



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General  
26 September 2014

Original: English

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## Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

### Concluding observations on the initial report of Ghana\*

1. The Committee considered the initial report of Ghana (CMW/C/GHA/1) at its 265th and 266th meetings (CMW/C/SR.265 and SR.266), held on 2 and 3 September 2014. At its 270th meeting (CMW/C/SR.270), held on 5 September 2014, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was prepared in response to the list of issues prior to reporting (CMW/C/GHA/QPR/1), and appreciates the dialogue held with the delegation of the State party. However, the Committee regrets that the report, which constitutes the written replies to the list of issues prior to reporting, was only submitted on 31 August 2014, which did not allow sufficient time for translation into the working languages of the Committee nor for due consideration of the report by the Committee. The Committee also regrets that the information in the report is often general or incomplete, especially with regard to the practical implementation of the Convention.

3. The Committee notes that some of the countries in which Ghanaian migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

#### B. Positive aspects

4. The Committee welcomes the adoption of the following instruments:

(a) The Immigration Amendment Act (2012), providing for the offence of migrant smuggling;

(b) The Representation of the People's (Amendment) Act 2006 (No. 699), which gives Ghanaian migrant workers abroad the right to vote in Ghana (2006);

(c) The Human Trafficking Act (2005) and its Amendment (2009).

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\* Adopted by the Committee at its twenty-first session (1–5 September 2014).



5. The Committee notes with satisfaction that Ghana became a party (2012) to the Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air.

## **C. Principal subjects of concern, suggestions and recommendations**

### **1. General measures of implementation (arts. 73 and 84)**

#### **Legislation and application**

6. The Committee welcomes the establishment of the Inter-Ministerial Committee on Migration and notes its efforts to adopt a draft national migration policy. Nevertheless, the Committee notes with concern that:

(a) The legal framework governing migration, while extensive, remains fragmented;

(b) There is insufficient coordination of the institutions and services that deal with the various measures to implement the rights under the Convention and there is no single entity responsible for ensuring the coordination of migratory affairs.

**7. The Committee recommends that the State party take the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention and that these are streamlined. It also encourages the State party to ensure that the draft national migration policy is in line with the Convention and to accelerate its adoption by the Parliament so as to move away from project-based approaches and into longer term planning and implementation. The Committee recommends that the State party intensify its efforts to improve the coordination among ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention and ensure a clear mandate and appropriate human and financial resources for the Inter-Ministerial Committee to carry out its work.**

8. The Committee regrets that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals concerning violation of rights established by the Convention.

**9. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

10. The Committee notes with regret that the State party has not yet acceded to International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and Domestic Workers Convention, 2011 (No. 189).

**11. The Committee invites the State party to consider acceding, as soon as possible, to ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Domestic Workers Convention, 2011 (No. 189), which concern migrant workers.**

12. The Committee regrets that the State party has not provided sufficient information on the specific measures it has taken to implement the Convention.

**13. The Committee urges the State party to include in its second periodic report updated information, supported by statistics, on the concrete measures it has taken to implement the rights of migrant workers as set out in the Convention.**

### Data collection

14. The Committee regrets the absence of disaggregated statistical information that would enable it to fully assess the extent and the manner to which the rights set out in the Convention are implemented in the State party. It also notes with concern the absence of information on the coordination mechanisms among the different entities that collect and analyse migration-related data.

**15. 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 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.**

### Training on and dissemination of the Convention

16. The Committee notes with appreciation the information shared by the delegation of the State party about the training initiatives regarding the Convention offered to law enforcement officials. Nevertheless, the Committee is concerned about the lack of dissemination of information about the Convention and the rights enshrined therein among all relevant stakeholders, including local government bodies, civil society organizations, migrant workers themselves and members of their families.

17. **The Committee recommends that the State party:**

**(a) Make information about the rights under the Convention available to migrant workers and members of their families;**

**(b) Continue to carry out capacity-building efforts for all public officials working in the area of migration, in particular law enforcement and border personnel, judges, prosecutors, relevant consular officers, as well as local officials and social workers;**

**(c) Strengthen its work with civil society organizations and migrant workers themselves, in order to disseminate information about and promote the Convention.**

### Corruption

18. The Committee expresses concern about reports that migrant workers and members of their families have fallen victim to corruption perpetrated by officials from various institutions with responsibilities relating to the implementation of the Convention.

**19. The Committee encourages the State party to continue to take measures to address any instances of corruption and recommends that it thoroughly investigate any cases that appear to involve officials working in areas related to the implementation of the Convention and impose the appropriate sanctions, where necessary. The Committee also recommends that the State party conduct information campaigns, with a view to encouraging migrant workers and members of their families claiming to be victims of corruption to report it, and raise awareness among migrant workers and members of their families about the services available free of charge.**

## 2. General principles (arts. 7 and 83)

### Non-discrimination

20. The Committee notes with interest that, according to the State party, national legislation makes no distinction between national workers and migrant workers. The Committee regrets, however, the lack of information on actual practice and examples that would make it possible to assess the implementation of the right to non-discrimination pursuant to the Convention.

**21. The Committee urges the State party to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy, without discrimination, the rights recognized by the Convention, in accordance with article 7 thereof. It also urges the State party to provide in its second periodic report information on actual practice in that regard and relevant examples.**

### Right to an effective remedy

22. The Committee notes the information provided by the State party that every person, regardless of nationality, has access to the courts and enjoys the protection of the rights guaranteed by law. However, the Committee notes with concern that no information has been provided on the number of cases and/or proceedings brought before those organs, including the Commission on Human Rights and Administrative Justice, since the ratification of the Convention by the State party, by migrant workers and members of their families, including those in an irregular situation, which may reflect a lack of awareness on their part of their rights and of the legal remedies available to them.

**23. The Committee urges the State party to ensure that, in law and in practice, migrant workers and members of their families, including those in an irregular situation, have equal opportunities to nationals of the State party to file complaints and obtain effective redress in the courts, in cases where their rights under the Convention are violated. The Committee also urges the State party to take additional measures to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in case of a violation of their rights under the Convention.**

## 3. Human rights of all migrant workers and members of their families (arts. 8–35)

24. The Committee notes the State party's claim that measures are in place to ensure that, in criminal and administrative proceedings, including detention and expulsion proceedings, migrant workers and members of their families, in particular those in an irregular situation, are provided with the necessary legal assistance and that due process is guaranteed. However, the Committee is concerned about:

(a) The absence of precise, detailed information regarding migrant workers and members of their families in detention, the implementation of the right to equality of migrant workers and members of their families with nationals of Ghana before the courts and tribunals in criminal or administrative proceedings;

(b) The increasing number of expulsions of migrant workers in recent years and the absence of statistical figures explicitly highlighting the number of migrant workers in detention;

(c) The absence of information regarding the possibility by migrant workers to challenge expulsion orders.

**25. With reference to the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, the**

Committee recalls that administrative detention should only be used as a last resort, and recommends that the State party consider alternatives to administrative detention. It further recommends that the State party:

- (a) Include in its second periodic report detailed disaggregated information on the number of migrant workers detained for immigration offences and the place, average duration and conditions of their detention;
- (b) Ensure that migrant workers detained for violations of immigration law are held in special facilities, separately from ordinary prisoners;
- (c) Provide updated information, including disaggregated statistics, on the numbers of expulsions as well as the procedures used;
- (d) Ensure that the minimum guarantees enshrined in the Convention are assured with regard to criminal or administrative charges against migrant workers and members of their families.

26. While noting the extensive consular and diplomatic assistance offered by the State party to migrant workers, the Committee is concerned that not enough practical information was made available to the Committee on the specific assistance offered to migrant workers and members of their families to ensure the protection of their rights.

27. **The Committee recommends that the State party ensure that all migrant workers and members of their families have recourse to consular support for the protection of the rights set out in the Convention. It recommends that the State party ensure that its embassy and consulate personnel abroad have appropriate knowledge about the laws and procedures of the countries of employment of Ghanaian migrant workers.**

28. The Committee notes with interest the information before the Committee that all migrant workers have the right to social security and retirement pension. Nevertheless, the Committee regrets the lack of information on the practical implementation of this right, including information on the legal requirements that migrant workers in an irregular situation would have to fulfil to have access to social security on equal terms as nationals. It also regrets that no information on bilateral and multilateral social security agreements concluded by the State party was made available.

29. **The Committee recommends that the State party:**

- (a) **Ensure that all migrant workers and members of their families are able to subscribe to a social security scheme and that they are informed of their rights in that regard;**
- (b) **Enter into bilateral and multilateral social security agreements in order to guarantee the social protection of migrant workers.**

30. The Committee notes with interest the initiatives to encourage the transfer of earnings and savings by Ghanaian migrant workers to productive projects in the State party. Nevertheless, the Committee notes with concern the absence of information about partnerships with financial institutions to facilitate the transfer of earnings and savings for Ghanaian migrant workers abroad and for migrant workers in the State party.

31. **The Committee encourages the State party to expedite current efforts to facilitate the transfer of remittances by Ghanaian migrant workers abroad. It also recommends that the State party undertake measures to facilitate the transfer of earnings and savings by migrant workers in Ghana with preferential transfer and reception fees and to make savings more accessible to migrant workers and members of their families.**

32. Although the Committee notes with appreciation the initiatives carried out by the State party in collaboration with the media to inform migrant workers and members of their families of the risks of irregular migration and of crossing the Saharan desert, it regrets the limited information on initiatives seeking to provide information to migrant workers and members of their families on the rights arising out of the present Convention and the rights and obligations in Ghana.

**33. The Committee encourages the State party to make available to migrant workers and members of their families, free of charge, and to the extent possible, in a language that they are able to understand appropriate information on the rights set out in the Convention and their rights and obligations in Ghana. The Committee also recommends that the State party:**

**(a) Continue its collaboration with the media to inform migrant workers of their rights under the Convention;**

**(b) Conduct capacity-building programmes on the Convention for relevant public officials, such as law enforcement officials, embassy and consular staff, social workers, judges, prosecutors and other government officials.**

**4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**

34. The Committee notes the claim by the State party that migrant workers can, in principle, form associations and trade unions, but regrets the lack of practical information regarding the implementation of this right.

**35. The Committee recommends that the State party take the necessary measures to guarantee to migrant workers and members of their families, both in law and in practice, the right to form, and be a member of the executive bodies of, associations and unions for the promotion and protection of their economic, social, cultural and other interests, in accordance with article 40 of the Convention.**

36. The Committee notes with appreciation that national legislation recognizes the right of Ghanaians residing abroad to participate in public affairs in Ghana and to vote. It also notes the vote-by-proxy mechanism for migrant workers residing abroad, but is concerned that the mechanism, as described by the delegation of the State party, is inadequate to guarantee the exercise of the right to vote and participate in public affairs for Ghanaian migrant workers and members of their families.

**37. The Committee encourages the State party to undertake measures, including those of a legislative nature, to ensure the implementation of the right to vote for Ghanaian migrant workers residing abroad and, in the near future, to increase its efforts towards facilitating the exercise of the right to vote by Ghanaian nationals residing and working abroad in the presidential elections to be held in 2016.**

38. The Committee notes with interest the establishment of the Diaspora Affairs Bureau and its mandate to develop a diaspora policy, but regrets the lack of clarity about processes and fora for Ghanaian migrant workers abroad to participate in consultations regarding their views on how to contribute to national development.

**39. The Committee recommends that the State party ensure that the Diaspora Affairs Bureau facilitate consultations and exchange of views with Ghanaian diaspora associations about their contribution to national development processes.**

**5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

40. The Committee is concerned that no bilateral or multilateral agreements have been concluded with countries of employment of Ghanaian migrant workers with a view to protecting their rights. The Committee notes with particular concern the information provided by the delegation of the State party of cases of violence, abductions and deaths in countries of transit used by Ghanaian migrant workers on their way to destination countries, mainly into Europe.

**41. The Committee recommends that the State party enter into agreements with the countries of employment and transit in order to better protect the rights of Ghanaian migrant workers and facilitate the provision of appropriate consular and other services.**

42. While noting with interest the information on the project for Ghanaian nurses working abroad to perform temporary professional service in Ghana with a view to fostering liaison between the State party and potential returnees, the Committee is concerned about the lack of clarity about the measures taken by the State party to promote the reintegration of Ghanaian migrant workers and members of their families returning to Ghana.

**43. The Committee recommends that the State party take measures to ensure the appropriate social, economic or other necessary conditions to facilitate the return and durable reintegration of Ghanaian migrant workers and members of their families in the State party, as provided for in article 67 of the Convention.**

44. The Committee acknowledges the efforts made by the State party to combat trafficking in persons and the commercial sexual exploitation of migrant workers, as well as initiatives to counter human smuggling and other irregular migration. However, the Committee remains concerned about:

(a) The lack of information about progress in the implementation of the Human Trafficking Act and the Immigration Amendment Act;

(b) The absence of information on the number of convictions of traffickers and smugglers;

(c) The absence of statistical information on victims of trafficking in persons and smuggling of migrant workers;

(d) The insufficient services and resources dedicated to victims of trafficking and smuggling and to awareness-raising campaigns.

**45. The Committee urges the State party to:**

**(a) Step up its efforts to enforce the Human Trafficking Act and the Immigration Amendment Act and its regulations, allocate sufficient resources for the implementation of strategies to combat trafficking in persons and counter human smuggling and other irregular migration and build the capacity of border guards, law enforcement officials, judges, prosecutors, labour inspectors, teachers and other social service providers on the existing legal framework and its implementation with regard to both trafficking in persons and human smuggling as well as other irregular migration;**

**(b) Promptly, effectively and impartially investigate, prosecute and punish all acts of trafficking in persons, human smuggling and other related offences, and deal expeditiously with cases filed against traffickers and human smugglers;**

(c) **Develop effective mechanisms to identify victims of trafficking and smuggling, especially migrant women and children, and build the capacity of relevant law enforcement and other officials with regard to their implementation;**

(d) **Systematically collect disaggregated data on trafficking in persons and human smuggling as well as on other irregular migration;**

(e) **Provide adequate assistance, protection and rehabilitation to all victims of trafficking in persons and smuggling of migrants, including in cooperation with civil society and organizations for migrant rights, and ensure that victims of trafficking and human smuggling are informed of their rights under the Convention;**

(f) **Increase collaboration within schools, families and communities on prevention initiatives and continue collaborating with the media to educate the public about trafficking in persons and human smuggling.**

46. The Committee regrets the lack of clarity regarding the concrete measures taken by the State party to ensure that the situation of irregular migrant workers and members of their families within its territory does not persist.

47. **The Committee encourages the State party to take appropriate measures to consider the establishment of procedures for regularizing the situation of migrant workers in an irregular situation so as to ensure that such a situation does not persist, and ensure that migrant workers in an irregular situation are informed about such procedures.**

## **6. Follow-up and dissemination**

### **Follow-up**

48. **The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that those recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly as well as local authorities.**

49. **The Committee requests the State party to involve civil society organizations more closely in the implementation of the recommendations contained in the present concluding observations**

### **Follow-up report**

50. **The Committee requests the State party to provide, within two years, i.e. by 5 September 2016, written information on the follow-up to the recommendations contained in paragraphs 23, 25, 31, 37, 41 and 45 above. The Committee recommends that the State party take all appropriate measures to ensure that those recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly, as well as to local authorities.**

### **Dissemination**

51. **The Committee likewise requests the State party to disseminate the Convention and the present concluding observations widely, including to public agencies, the judiciary, non-governmental organizations and other members of civil society, so as to**



increase awareness thereof among the judicial, legislative and administrative authorities, civil society and the public in general.

7. Technical assistance

52. The Committee recommends that the State party avail itself of international assistance, including technical assistance, to develop a comprehensive programme for the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with the specialized agencies and programmes of the United Nations system.

8. Next periodic report

53. The Committee requests the State party to submit its second periodic report by 5 September 2019 and to include therein information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention. In that way, the State party does not submit its report in the traditional manner. This new optional procedure was adopted by the Committee at its fourteenth session in April 2011 (see A/66/48, para. 26).

54. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (CMW/C/2008/1) and reminds it that periodic reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.

55. The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all relevant stakeholders, including civil society, migrant workers and human rights organizations.

56. The Committee also invites the State party to submit an updated common core document, not exceeding 42,400 words, in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).