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THE LEGAL STATUS OF MIGRANT WORKERS AND THEIR FAMILIES IN INTERNATIONAL LAW

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

I. RESOLUTION OF THE INTER-AMERICAN JURIDICAL COMMITTEE CJI/RES.127 (LXX-O/07)

The Inter-American Juridical Committee, at its 70th regular session (26 February to 9 March 2007) held in the city of San Salvador, El Salvador, approved resolution CJI/RES.127 (LXX-O/07) denominated "The legal status of migrant workers and their families in the international law", which considered that migration of workers and their families, whether documented or not, is a matter that interests all the States of the American Continent; that it is necessary to know the legal aspects of human mobility, especially as regards human rights, in order to reflect about migrant workers; and that it is worthwhile to consider the work carried out in the inter-American system in this respect.

In this sense, the Inter-American Juridical Committee, at its 70th regular session, decided to include it as a topic under consideration and designated Drs. Jorge Palacios Treviño, Ana Elizabeth Villalta Vizcarra, Ricardo Seitenfus and Galo Leoro Franco as rapporteurs.

In compliance with this resolution, as one of the rapporteurs of the topic, the undersigned presents the following report at this 71st regular session:

1. Legal condition of migrant workers and their families in the inter-American system

The migrant phenomenon is one of the most important social, political and economic topics in the American Continent, since many of the member States of the Organization of American States (OAS) have become states of origin, transit and destination for migrants not only of the region but also of the whole world, which is why it is necessary to guarantee and assure the human rights of migrants.

This has led to the inter-American system now having available an "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and their Families"; a "Special Rapporteur for Migrant Workers and Their Families" and jurisprudence emitted by the Inter-American Court on Human Rights to protect the human rights of migrant workers through advisory opinions on the matter.[1]

1.1 Inter-American Program

Its antecedent is the Third Summit of the Americas held in Quebec, Canada, in April 2001, when the "Declaration of Quebec City: Plan of Action" was approved, containing the mandate to create an "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families". This Summit accepted the commitment adopted at the First Summit of the Americas held in Miami, Florida, in December 1994, with regard to "guaranteeing protection of the human rights of all migrant workers and their families", a commitment taken up again at the Second Summit of the Americas, held in Santiago de Chile in 1998.

The subsequent Summits also ratified this commitment, as well as the Special Summit of Monterrey, Mexico, in 2004, which repeated this commitment in the "Declaration of Nuevo León", and in the Fourth Summit of Mar del Plata in 2005, which reaffirmed the intention of fully supporting the "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and their Families".

The Organization of American States assigned the preparation of this program to a Working Group set up by the Committee on Juridical and Political Affairs. The General Assembly of the OAS approved the "Inter-American program for the promotion and

[1] OEA/Sec.Gral.ODI/doc.06/07. *El papel de la OAS en la protección de los derechos humanos de los migrantes*.

protection of the human rights of migrants, including migrant workers and their families", through resolution AG/RES. 2141 (XXXV-O/05).

The importance of the topic was emphasized at the General Assembly of the OAS in Panama in June 2007, through resolutions AG/RES. 2289 (XXXVII-O/07), called "The human rights of all migrant workers and their families", and AG/RES. 2326 (XXXVII-O/07), "Migrant populations and migration flows in the Americas".

This program, one of the key tools available to the OAS for protecting and guaranteeing the human rights of migrants, aims basically at promoting the exchange of practical developments and cooperation among states of origin, transit and destination with a view to respecting and protecting their human rights.

1.2 Special Rapporteur for Migrant Workers and Their Families

The antecedent of this initiative, which was set up in the framework of the Inter-American Committee on Human Rights (CIDH) in 1997 are resolutions AG/RES. 1404 (XXVI-O/96), "Annual report of the Inter-American Commission on Human Rights", and AG/RES. 1480 (XXVII-O/97), "The human rights of all migrant workers and their families".

The purpose of this Rapporteur is to lend proper attention to an especially vulnerable group exposed to eventual violations of their human rights.

Its objectives are as follows:

- To generate awareness of the duty of States to respect the human rights of migrant workers and their families;
- To present specific recommendations to the member States of the OAS on issues related to the promotion and protection of the human rights of these persons, so that measures can be adopted on their behalf;
- To draft specialized reports and studies on the situation of migrant workers and on topics related to migration in general;
- To act promptly in respect to petitions or communications signaling that the human rights of migrant workers and their families are violated in some Member State of the OAS. [2]

1.3 Jurisprudence of the Inter-American Court of Human Rights

a) Advisory Opinion OC-18/03, "Juridical Condition and Rights of the Undocumented Migrants" (September 17, 2003)

According to this Opinion, the Inter-American Court of Human Rights understands "migrant workers" to be any person who engages, is going to engage or has engaged in a remunerated activity in a State other than their original State, and "undocumented or illegal migrant worker" to be any person who is not authorized to enter, remain in and exercise a remunerated activity in the State of employment, in accordance with the laws of that State and the international agreements to which the State is Party, and who nevertheless performs such activity.

In this sense, it is obligatory that the States respect and guarantee human rights in keeping with international instruments on the matter, as manifested by the Inter-American Court of Human Rights in Advisory Opinion OC-18:

> ... All persons have attributes inherent to their human dignity that may not be harmed; these attributes make them possessors of fundamental rights that may not be disregarded and which are, consequently, superior to the power of the State, whatever its political structure."[3]

Therefore, according to said international instruments and the respective international jurisprudence, the States have the general obligation to respect and guarantee fundamental rights, and to avoid taking initiatives that limit or infringe upon the exercise of those rights.

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2 Inter-American Commission on Human Rights. Special Rapporteur for Migrant Workers and their Families.

3 OAS. Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*, par. 73.

Following the same line of thinking, recognition of equality before the law prohibits all discriminatory treatment as being in violation of human rights in such a way that States are obliged to respect and guarantee full, free exercise of rights and liberties without any discrimination whatever, and non-compliance on the part of the State, through any discriminatory treatment, of the obligation to respect and guarantee said rights, entails international responsibility, since States have a universal duty to respect and guarantee human rights as set forth in the principle of equality and non-discrimination.

For this reason the States have the obligation to refrain from introducing discriminatory rules in their legal systems, to eliminate such rules from their systems, and to combat discriminatory practices.

Discrimination is understood as making a distinction that lacks objective and reasonable justification; a *contrario sensu*, if the difference in treatment is legitimately oriented and does not lead to situations against the justice, reason or the nature of the cases, there is no discrimination.

The United Nations Commission on Human Rights defines discrimination in the following way:

> …any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[4]

In this sense, this United Nations Commission has pointed out that the Party States must strive to guarantee the rights recognized in the "International Covenant on Civil and Political Rights"[5] for all the individuals who find themselves in their territory and are liable to their jurisdiction.

Consequently, this guarantee must apply equally to foreigners and nationals, since foreigners are entitled to the protection of the law on equal terms, which implies that the States must respect and guarantee human rights in the light of the general and fundamental principle of equality and non-discrimination, since any discriminatory treatment as regards protection and execution of human rights entails international responsibility by the States.

In Advisory Opinion OC-18/03, the Inter-American Court of Human Rights considered that the principle of equality before the law and non-discrimination are part of the norms of the *jus cogens* and also part of general international law.

The Inter-American Court of Human Rights established the "principle of equality and non-discrimination", which by its very character and juridical nature is *jus cogens*, since this concept has now been developed for its doctrine and international jurisprudence. It is not limited solely to the right of the treaties, but rather its scope has extended to international law in general, embracing all juridical acts and also being manifest in the right of responsibility of States and affecting the very foundations of the international juridical system.

Therefore, as the "principle of equality and non-discrimination" became part of general international law, and due to its actual evolution, it entered the domain of *jus cogens*, that is, norms of obligatory compliance.

For this reason, the States have the general obligation to respect and guarantee human rights, without any discrimination whatsoever and on the basis of equality, abstaining from performing actions that in any way directly or indirectly create situations of discrimination, whether *de jure* or *de facto*. Furthermore, States are obliged to adopt positive measures to revert or change discriminatory situations existing in their societies that jeopardize a certain group of people, which in turn implies the special duty of protection that

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4 UN. Commission on Human Rights. *General Comment No. 18: Non-discrimination, 10/11/89,* par. 7.

5 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force on 23 March 1976, in accordance with Article 49.

the State should exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, believe, maintain or favor such discriminatory situations.

States can only establish objective and reasonable distinctions when these are made with due respect for human rights and in keeping with the principle of application of the norm that best protects the human person.

Pursuant to the above, the States must ensure that all persons have unrestricted access to a simple and effective resource that protects and guarantees their rights regardless of their migratory status. The right to due process of law must be acknowledged in the framework of minimum guarantees that should be afforded to all migrants.

As the "principle of equality and non-discrimination" is part of the domain of *jus cogens*, its effects reach all member States of the Organization of American States, besides establishing *erga omnes* obligations of protection that bind all the States and produce effects with regard to third parties, including private individuals.

As a consequence, it is the general obligation of the States to respect and guarantee human rights, regardless of any circumstances or consideration, including the migratory status of persons.

It must be taken into account that migrants find themselves in a vulnerable situation *vis-à-vis* nationals and residents, a situation that leads to differences being established in their respective access to public resources administered by the State, besides other situations that exacerbate this situation of vulnerability, such as cultural and ethnic prejudice, xenophobia and racism.

This has led the international community to adopt special measures to guarantee protection for the human rights of migrants, which is why the States cannot discriminate or tolerate discriminatory situations that put migrants in jeopardy.

That is why States cannot discriminate or tolerate discriminatory situations that affect migrants, which does not mean that the States can treat documented migrants differently from undocumented migrants, or migrants differently from nationals, whenever this differential treatment is reasonable, objective and proportional and does not violate human rights.

The Inter-American Court of Human Rights has considered that the right to due process of law should be recognized in the framework of minimum guarantees offered to all migrants, regardless of their migratory status.

The "International Convention of the United Nations on Protection of the Rights of all Migrant Workers and their Families"[6] has established the situation of vulnerability in which they find themselves, due among other things to their being absent from their State of origin and the difficulties they face being present in the State of employment.

Despite the above, the Inter-American Court of Human Rights considers that a person who enters a State and starts to work acquires their labor human rights in this State of employment, regardless of their migratory situation, since the respect and guarantee of enjoying and exercising those rights should entail no discrimination whatsoever.

Accordingly, a person's migratory quality can by no means constitute a justification for depriving him or her from enjoying and exercising their human rights, including labor rights. On assuming a working relation, the migrant acquires rights as a worker that should be recognized and guaranteed, regardless of whether his or her situation is regular or irregular in the State of employment. These rights are the consequence of the labor relation.

In this same sense, the Inter-American Court of Human Rights states that:

> The State is obliged to respect and ensure the labor human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that prejudice the latter in the employment relationships established between individuals (employer-worker). The State

6 UN. Commission on Human Rights. Resolution 1996/18.

should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.[7]

Nowadays, States and private individuals set up labor relations with migrants in irregular circumstances, which immediately converts them into holders of labor rights as workers, without there being any possibility of discrimination on account of their irregular situation. These labor relations are established both in the sphere of public and private law.

It is in this sense that the Inter-American Court of Human Rights affirmed that:

> … employment relationships between migrant workers and third party employers may give rise to the international responsibility of the State in different ways. First, States are obliged to ensure that, within their territory, all the labor rights stipulated in its laws – rights deriving from international instruments or domestic legislation – are recognized and applied. Likewise, States are internationally responsible when they tolerate actions and practices of third parties that prejudice migrant workers, either because they do not recognize the same rights to them as to national workers or because they recognize the same rights to them but with some type of discrimination.[8]

The Inter-American Court of Human Rights further affirmed that:

> 151. ... in labor relations, employers must protect and respect the rights of workers, whether these relations occur in the public or private sector. The obligation to respect the human rights of migrant workers has a direct effect on any type of employment relationship, when the State is the employer, when the employer is a third party, and when the employer is a natural or legal person.
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> 152. The State is thus responsible for itself, when it acts as an employer, and for the acts of third parties who act with its tolerance, acquiescence or negligence, or with the support of some State policy or directive that encourages the creation or maintenance of situations of discrimination.[9]

In the case of any doubt as to which norm to apply to establish the rights of migrant workers, according to the Principle of *indubio pro-operario* this should be the most favorable; since internal practices or norms favor the worker more than international norms, the former should be applied. If an international instrument benefits the worker by granting rights not guaranteed or recognized by the State, these should also be respected and guaranteed.

The Court also establishes in its Advisory Opinion OC-18 that:

> The Court considers that undocumented migrant workers, who are in a situation of vulnerability and discrimination with regard to national workers, possess the same labor rights as those that correspond to other workers of the State of employment, and the latter must take all necessary measures to ensure that such rights are recognized and guaranteed in practice. Workers, as possessors of labor rights, must have the appropriate means of exercising them.[10]

A State's migratory policy is constituted by all acts, measures or institutional omission that deal with the entry, exit or permanence of the national or foreign population inside its territory.

But the Inter-American Court of Human Rights establishes that the objectives of these migratory policies should respect human rights and that these should be carried out by respecting and guaranteeing such rights.

In this same line of ideas, the Inter-American Court of Human Rights determines that:

> …the State may not subordinate or condition the observance of the principle of equality before the law and non-discrimination to achieving the goals of its

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7 Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*, par. 148.
8 Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*, par. 153.
9 Inter-American Court on Human Rights. *Advisory Opinion OC-18/03.*
10 Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*, par. 160.

public policies, whatever these may be, including those of a migratory nature. This general principle must be respected and guaranteed always. Any act or omission to the contrary is inconsistent with the international human rights instruments.[11]

The unanimous decision of the Inter-American Court of Human Rights on this matter is as follows:

For the foregoing reasons,

THE COURT,

DECIDES

unanimously,

that it is competent to issue this Advisory Opinion.

AND IS OF THE OPINION

unanimously,

1. That States have the general obligation to respect and ensure the fundamental rights. To this end, they must take affirmative action, avoid taking measures that limit or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right.

2. That non-compliance by the State with the general obligation to respect and ensure human rights, owing to any discriminatory treatment, gives rise to international responsibility.

3. That the principle of equality and non-discrimination is fundamental for the safeguard of human rights in both international law and domestic law.

4. That the fundamental principle of equality and non-discrimination forms part of general international law, because it is applicable to all States, regardless of whether or not they are a party to a specific international treaty. At the current stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens.*

5. That the fundamental principle of equality and non-discrimination, which is of a peremptory nature, entails obligations *erga omnes* of protection that bind all States and generate effects with regard to third parties, including individuals.

6. That the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person.

7. That the right to due process of law must be recognized as one of the minimum guarantees that should be offered to any migrant, irrespective of his migratory status. The broad scope of the preservation of due process encompasses all matters and all persons, without any discrimination.

8. That the migratory *status* of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights, including those of a labor-related nature. When assuming an employment relationship, the migrant acquires rights that must be recognized and ensured because he is an employee, irrespective of his regular or irregular status in the State where he is employed These rights are a result of the employment relationship.

9. That the State has the obligation to respect and guarantee the labor human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that are harmful to the latter in the employment relationships established between private individuals (employer-worker). The State must not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.

10. That workers, being possessors of labor rights, must have all the appropriate

[11] Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*, par. 172.

means to exercise them. Undocumented migrant workers possess the same labor rights as other workers in the State where they are employed, and the latter must take the necessary measures to ensure that this is recognized and complied with in practice.

11. That States may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character.

[...]

Done at San José, Costa Rica, on September 17, 2003, in the Spanish and the English language, the Spanish text being authentic."[12]

b) Advisory Opinion Oc-16, "The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law" (October 1, 1999)

This Opinion establishes that the Court has the competence to interpret, in addition to the "American Convention on Human Rights", other treaties concerning protection of human rights in the American States.

In conformity with its consultative jurisprudence, the Inter-American Court of Human Rights interprets that a treaty can concern protection of human rights, whatever its principal object may be. Accordingly, the principal object of the "Vienna Convention on Consular Relations" is "to establish a balance between States", but it also concerns protecting a national's fundamental rights in the American Continent, since it is a primordial consular function to lend assistance to nationals of the sending State in defense of their rights before the authorities of the receiving State.

In this sense, article 36 of the "Vienna Convention on Consular Relations" deals with consular assistance in a particular situation: deprival of freedom. This article also expressly regulates "the rights to information and consular notification", which is a notable advance in respect to the traditional concepts of International Law on the matter.

The exercise of the rights established in this article is limited only by the will of individuals, since only they can expressly object to any intervention of the consular officer to help them, once again reaffirming the individual nature emphasized in this article of the Convention together with the corresponding duties of the receiving State.

The relation that exists between the rights conferred by article 36 and the concepts of "due process of law" or "juridical guarantees" concerns protection of human rights.

A foreigner's right to be informed opportunely that he or she can count on consular analysis is part of the set of minimum guarantees that make up due process of law.

Notification of the right to communicate with one's consular representatives will contribute considerably towards improving the possibility of defense, since the processual acts in which they intervene are performed with greater consideration for the law and respect for people's dignity. The right to information on consular assistance constitutes a way of defending detainees, whereas non-observance or obstruction of their right to information affects their legal guarantees.

In this Advisory Opinion, the Inter-American Court of Human Rights establishes:

> … that nonobservance of a detained foreign national's right to information, recognized in Article 36 (1)(b) of the Vienna Convention on Consular Relations, is prejudicial to the guarantees of the due process of law; in such circumstances, imposition of the death penalty is a violation of the right not to be "arbitrarily" deprived of one's life…[13]

In this line of thinking, the Inter-American Court of Human Rights decided unanimously that it is competent to emit this Advisory Opinion, and also unanimously expressed:

> 1. That Article 36 of the Vienna Convention on Consular Relations confers rights upon detained foreign nationals, among them the right to information on

[12] Inter-American Court on Human Rights. *Advisory Opinion OC-18/03*.
[13] Inter-American Court on Human Rights. *Advisory Opinion OC-16/99*. par. 137.

consular assistance, and that said rights carry with them correlative obligations for the host State.

Unanimously,

2. That Article 36 of the Vienna Convention on Consular Relations *concerns* the protection of the rights of a national of the sending State and is part of the body of international human rights law.

Unanimously,

3. That the expression "without delay" in Article 36(1)(b) of the Vienna Convention on Consular Relations means that the State must comply with its duty to inform the detainee of the rights that article confers upon him, at the time of his arrest or at least before he makes his first statement before the authorities.

Unanimously,

4. That the enforceability of the rights that Article 36 of the Vienna Convention on Consular Relations confers upon the individual is not subject to the protests of the sending State.

Unanimously,

5. That articles 2, 6, 14 and 50 of the International Covenant on Civil and Political Rights *concern* the protection of human rights *in the American States*.

Unanimously,

6. That the individual's right to information established in Article 36(1)(b) of the Vienna Convention on Consular Relations allows the right to the due process of law recognized in Article 14 of the International Covenant on Civil and Political Rights to have practical effects in concrete cases; Article 14 establishes minimum guarantees that can be amplified in the light of other international instruments such as the Vienna Convention on Consular Relations, which expand the scope of the protection afforded to the accused.

By six votes to one,

7. That failure to observe a detained foreign national's right to information, recognized in Article 36(1)(b) of the Vienna Convention on Consular Relations, is prejudicial to the due process of law and, in such circumstances, imposition of the death penalty is a violation of the right not to be deprived of life "arbitrarily", as stipulated in the relevant provisions of the human rights treaties (*v.g.* American Convention on Human Rights, Article 4; International Covenant on Civil and Political Rights, Article 6), with the juridical consequences that a violation of this nature carries, in other words, those pertaining to the State's international responsibility and the duty to make reparation.

Judge Jackman dissenting.

Unanimously,

8. That the international provisions that concern the protection of human rights in the American States, including the right recognized in Article 36(1)(b) of the Vienna Convention on Consular Relations, must be respected by the American States Party to the respective conventions, regardless of whether theirs is a federal or unitary structure.

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Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on October 1, 1999.[14]

With regard to the above, the conclusion may be drawn that article 36.1.b) of the "Vienna Convention on Consular Relations" constitutes a norm that protects human rights

[14] Inter-American Court on Human Rights. *Advisory Opinion OC-16/99*.

and a minimum guarantee of due process of law. In this sense, article 36 of the "Vienna Convention on Consular Relations" was converted to another treaty concerning protection of human rights in the American States, on which the Inter-American Court of Human Rights, in accordance with article 64.1 of the American Convention on Human Rights, can emit a Advisory Opinion.

Both Advisory Opinions OC-16 and OC-18, emitted by the Inter-American Court of Human Rights, refer to protection of migrant workers. OC-18 is more specific in that it refers to the juridical status and rights of undocumented migrants, with express reference to protection of the rights of undocumented migrant workers, while OC-16 refers to the right to information on consular assistance in the framework of guarantees of due process of law, protecting at the same time the rights of all foreigners detained abroad, who may perfectly well be documented or undocumented migratory workers, since the right to information on consular assistance constitutes a minimum guarantee of due process of law, with article 36 of the Convention of Vienna on Consular Relations being converted to a treaty on protection of human rights, notwithstanding its principal object and purpose.

Both Advisory Opinions are not only part of the Jurisprudence of the Inter-American System concerning human rights but also part of the *corpus juris* of the International Law of Human Rights, serving at one and the same time as a precedent on which to base decisions of other international jurisdictional courts. One example is the International Court of Justice, which recently resolved a petition of the United States of Mexico against the United States of America for violation of articles 5 and 36 of the "Vienna Convention on Consular Relations" in its decision dated 31 March 2004, in the case of Avena and other Mexican nationals in which Advisory Opinion OC-16 of the Inter-American Court of Human Rights played a relevant role.

Both Advisory Opinions contributed significantly to the progressive development of the international law of human rights in protection of the rights of migrants, since they are both related to the legislation and measures adopted by some States that could restrict the human rights and fundamental liberties of migrants, so these States should meet the obligations imposed by international law on human-rights questions in order that the fundamental rights of migrants be fully respected.

In this sense, constructive dialogue should be continued among the States with a view to improving their migratory policies and practices and offer adequate protection to all migrants (including documented and undocumented migrant workers).

It is appropriate that States should adopt integral migratory policies that take into account what is set forth in the "Inter-American program for the promotion and protection of the human rights of migrants including migrant workers and their families", and that these should be implemented by institutions of the State specially tasked for this purpose, such as the Salvadorian Ministry of Foreign Affairs, where a "Vice-Ministry for Salvadorians living Abroad" was set up on 1 June 2004, one of its principal functions being to attend to the human rights of Salvadorians abroad, including migrant workers and their families, whether documented or undocumented.[15]

With this first report on "The legal status of migrant workers and their families in international law", the undersigned, as one of the rapporteurs of the topic, hopes to underscore the contribution of the inter-American system to the progressive development of same, which is why consideration was given to the Resolutions and Declarations emitted in the framework of the Organization of the American States, as well as the jurisprudence of the Inter-American Court of Human Rights on the issue.

A subsequent report will deal with the theme from a universal point of view, with special emphasis on the United Nations "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families"[16], since it is the priority duty of the States to guarantee and assure protection of the human rights of migrants.

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[15] Since its creation to the present date, Ambassador Margarita Escobar is Vice-Minister for Salvadorians Abroad.

[16] UN. General Assembly. Resolution 45/158, December, 18, 1990.

Bibliography

1. Resolutions of the Inter-American Juridical Committee
2. Resolutions of the General Assembly of the OAS
3. Inter-American Court on Human Rights Advisory Opinion OC-16
4. Inter-American Court on Human Rights Advisory Opinion OC-18

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