

GENERAL ASSEMBLY



THIRTY-FOURTH REGULAR SESSION
June 6-8, 2004
Quito, Ecuador

OEA/Ser.P
AG/doc.4304/04
26 May 2004
Original: Spanish

Item 40 on the agenda

DRAFT RESOLUTION

THE HUMAN RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

(Approved by the Permanent Council at its meeting of May 18, 2004)

THE GENERAL ASSEMBLY,

HAVING SEEN the report on this topic included in the Annual Report of the Permanent Council to the General Assembly (AG/doc...../04 add. 3);

TAKING INTO ACCOUNT:

Its resolutions AG/RES. 1717 (XXX-O/00), AG/RES. 1775 (XXXI-O/01), AG/RES. 1898 (XXXII-O/02), and AG/RES. 1928 (XXXIII-O/03);

The annual report of the Inter-American Commission on Human Rights, especially the chapter on the situation of migrant workers and members of their families in the Hemisphere (CP/doc.3844/04); and

The draft "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants in the Framework of the Organization of American States" (CP/CAJP-2038/03), prepared by the Inter-American Commission on Human Rights;

REAFFIRMING that the American Declaration of the Rights and Duties of Man proclaims that all persons are equal before the law and have the rights and duties enshrined in that declaration, without distinction as to race, sex, language, creed, or any other factor;

EMPHASIZING that the American Convention on Human Rights recognizes that the essential rights of the human individual are not derived from the fact that a person is a national of a certain state, but are based upon attributes of the human personality;

REAFFIRMING that the principles and standards set forth in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights take on special importance with respect to protection of the rights of migrant workers and their families;

CONSIDERING:

That the Heads of State and Government, gathered at the Third Summit of the Americas, recognized the cultural and economic contributions made by migrants to receiving societies as well as to their communities of origin and committed to ensure dignified, humane treatment with applicable legal protections and to strengthen mechanisms for hemispheric cooperation to address their legitimate needs;

That in the Declaration of Nuevo León, at the Special Summit of the Americas, the Heads of State and Government highlighted the importance of cooperation among countries of origin, countries of transit, and receiving countries to ensure full protection of the human rights of all migrants, including migrant workers and their families, the defense of human rights, and safe and healthy labor conditions for migrants, and to take effective measures against trafficking in human beings;

That practically all countries are countries of origin, countries of transit, and receiving countries for migrants and have the authority to regulate the immigration of persons into their territories, in accordance with international law, including international human rights law;

The positive contributions often made by migrants, both to their countries of origin and to the receiving countries, including their gradual incorporation into the receiving societies, and the efforts made by some receiving countries to integrate migrants;

The entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, on July 1, 2003; the installation and initiation of work of the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families; and the entry into force of the Protocol against the Smuggling of Migrants by Land, Sea and Air, on January 28, 2004;

Advisory Opinion OC-16, issued by the Inter-American Court of Human Rights, on the Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law;

Advisory Opinion OC-18, issued by the Inter-American Court of Human Rights on September 17, 2003, on the Juridical Situation and Rights of Undocumented Migrants; and

The judgment issued by the International Court of Justice on March 31, 2004, in the case of Avena and other Mexican nationals;

BEARING IN MIND:

That, in the Strategic Plan for Partnership for Development 2002-2005 of the Inter-American Council for Integral Development (CIDI), support for vulnerable groups such as migrant workers was identified as a priority in the implementation of policies and programs to facilitate access to the labor market and to improve working conditions; and

That the Plan of Action of the Third Summit of the Americas provided for the establishment of an inter-American program within the OAS for the promotion and protection of the human rights

of migrants, including migrant workers and their families, taking into account the activities of the Inter-American Commission on Human Rights (IACHR) and supporting the work of the IACHR Special Rapporteur for Migrant Workers and Their Families and of the Special Rapporteur on the Human Rights of Migrants of the United Nations Commission on Human Rights;

EXPRESSING its satisfaction at the establishment of the Working Group of the Committee on Juridical and Political Affairs to Prepare an Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, at the commencement of its activities, and at the progress made in the fulfillment of its mandate;

TAKING NOTE of the offer by the Inter-American Federation of Ombudsmen to collaborate with the Working Group on its activities;

CONCERNED over the extremely vulnerable situation in which many migrant workers and their families find themselves and over the persistent obstacles that prevent them from fully exercising their human rights; and

BEARING IN MIND that migrants are often victims of mistreatment, discrimination, racism, and xenophobia,

RESOLVES:

1. To vehemently condemn manifestations or acts of racism, racial discrimination, xenophobia, and related forms of intolerance against migrants, as well as all forms of racism, racial discrimination, xenophobia, and related forms of intolerance with respect to access to employment, professional training, housing, instruction, health services, social services, and services to the public.

2. To reaffirm the duty of states parties to the 1963 Vienna Convention on Consular Relations to comply with that convention, including the right to communication between consular officers and their nationals in case of detention and the obligation of the states parties in whose territory the detention occurs to inform the foreign national of that right; and, in that connection, to call the attention of states to Advisory Opinion OC-16 of the Inter-American Court of Human Rights and to the ruling of the International Court of Justice on March 31, 2004, in the case of Avena and other Mexican nationals, on the obligation to comply with Article 36 of the Vienna Convention.

3. To call the attention of the states to Advisory Opinion OC-18 of the Inter-American Court of Human Rights, which holds that a person's status as a migrant cannot constitute a justification for denying that person the enjoyment and exercise of his or her human rights, including those of a labor-related nature.

4. To encourage dialogue and cooperation among the member states so as to improve their migration policies and practices with a view to providing adequate protection to all migrants, migrant workers, and their families.

5. To urge member states to consider the signature and ratification of, ratification of, or accession to the inter-American human rights instruments, as the case may be, and to take the necessary measures to guarantee the human rights of all migrants, including migrant workers and their families.

6. To acknowledge with appreciation the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and, accordingly, to urge member states to consider, as appropriate, signing and ratifying that instrument.

7. To instruct the Permanent Council:

- a. To renew the mandate of the Working Group of the Committee on Juridical and Political Affairs to Prepare an Inter-American Program for the Promotion and Protection of the Human Rights of Migrants so that, as soon as possible, it may draft the proposed Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, on the basis of the draft presented by the Inter-American Commission on Human Rights and the proposals of member states, specialized organizations, and other bodies, in accordance with the mandate of the Summits of the Americas held in Quebec City.
- b. To convene a special meeting of the Working Group during the third quarter of 2004, to facilitate the drafting of the Program, with the participation of government experts, relevant organs, agencies, and entities of the inter-American system, other international organizations, and civil society organizations, pursuant to the Draft Agenda attached to this resolution.
- c. To continue supporting the work of the IACHR in this area and to take into account the efforts of other international organizations on behalf of migrant workers and their families, with a view to helping to improve their situation in the Hemisphere and, in particular and where applicable, the efforts of the Special Rapporteur on the Human Rights of Migrants of the United Nations Commission on Human Rights and those of the International Organization for Migration (IOM).

8. To instruct the relevant organs, agencies, and entities of the Organization to support, upon request, the efforts of the Working Group and to participate actively in the drafting of the proposed Inter-American Program.

9. To request the Inter-American Agency for Cooperation and Development (IACD) to strengthen communication and coordination with the IACHR, the IOM, the International Labour Organization (ILO), and other pertinent organizations, agencies, and entities and that, in that context, it follow up in particular on IACD partnership-for-development activities, under the Strategic Plan for Partnership for Development 2002-2005, related to the status of the situation of migrant workers and members of their families.

10. To recommend to the Inter-American Commission on Human Rights that it:

- a. Consider the advisability of participating in joint cooperation projects conducted by the IACD in this area;

- b. Continue supporting the Working Group to Prepare an Inter-American Program for the Promotion and Protection of the Human Rights of Migrants through the Office of its Special Rapporteur for Migrant Workers and Their Families in the Hemisphere;
- c. Provide the Office of the Special Rapporteur with the necessary and appropriate means to perform his or her duties, within the resources allocated in the program-budget and other resources; and
- d. Present to the Permanent Council a report on the status of the rights of all migrant workers and their families prior to the thirty-fifth regular session of the General Assembly.

11. To invite the member states, permanent observer states, organs, agencies, and entities of the inter-American system, and others to contribute to the Voluntary Fund of the Office of the Special Rapporteur for Migrant Workers and Their Families of the IACHR.

12. Also to invite the member states to consider inviting the Special Rapporteur for Migrant Workers and Their Families in the Hemisphere to visit their countries so as to perform his or her functions effectively.

13. To urge all member states of the Organization to participate constructively in the International Labour Conference, to be held in June 2004, with a view to achieving consensus on the consideration of its agenda item “Migrant workers (*general discussion based on an integrated approach*).”

14. To request the Permanent Council to report to the General Assembly at its thirty-fifth regular session on the implementation of this resolution, which shall be carried out in accordance with resources allocated in the program-budget of the Organization and other resources.

AGENDA FOR A SPECIAL MEETING
OF THE WORKING GROUP OF THE COMMITTEE ON JURIDICAL AND POLITICAL
AFFAIRS TO PREPARE AN INTER-AMERICAN PROGRAM WITHIN THE OAS FOR THE
PROMOTION AND PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS

“Identification of proposals, best practices, and specific activities for preparing an Inter-American Program within the OAS for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and Their Families”

Washington D.C. - September 16 and 17, 2004

(Approved by the Working Group on May 3, 2004)

- I. Inaugural session
- II. Draft “Inter-American Program for the Promotion and Protection of the Human Rights of Migrants in the Framework of the Organization of American States,” prepared by the Inter-American Commission on Human Rights (IACHR)
- III. Experiences of the organs, agencies, and entities of the OAS
- IV. Experiences of other organizations
- V. Dialogue among governmental experts from the member states
- VI. Preliminary conclusions of the rapporteur of the meeting