property in the cases envisaged in article 34 of the Political Constitution.” www.treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-13&chapter=4&lang=en#EndDec, accessed 15 July 2010. [↑](#endnote-ref-37)
38. www.december18.net/article/10th-session-committee, accessed 6 August 2010. [↑](#endnote-ref-38)
39. *Philippine Migrants Rights Groups' Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines* www2.ohchr.org/english/bodies/cmw/docs/ngos/PMG\_Philippines10.pdf, accessed 9 August 2010. [↑](#endnote-ref-39)
40. Committee on Migrant Workers, par. 13, “The Committee notes with concern the plight of hundreds of thousands of Sri Lankan women working abroad as domestic helpers, many of them underpaid and treated as virtual slaves. The Committee regrets that the Government has not made a serious effort to assess the negative impact of this phenomenon on children who are left in vulnerable and difficult circumstances without their mothers and to take appropriate remedial measures. www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.24.En?Opendocument, accessed 6 September 2010. [↑](#endnote-ref-40)
41. www2.ohchr.org/english/bodies/cmw/cmws11.htm, accessed 6 September 2010. [↑](#endnote-ref-41)
42. www2.ohchr.org/english/bodies/cmw/cmws11.htm, accessed 6 September 2010. [↑](#endnote-ref-42)
43. www2.ohchr.org/english/bodies/cmw/docs/co/CMW-C-DZA-CO1.pdf, accessed 6 September 2010. [↑](#endnote-ref-43)
44. www2.ohchr.org/english/bodies/cmw/docs/co/CMW-C-DZA-CO1.pdf, accessed 6 September 2010. [↑](#endnote-ref-44)
45. www.december18.net/article/9th-session-committe, accessed 8 September 2010. [↑](#endnote-ref-45)
46. www.december18.net/article/un-committee-migrant-workers-concludes-11th-session, accessed 10 September 2010. [↑](#endnote-ref-46)
47. www.december18.net/article/cmw-concludes-12th-session, accessed 8 September 2010. [↑](#endnote-ref-47)
48. www2.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf, accessed 7 September 2010. [↑](#endnote-ref-48)
49. www.unog.ch/unog/website/news\_media\_archive.nsf/%28httpNewsByYear\_en%29/80257631003154D9C12570F1004B6382?OpenDocument, accessed 14 September 2010. [↑](#endnote-ref-49)
50. Civil Society groups from Cameroun, Costa Rica, El Salvador, Israel, Italy, Lebanon, Malaysia, the Netherlands, and the Philippines made their written contribution in the form of reports. www2.ohchr.org, accessed 27 July 2010. [↑](#endnote-ref-50)
51. www2.ohchr.org/english/bodies/hrc/.../ApproachPublicRelations.doc, accessed 28 September 2010. [↑](#footnote-ref-1)