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Connie de la Vega

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# International Standards on Business and Human Rights: Is Drafting a New Treaty Worth It?

BY CONNIE DE LA VEGA\*

Human Rights Council Resolution 26/9, establishing the process for drafting a treaty on business and human rights, passed with a vote of less than half the members of the Human Rights Council: 20 in favor; 14 against; 13 abstentions.<sup>1</sup> The 20 countries in favor were primarily developing countries: Algeria, Benin, Burkina Faso, China, Congo, Côte d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russian Federation, South Africa, Venezuela (Bolivarian Republic of), Vietnam.<sup>2</sup> The countries voting against were countries in Europe along with the United States and Japan: Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Montenegro, Republic of Korea, Romania, the former Yugoslav Republic of Macedonia, and the United Kingdom of Great Britain and Northern Ireland.<sup>3</sup> The countries abstaining were primarily developing countries along with Saudi Arabia and the United Arab Emirates: Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, and Sierra Leone.<sup>4</sup>

While this vote might vary depending on who is a member of the Human Rights Council, it was clear from the vote on the resolution that developed countries are not going to support a treaty on business and

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\* This article is a reprint of Part IV of an article by Connie de la Vega, *International Standards on Business and Human Rights: Is Drafting a New Treaty Worth It?*, 51 U.S.F. L. REV. (forthcoming 2017), Professor of Law, University of San Francisco, School of Law. The author has addressed the issue of business and human rights at the United Nations for over twenty-five years. Valuable research assistance was provided by Lee Ryan in the USF Library and Caroline Holtgrave, a third-year law student at the University of San Francisco, School of Law. The author would also like to thank Professors Reza Dibadj and Peter Honigsberg for their comments and suggestions on drafts of the article, and the participants at the Business and Human Rights Workshop at the University of Washington, in particular César González Cantón and Gwynne Skinner.

1. Human Right Council Resolution U.N. Doc. A/HRC/RES/26/9 at 3 (July 14, 2014); 26/9, [hereinafter "HRC Res. 26/9"].

2. *Id.*

3. *Id.*

4. *Id.*

human rights. The question may arise, therefore, whether going through the drafting process is worth it. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Convention on Migrant Workers” or “Convention”) provides some guidance on this issue since it is an example of another treaty that primarily has only been ratified by one side of the states involved in migration – the sending states – though some sending states do receive some migrants as well. This section will review the Convention on Migrant Workers and assess what value the treaty itself provides. It will also analyze the country reports that have resulted from review of the State Parties to the treaty to assess whether there has been a benefit from having only sending countries ratify it.

### A. The Convention on Migrant Workers

The drafting of the Convention on Migrant Workers was completed in 1990, but it did not enter into force until July 2003, in accordance with article 87(1).<sup>5</sup> The Convention’s main objective is to protect migrant workers and their families from exploitation and human rights violations, and the Convention seeks to establish minimum standards that States Parties should apply to migrant workers and their families, regardless of documentation status.<sup>6</sup> Currently, there are 38 signatories and 48 States Parties that have ratified.<sup>7</sup>

In 2015, two-thirds of all international migrants were living in only 20 countries.<sup>8</sup> Countries hosting the highest number of international migrants include the United States (hosting approximately 19 percent of total migrants), Germany, Russia, Saudi Arabia, the United Kingdom, and the United Arab Emirates.<sup>9</sup> Although each of these countries accounts for a high percentage of

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5. Office of the U.N. High Commissioner for Human Rights, International Convention on Migrant Workers and its Committee: Fact Sheet No. 24 (Rev. 1) (2005), <http://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf>.

6. UNESCO, International Migration Convention, <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/international-migration-convention/> (hereinafter “UNESCO”).

7. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Dec. 18, 1990, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-13&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-13&chapter=4&clang=_en) (hereinafter “UN Treaty Collection”).

8. United Nations, Sustainable Development Goals: 244 million international migrants living abroad worldwide, new UN statistics reveal (Jan. 12, 2016), <http://www.un.org/sustainabledevelopment/blog/2016/01/244-million-international-migrants-living-abroad-worldwide-new-un-statistics-reveal/>.

9. *Id.*

total international migrants, none has signed the Convention.<sup>10</sup> In fact, none of the western migrant-receiving countries have signed the Convention.<sup>11</sup> States Parties to the convention are primarily countries of origin,<sup>12</sup> though some countries like Mexico and Turkey have become both sending and receiving countries.<sup>13</sup>

The Committee on Migrant Workers (CMW) is a body of independent experts responsible for monitoring the implementation of the convention.<sup>14</sup> Its first session was held in March 2004, and it generally holds two sessions each year.<sup>15</sup> CMW requires States Parties to submit regular reports on the implementation of rights guaranteed under the Convention.<sup>16</sup> The CMW has adopted a simplified reporting procedure through which the CMW lists issues and the State Party replies.<sup>17</sup> The CMW can receive individual complaints only if States Parties “formally recognize the competence of the committee to do so” by making a declaration under Article 77 of the Convention. However, as of August 2015, only three States Parties<sup>18</sup> had made the relevant declaration to give the CMW such authority.<sup>19</sup>

To date, there have been two general comments filed under the Convention. General Comment No. 1 focuses on who are considered migrant domestic workers under the treaty.<sup>20</sup> It also addresses various

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10. UNESCO, *supra* note 6.

11. UN Treaty Collection, *supra* note 7.

12. *Id.*

13. See Francisco Alba, *Mexico: The New Migration Narrative*, Migration Policy Institute (April 24, 2013), <http://www.migrationpolicy.org/article/mexico-new-migration-narrative>; Kemal Kirisci, *Turkey: A Transformation from Emigration to Immigration*, Migration Policy Institute (Nov. 1, 2003), <http://www.migrationpolicy.org/article/turkey-transformation-emigration-immigration>.

14. Office of the U.N. High Commissioner for Human Rights, *Committee on Migrant Workers*, <http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx>.

15. *Id.*

16. *Id.*

17. International Justice Resource Center, Committee on Migrant Workers, [http://www.ijrcenter.org/un-treaty-bodies/committee-on-migrant-workers/#WORKING\\_METHODS](http://www.ijrcenter.org/un-treaty-bodies/committee-on-migrant-workers/#WORKING_METHODS) [hereinafter “International Justice Center”].

18. Guatemala, Mexico and Uruguay have recognized the CMW’s competence to receive individual complaints through declarations under Article 77 of the Convention. See Office of the U.N. High Commissioner for Human Rights, Ratification Status for CMW-International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CMW&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CMW&Lang=en).

19. International Justice Resource Center, *supra* note 18.

20. Office of the U.N. High Commissioner for Human Rights, Committee on Migrant Workers, General Comment No. 1 on Migrant Domestic Workers, U.N. Doc. CMW/C/GC/1 (Feb. 23, 2011), [http://www2.ohchr.org/english/bodies/cmwr/cmwr\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmwr/cmwr_migrant_domestic_workers.htm) [hereinafter “CMW General Comment No.1”].

problems faced by migrant workers and their families<sup>21</sup> and gaps in protection.<sup>22</sup> There are also several recommendations to States Parties. These recommendations include pre-departure training,<sup>23</sup> cooperation among states,<sup>24</sup> and recommendations around work conditions.<sup>25</sup>

The General Comment No. 2 focuses on the rights of migrant workers in an irregular situation and members of their families.<sup>26</sup> To implement the Convention, the Comment includes (1) power to regulate entry and stay; (2) duty to comply with the laws and regulations; (3) regularization; and (4) international cooperation as basic principles.<sup>27</sup> It also discusses protection of civil and political rights including protection against violence,<sup>28</sup> protection against arbitrary arrest and detention,<sup>29</sup> protection against inhumane treatment,<sup>30</sup> and protection in expulsion proceedings.<sup>31</sup> Economic, social and cultural rights protections include protection against forced and compulsory labor and child labor,<sup>32</sup> right to social security,<sup>33</sup> right to urgent medical care<sup>34</sup> and right to education.<sup>35</sup>

Recent country reports of the CMW (22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> Sessions) demonstrate some similar concerns with respect to the implementation of the Convention by States Parties. These concerns include overall lack of information available to migrant workers on their rights and obligations, lack of training programs, lack of adequate information on migration flows in individual countries, and lack of information on application and implementation of the Convention's various provisions. This analysis is derived from the Concluding Observations of the States Parties reports:

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21. CMW General Comment No.1, *supra* note 20 ¶¶ 8-17.

22. *Id.* ¶¶ 18-27.

23. *Id.* ¶¶ 28-30.

24. *Id.* ¶¶ 31-36.

25. *Id.* ¶¶ 37-41.

26. Comm. on the Protection of All Migrant Workers and Members of Their Families, General Comment No. 2 on The Rights of Migrant Workers in an Irregular Situation and Members of Their Families, U.N. Doc. CMW/C/GC/2 (Aug. 28, 2013), [http://www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm).

27. *Id.* ¶¶ 13-17.

28. *Id.* ¶¶ 21-22.

29. *Id.* ¶¶ 23-35.

30. *Id.* ¶¶ 36-48.

31. *Id.* ¶¶ 49-59.

32. *Id.* ¶¶ 60-66.

33. *Id.* ¶¶ 66-71.

34. *Id.* ¶ 72-74.

35. *Id.* ¶¶ 75-79.

Mexico,<sup>36</sup> Guinea,<sup>37</sup> Peru,<sup>38</sup> Ghana,<sup>39</sup> El Salvador,<sup>40</sup> Uruguay,<sup>41</sup> The Philippines,<sup>42</sup> Seychelles<sup>43</sup> and Belize.<sup>44</sup> The Concluding Observations on Uganda also raise more specific violations such as reports that child migrant workers are exploited into forced labor<sup>45</sup> and that some national rights are only guaranteed to documented migrant workers and not workers in an irregular situation.<sup>46</sup>

Country reports to the CMW do indicate that the treaty is being implemented through legislation in States Parties and this in turn is affecting migrant workers, particularly in relation to education of migrant workers about migration issues. The following are examples of legislative actions taken by States Parties to the Convention on Migrant Workers following ratification or accession to the treaty as well as the concerns raised by the CMW regarding the reports.

**Mexico** ratified the Convention in 1999.<sup>47</sup> Mexico has reported twice

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36. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Mexico, U.N. Doc. CMW/C/MEX/CO/1 (Dec. 20, 2006).

37. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Guinea, U.N. Doc. CMW/C/GIN/CO/1 (Oct. 8, 2015).

38. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Peru, U.N. Doc. CMW/C/PER/CO/1 (May 13, 2015).

39. Comm. on the Protection of the Rights of Migrant Workers and Members of their Families, Concluding Observations on the Initial Report of Ghana, U.N. Doc. CMW/C/GHA/CO/1 (Sept. 26, 2014).

40. Comm. on the Protection of Migrant Workers and Members of their Families, Concluding Observations on the second periodic report of El Salvador, U.N. Doc. CMW/C/SLV/CO/2 (May 2, 2014).

41. Comm. on the Protection of the Rights of Migrant Workers and Members of their Families, Concluding Observations on the Initial Report of Uruguay, U.N. Doc. CMW/C/URY/CO/1 (May 2, 2014).

42. Comm. on the Protection of Migrant Workers and Members of their Families, Concluding Observations on the second periodic report of the Philippines, U.N. Doc. CMW/C/PHL/CO/2 (May 2, 2014).

43. Comm. on the Protection of all Migrant Workers and their Families, Concluding Observations on the Initial Report of Seychelles, U.N. Doc. CMW/C/SYC/CO/1 (Oct. 8, 2015).

44. Comm. on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding Observations on Belize in the absence of a report, U.N. Doc. CMW/C/BLZ/CO/1 (Sept. 26, 2014).

45. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Uganda, ¶ 30, U.N. Doc. CMW/C/UGA/CO/1 (May 22, 2015).

46. *Id.* ¶¶ 26, 36.

47. UN Treaty Collection, *supra* note 7.

under the Convention and is thus a good example of how the treaty has had an effect on the protection of migrant workers, especially since it is both a sending and receiving country. The CMW noted in its first report that Mexico had extended voting rights to Mexican citizens residing abroad.<sup>48</sup> The CMW also referred to the government's migration reform initiatives including amendments to the General Population Act of 1974, which had not yet passed.<sup>49</sup> It noted that several acts regarding discrimination had also been enacted, but also expressed concern that migrant workers and their families continued to suffer from employment discrimination and social stigmatization.<sup>50</sup> The CMW also mentioned several programs aimed at upgrading migrant holding centers but expressed concern that conditions continued to violate migrants' rights.<sup>51</sup> In the review of Mexico's second report, among the positive developments, the CMW noted that the General Population Act had passed in 2008, and it included reduction in prison terms from 10 years to 18 months for undocumented migrant workers.<sup>52</sup> It also mentioned the adoption of legislation to address trafficking in persons and kidnapping of migrants.<sup>53</sup> The CMW also expressed concern about a number of issues affecting migrants, such as the need to educate judges about the treaty,<sup>54</sup> corruption issues,<sup>55</sup> and that undocumented workers who were victims of abuses had not had proper access to justice.<sup>56</sup>

**Guinea** acceded to the Convention on Migrant Workers in 2000.<sup>57</sup> As noted by the CMW, the government took various initiatives to implement the treaty, such as the creation in 2011 of the Ministry Responsible for Guineans Abroad,<sup>58</sup> and in 2012 the Ministry of Human Rights and Public Liberties.<sup>59</sup> The CMW expressed a number of concerns, including the failure

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48. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Mexico, *supra* note 36 ¶ 10.

49. *Id.* ¶ 14.

50. *Id.* ¶ 14.

51. *Id.* ¶ 27.

52. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations of the Committee on the Protection of Rights of All Migrant Workers and their Families – Mexico, ¶ 7(a), U.N. Doc. CMW/C/MEX/CO/2 (May 3, 2011).

53. *Id.* ¶ 7.

54. *Id.* ¶¶ 21, 22.

55. *Id.* ¶ 28.

56. *Id.* ¶ 25.

57. UN Treaty Collection, *supra* note 7.

58. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Guinea, *supra* note 37 ¶ 5(a).

59. *Id.*

to protect the rights of their own citizens living abroad,<sup>60</sup> and discrimination against migrant workers living in Guinea.<sup>61</sup> As with its review of other States' reports, it urged the need to collect data regarding migrant workers.<sup>62</sup>

**Peru** ratified the Convention in 2005.<sup>63</sup> In March 2013, an act on the Economic and Social Reintegration of Returned Migrants was passed. In January 2007, Act No. 28950 on Trafficking in Persons and Smuggling of Migrants was passed.<sup>64</sup> In November 2013, Act No. 30103 establishing residency procedure for foreign nationals in an irregular situation was passed.<sup>65</sup> In July 2014, Peru adopted the National Human Rights Plan for 2014-2016, and then in December 2014 adopted the National Human Rights and Fundamental Duties Education Plan for 2021.<sup>66</sup> Despite these developments, the CMW still expressed concern that Peru "is still in the midst of a long shift towards the development of new legislation on migration" consistent with the Convention.<sup>67</sup> It does appear that Peru is attempting to take positive steps with respect to migrant workers and it is hoped that it will continue to implement programs to both educate and support all workers in every type of situation.

**Ghana** ratified the Convention in 2000.<sup>68</sup> In the review of its first report, the CMW noted that Ghana had established the Inter-Ministerial Committee on Migration and has made prominent efforts to adopt a draft national migration policy.<sup>69</sup> However, the CMW expressed concern that the framework of the policy and its legislation is fragmented and had insufficient coordination between institutions and services.<sup>70</sup> It made various suggestions for implementing the Convention and made one recommendation that would be useful for all Party reports:

Recalling that disaggregated statistical information is indispensable to understanding the situation of migrant workers in the State party and to assessing the implementation of the Convention, the Committee recommends

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60. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Guinea, *supra* note 37 ¶ 26.

61. *Id.* ¶¶ 35-41.

62. *Id.* ¶ 22.

63. UN Treaty Collection, *supra* note 7.

64. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Peru, *supra* note 38 ¶ 7.

65. *Id.*

66. *Id.* ¶ 8(a), (b).

67. *Id.* ¶ 10.

68. UN Treaty Collection, *supra* note 7.

69. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Ghana, *supra* note 39 ¶ 6.

70. *Id.* ¶ 6 (a),(b).



that the State party create a centralized and comprehensive database covering all aspects of the Convention. It recommends that the data collected, including on migrant workers in an irregular situation, be disaggregated in order to effectively inform the migration policy and the application of the various provisions of the Convention.<sup>71</sup>

**El Salvador** ratified the Convention in 2003.<sup>72</sup> In its second review, the CMW noted legislation that the government enacted including the Special Act on the Protection and Development of Salvadoran Migrants and their Families in 2011,<sup>73</sup> and the Project to Regularize Nicaraguan Citizens and their Families in El Salvador in 2011–2012, which resulted in the regularization of 400 people.<sup>74</sup> The CMW also mentioned that the government had held limited training programs on the Convention for public officials but noted a need for more.<sup>75</sup> It also mentioned a number of problems related to the lack of access to justice by migrant workers,<sup>76</sup> as well as work-related rights,<sup>77</sup> and rights to health and education for them and their families.<sup>78</sup> As this was the second review of El Salvador, the CMW had very specific recommendations to address these and other issues related to the rights of migrant workers. It will be interesting to see to what extent El Salvador is able to address all of these before their next report.

**Uruguay** acceded to the Convention in 2001.<sup>79</sup> In 2008, it adopted Migration Act (No. 18250) “which adheres to the provisions of the Convention and could serve as a model for other States Parties to follow.”<sup>80</sup> The Concluding Observations on Uruguay’s report include specific provisions of the Act,<sup>81</sup> including references to bilateral and multilateral agreements relating to migrant workers and efforts to support returning migrant workers through the “Return and Welcome Office, though it also mentions problems related to the latter and notes the need to provide more

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71. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Guinea, *supra* note 39 ¶ 15.

72. UN Treaty Collection, *supra* note 7.

73. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the second periodic report of El Salvador, *supra* note 40 ¶ 5.

74. *Id.* ¶ 6.

75. *Id.* ¶ 18.

76. *Id.* ¶¶ 22-25.

77. *Id.* ¶¶ 29-30.

78. *Id.* ¶¶ 30-31.

79. UN Treaty Collection, *supra* note 7.

80. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Uruguay, *supra* note 41 ¶ 5.

81. *Id.* ¶ 5 (a)-(d)

information as well as publicize services to returning migrant workers.<sup>82</sup> The CMW notes that while Uruguay was traditionally a sending country, it has recently become a receiving country.<sup>83</sup> In addition to calling for collection of data, it addressed a number of rights related to migrant workers in the Concluding Observations.

**The Philippines** ratified the Convention on Migrant Workers in 1995.<sup>84</sup> The CMW reviewed The Philippines' second report in 2014 and noted that the State Party had "expressed high level political will to respond to the needs of migrant workers abroad" with a multitude of programs and support structures for overseas working, covering all stages of the migration process.<sup>85</sup> This included: The Migrant Worker and Overseas Filipino Act;<sup>86</sup> Overseas Preparedness and Response Team,<sup>87</sup> and Training on the Convention, although the CMW noted that the target group is unclear for the programs and their dissemination inadequate.<sup>88</sup> Many of the comments and recommendations would be useful for other governments seeking to address the rights of both their own citizens abroad as well as migrants in their country.

**Seychelles** acceded to Convention in 1994.<sup>89</sup> In its first review of the Seychelles in 2015, the CMW noted that training programs on trafficking targeting "front-line officers, non-governmental organizations and journalists" are conducted in the country as well as disseminated leaflets to migrant workers in their languages, but also expressed concern that these efforts were inadequate.<sup>90</sup> Migrant workers are protected by the Employment Act,<sup>91</sup> and their families can gain access to all services

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82. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Uruguay, *supra* note 41 ¶ 43.

83. *Id.* ¶ 3.

84. UN Treaty Collection, *supra* note 7.

85. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the second periodic report of the Philippines, *supra* note 42 ¶ 5.

86. An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 10022 (2010) (Phil.), <http://hrlibrary.umn.edu/research/Philippines/RA%2010022-%20%20Migrant%20Workers%20Act.pdf>.

87. Comm. on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the second periodic report of the Philippines, *supra* note 42 ¶ 6(c).

88. *Id.* ¶ 20.

89. UN Treaty Collection, *supra* note 7.

90. Committee on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Seychelles, *supra* note 43 ¶ 16.

91. *Id.* ¶ 24.

provided to nationals by the State's social services division that support and protect families.<sup>92</sup> However, there is no legislation or policy on family reunification and programs that are available are inadequate.<sup>93</sup> While the Seychelles has adopted significant legislation and regulations to combat trafficking in persons and established a National Coordinating Committee on Trafficking in Persons in 2014, the Committee expressed concern that the lack of studies, analyses and disaggregated data make it difficult to assess the extent of trafficking in the State party and noted the lack of shelters for victims of trafficking in persons.<sup>94</sup>

**Belize** acceded to the MWT in 2001.<sup>95</sup> Since Belize had not submitted a report since becoming a party, the CMW decided to review them without the report basing its comments on information from other U.N. bodies and procedures.<sup>96</sup> Mention was made of its international treaty obligations including the fact that Belize is a member of the International Labor Organization (ILO), but has not ratified the ILO's Migrant Workers (Supplementary Provisions) Convention No. 143 or other ILO Conventions.<sup>97</sup> The CMW expressed concern that there is only limited access to justice for migrant workers in Belize regardless of their status and made recommendations for addressing this problem.<sup>98</sup> It also mentioned a number of issues regarding discrimination regarding the entry of migrant workers and their families.<sup>99</sup>

While there is limited reporting on the specific benefits the Convention on Migrant Workers has had on protecting migrant workers, the country reports since it was ratified indicate that governments have adopted legislation to both educate their own citizens who might emigrate to other countries, as well as provide some benefits to migrant workers in their own countries. Though these countries have a very small percentage of the migrant workers worldwide, the legislation serves as examples of what can be done to protect the rights of migrant workers both in sending and receiving countries. While the CMW has raised concerns regarding the adequacy of the legislation, it has helped to develop the legal standards

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92. Committee on the Protection of Rights of All Migrant Workers and their Families, Concluding Observations on the Initial Report of Seychelles, *supra* note 43 ¶ 30.

93. *Id.*

94. *Id.* ¶ 36.

95. UN Treaty Collection, *supra* note 7.

96. Committee on the Protection of Rights of All Migrant Workers and their Families, Concluding Observation on Belize in the absence of a report, *supra* note 44 ¶ 1.

97. *Id.* ¶¶ 12, 13.

98. *Id.* ¶¶ 22, 23.

99. *Id.* ¶¶ 18-21.

regarding the definition of migrant workers, as well as what rights those in irregular situations might have. These benefits will clearly have an effect on the evolution of the law protecting migrant workers and their families.

## **V. Conclusion**

Efforts to address corporate accountability for human rights violations in the international arena have spanned a least half a century with very few concrete procedures created to address violations and provide redress. While the Guiding Principles have raised awareness of both States and corporations of the need to address the topic, few remedies exist for victims of violations when national mechanisms are not able or available to address them. The Human Rights Council finally recognized this gap in the protection of human rights when it decided to establish a procedure to draft a treaty on this topic in 2014. Unfortunately, the resolution to establish the procedure did not receive the support of the developed countries where the bulk of multinational corporations reside. The question then arises whether it is worth going through the process of drafting the treaty if it is likely that only developing countries will become party to the treaty.

The Convention on Migrant Workers provides good lessons of dealing with a treaty that addressed a long time concern regarding the protection of rights and that has not been ratified by the countries where the bulk of migrant workers reside. The drafting of the Convention helped to coalesce the various standards regarding migrant workers' rights into a binding document that helped to develop law on the topic. This benefit has already been raised in discussions during the first week of meetings held by the Working Group tasked with drafting the treaty on business and human rights. Second, the entering into force of the Convention has already seen the adoption of laws in States Parties that help to promote and protect the rights of persons who might become migrant workers, as well as the rights of migrant workers that are not in traditionally considered by receiving countries. A treaty on business and human rights can have a similar effect on the development of procedures at the national level and provide a forum for addressing redress at the international level when the treaties protecting migrant workers is not sufficient.