



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

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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 first periodic 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, in response to the list of issues prior to reporting. The Committee also appreciates the dialogue held with the delegation of the State party. However, the Committee regrets the fact that the written replies to the list of issues prior to reporting were only submitted on 31 August 2014, which did not allow sufficient time for their translation into the working languages of the Committee or for due consideration of the report by the Committee. It also regrets that the replies contained therein often remained general or incomplete, especially regarding 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 as a positive step the adoption of the following instruments:

- (a) The Immigration Amendment Act (2012) to provide 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 (2006); and
- (c) The Human Trafficking Act (2005) and its Amendment (2009).

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

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

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; and

(b) There is insufficient coordination of the institutions and services that deal with the various measures to implement the rights under the Convention and that 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 encourages the State party 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 between ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention and that it ensure a clear mandate and appropriate and 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 communications from States parties and individuals.

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) Conventions No. 97 (1949) concerning Migration for Employment and 189 (2011) concerning decent work for domestic workers.

11. The Committee invites the State party to consider acceding to ILO Conventions No. 97 (1949) and 189 (2011), which concern migrant workers, as soon as possible.

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 and 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 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 an understanding of the situation of migrant workers in the State party and to assess 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 such data, including on migrant workers in an irregular situation, be disaggregated in order to effectively inform the migration policy and for the application of the various provisions of the Convention.

Training in and dissemination of the Convention

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

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

(a) Make available information about the rights under the Convention 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 officials, judges, prosecutors and responsible consular officers, as well as local officials and social workers; and

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

Corruption

18. The Committee expresses concern about the reports of migrant workers and members of their families victims of corruption among officials from various institutions with responsibilities related 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 on them 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 that it raise awareness among migrant workers and members of their families as to 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. It 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 that the State party ensure that all migrant workers and members of their families within their territory or subject to their jurisdiction enjoy, without discrimination, the rights recognized by the Convention in accordance with article 7. It also urges that the State party provide information on the actual practice in this regard and relevant examples in its second periodic report.

Right to an effective remedy

22. The Committee notes the information provided by the State party that every person, regardless of their 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 was provided on the number of cases and / or proceedings brought to these 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 of their rights and of the legal remedies available to them.

23. The Committee urges that the State party 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 case that their rights under the Convention have been violated. The Committee also urges that the State party 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 takes note of 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 numbers of expulsions of migrant workers in recent years and the absence of statistical figures explicitly highlighting the number of migrant workers in detention; and

(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 look for alternatives to administrative detention. It further recommends that State party:**

(a) Include in its second periodic report detailed disaggregated information, on the number of migrant workers detained for immigration offences and on the place, average duration and conditions of their detention;

(b) Ensure that detention of migrant workers for violations of immigration law is used in special facilities, separately from ordinary prisoners;

(c) Supply updated information, including disaggregated statistics on the numbers of expulsions as well as the procedures used; and

(d) Ensure that the minimum guarantees enshrined in the Convention are assured regarding 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, 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 contemplated 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 information before the Committee that any migrant worker has 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 in equality with 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 this regard; and

(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 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, as well as 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 appropriate information to migrant workers and members of their families, free of charge, and to the extent possible, in a language they are able to understand on the rights arising out of the present Convention and the rights and obligations in Ghana. The Committee also recommends the State party to:

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

(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 to form part of the executive bodies of, associations and unions, for the promotion and the 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 of Ghana and to vote. It also notes the mechanism of vote by proxy for migrant workers residing abroad but is concerned that this mechanism, as described by the State party delegation, 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 with a view to facilitating the exercise of the right to vote by its nationals residing and working abroad in the 2016 presidential elections.

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

39. The Committee recommends that the State party ensure that the Diaspora Affairs Bureau facilitate consultations and exchange of views with the Ghanaian

diaspora associations about their contributions to the processes of national development.

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 those countries of employment of Ghanaian migrant workers with a view to protecting their rights. The Committee notes with special concern the information provided by the delegation of the State party of cases of violence, abductions and deaths, in those countries of transit used by Ghanaian migrant workers towards 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 information on the State party's project for Ghanaian nurses working abroad to carry out temporary professional practices in Ghana with a view to encouraging a liaison with the State party and a potential return, 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 returning to the State party as contemplated in article 67 of the Convention.

44. The Committee acknowledges the State party's efforts 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; and

(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) Increase its efforts to enforce the Human Trafficking Act, the Immigration Amendment Act and its regulations, allocate sufficient resources to implementing strategies to combat trafficking in persons and counter human smuggling and other irregular migration, and build 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 regarding

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 the 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 capacity of relevant law enforcement and other relevant officials, on their implementation;

(d) Systematically collect disaggregated data on trafficking in persons and human smuggling as well as 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 migrants rights' organizations, and ensure that victims of trafficking and human smuggling are informed of their rights under the Convention; and

(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 concrete measures undertaken 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 possibility of establishing procedures for regularizing the situation of migrant workers in an irregular situation to ensure that such a situation does not persist and to 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 made in the present concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these 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.

49. 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 its list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult migrant workers' and human rights organizations in the implementation of recommendations made in the present concluding observations.

Follow-up report

50. The Committee requests the State party to provide a follow-up report within two years of the recommendations contained in paragraphs 23, 25, 31, 37, 41 and 45, i.e., by 5 September 2016. The Committee recommends that the State party should take all appropriate measures to ensure that these 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 these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations and other members of civil society, so as to increase awareness among judicial, legislative and administrative authorities, civil society and the public in general. The Committee also requests the State party, when preparing its reports to broadly consult with all relevant stakeholders, including civil society organizations.

7. Technical Assistance

52. The Committee recommends that the State party avails itself of international assistance, including technical assistance to develop a comprehensive programme aimed at 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 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 in it information on the implementation of the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines (CMW/C/2008/1). Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of issues constitute its report under article 73 of the Convention, without the State party having to submit a traditional periodic report. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26). The Committee notes that periodic reports should not exceed 21,200 words (please see General Assembly resolution 68/268, adopted on 9 April 2014, paragraph 16). In the event 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 resolution. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.

54. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of 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).
