



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 second periodic report of the Plurinational State of Bolivia, adopted at its eighteenth session (15–26 April 2013)

1. The Committee considered the second periodic report of the Plurinational State of Bolivia (CMW/C/BOL/2) at its 216th and 217th meetings (CMW/C/SR.216 and SR.217), held on 16 and 17 April 2013. At its 232nd meeting (CMW/C/SR.232), held on 26 April 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party and thanks the State party for its written replies to the list of issues (CMW/C/BOL/Q/2/Add.1), although it regrets that the replies do not give sufficient information on issues of a legal and practical nature.

3. The Committee thanks the State party for sending a delegation headed by the Permanent Representative of Bolivia to the United Nations Office at Geneva, but regrets that the delegation did not include experts on the issues covered by the Convention coming from the capital. The Committee appreciates the dialogue between the delegation and Committee members, even though the majority of the answers were not precise, clear and complete. Concise answers were not forthcoming to many of the questions raised about the implementation of the Convention.

4. The Committee notes that some of the countries in which Bolivians have settled are members of the Southern Common Market (MERCOSUR) and the Andean Community (CAN) and therefore have access to the benefits of the MERCOSUR and CAN migration agreements.

B. Positive aspects

5. The Committee reiterates its appreciation for the political will expressed by the State party to improve its response to the needs of Bolivian migrant workers abroad and for recognizing migration as a priority.

6. The Committee welcomes the participation of Bolivians living in Argentina, Brazil, Spain and the United States of America in national Bolivian elections for the first time in 2009.

7. The Committee is pleased to note that the State party's new Constitution recognizes the rights of Bolivians to "freedom of residence, sojourn and movement throughout Bolivian territory, including the right to leave and enter the country".

8. The Committee welcomes as a positive step the adoption of the following instruments:

- (a) Act No. 251 on the protection of refugees (2012);
- (b) Organic Act No. 260 on the Public Prosecution Service (2012);
- (c) Comprehensive Act No. 348 on guaranteeing a life free of violence for women (2013);
- (d) The supreme decrees, including Nos. 741 and 0327, designed to make it easier for Bolivians to obtain personal documents wherever they live.

9. The Committee appreciates the State party's efforts to combat trafficking in persons, especially its efforts in coordination with neighbouring countries to eradicate the practice. It takes note with interest of the adoption of Comprehensive Act No. 263 on human trafficking and smuggling, and of the establishment of the Plurinational Council on Human Trafficking and Smuggling.

C. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

10. The Committee considers that the State party has not supplied sufficient detailed information on legal measures taken and notes the scarcity of information on the practical steps taken to implement the Committee's previous concluding observations (CMW/C/BOL/CO/1).

11. The State party is encouraged to put into practice all the recommendations addressed to it by the Committee and to take the necessary steps to ensure that its laws promote the effective implementation of the Convention.

12. The Committee notes that the adoption of the Migration Bill is still pending and is concerned that, until it enters into force, the current legislation on migration, Supreme Decree No. 24423 (1996), is inadequate for implementing the provisions of the Convention and protecting the rights of all migrant workers and members of their families in the State party.

13. The Committee recommends that the State party should ensure that the Migration Act is fully in line with the Convention as regards extending protection of the rights recognized therein to all migrant workers and members of their families in the State party, and that the Act is adopted without further delay.

14. The Committee reiterates that the State party has still 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, and encourages it to do so as soon as possible.

15. The Committee reiterates its recommendation and encourages the State party to make the declarations provided for in articles 76 and 77 of the Convention (CMW/C/BOL/CO/1, para. 12).

16. The Committee notes that the State party has still not acceded to International Labour Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment, or to Convention No. 143 (1975), concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

17. The Committee reiterates its invitation to the State party to consider acceding to ILO Conventions No. 97 and No. 143 (CMW/C/BOL/CO/1, para. 16) and encourages it to consider acceding to ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

Data collection

18. The Committee notes with interest that the State party included questions about migration for the first time in the 2012 population census. However, the Committee observes the lack of information relating to the various criteria needed to evaluate the effective implementation of the Convention, particularly as regards migrants in transit, women migrants, unaccompanied child migrants and cross-border and seasonal migrant workers. In particular, the Committee is concerned about the limited coordination between the National Institute of Statistics, the Directorate-General of Employment and the Directorate-General of Migration in terms of sharing information on migration.

19. The Committee reiterates its previous recommendation to the State party (CMW/C/BOL/CO/1, para. 18) and encourages the State party to create a sound centralized database covering all aspects of the Convention and to include in it systematic data disaggregated to the extent possible with a view to adopting an effective migration policy and applying the provisions of the Convention. It also recommends that the State party should take steps to improve inter-institutional coordination and ensure that the National Institute of Statistics has the human and financial resources it needs to fulfil its mandate as set out in Decree-Law No. 14100.

Training in and dissemination of the Convention

20. The Committee reiterates its concern that no measures have been taken to disseminate information and promote the Convention among all the relevant stakeholders, in particular local government bodies and civil society organizations (CMW/C/BOL/CO/1, para. 19).

21. The Committee reiterates its previous recommendations (CMW/C/BOL/CO/1, para. 20) that the State party should:

(a) Intensify training for all officials working in the area of migration, in particular police and border personnel, as well as officials at the local level and in consulates dealing with migrant workers;

(b) Take the necessary steps to ensure access by migrant workers to information and guidance on their rights under the Convention;

(c) Continue to work with civil society organizations in order to disseminate information and to promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

22. The Committee takes note with interest of the Act on the Elimination of Racism and All Forms of Discrimination and the related National Committee and National Action Plan for 2012–2015, but regrets that these do not treat migrant workers and members of their

families as a group at risk of discrimination. Moreover, the Committee remains concerned that law enforcement personnel in the State party continue to discriminate against certain groups of migrant workers, especially in border areas, and refugees.

23. **The Committee reiterates its previous recommendation that the State party should ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7. It also urges the State party to take immediate and effective measures to combat prejudice and social stigmatization, including by training the public servants concerned, educating the general public and running awareness campaigns.**

Right to an effective remedy

24. The Committee expresses its deep concern about the persistence of various factors that impede access to justice, such as systematic delays and corruption. It is also concerned about the State party's explanation that the courts have not recorded any cases of administrative or legal remedies, even though the right of migrant workers whose rights have been violated to an effective remedy is guaranteed by law, including the new Constitution. The Committee notes the lack of information on how to assert this right to a remedy before the competent authorities.

25. **The Committee reminds the State party that the mere absence of complaints and legal action by migrant workers whose rights have been violated may be largely an indication of the absence of specific legislation on the subject, ignorance of the available legal remedies or an unwillingness on the part of the authorities to prosecute. The Committee reiterates its previous recommendation that the State party should inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them and that it should process their complaints as efficiently as possible. It also recommends that the State party should ensure that migrant workers and members of their families, including those in an irregular situation, have the same opportunities as nationals of the State party to file complaints and to obtain effective redress from the courts when their rights under the Convention have been violated (CMW/C/BOL/CO/1, para. 24).**

26. The Committee is concerned that the Ombudsman's Office does not receive sufficient public funding, since a considerable part of its budget comes from outside sources.

27. **The Committee urges the State party to provide the Ombudsman's Office with the human and financial resources it needs to carry out all the activities related to the rights of migrant workers and members of their families provided for in its mandate.**

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

28. The Committee notes with concern that, notwithstanding the information provided by the State party, it is still not clear whether migrant workers subject to an expulsion order are entitled to appeal against the expulsion order within the time limits set out in Supreme Decree No. 24423 (1996) and in conformity with the provisions of the Convention.

29. **The Committee reiterates its recommendation that the State party should ensure that migrant workers and members of their families can only be expelled from the territory of the State party pursuant to a decision taken by the competent authority in conformity with the law, and that the right to appeal against this decision is respected, and also that the decision is suspended until the review has been completed (CMW/C/BOL/CO/1, para. 30).**

30. The Committee notes with appreciation the progress made in improving and expanding the State party's consular services. However, the Committee is concerned at the lack of information on the protection and assistance provided by the State party's consulates to migrant workers abroad, especially in cases involving deprivation of liberty and/or an expulsion order.

31. **The Committee recommends that the State party should take the necessary steps to ensure that its consular services respond more effectively to protect and promote the rights of Bolivian migrant workers and members of their families where necessary and that, in particular, they provide the necessary assistance to any of them who are in detention or subject to an expulsion order.**

32. The Committee is concerned at the lack of information on measures taken by the State party to eliminate obstacles to access to emergency medical treatment by migrant workers and members of their families and at the lack of information on their inclusion in the State party's social security system.

33. **The Committee recommends that the State party should guarantee effective access for all migrant workers and members of their families to emergency medical treatment and, where applicable, to social security benefits.**

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 expresses concern that both article 138 of the Decree regulating the General Labour Act and articles 6 (c) and 7 of Decree-Law No. 2565 impede the exercise by migrant workers in the State party of the right to form or join a trade union.

35. **The Committee recommends that the State party should adopt, as a matter of urgency, all necessary measures, including legislative amendments, to guarantee the right of migrant workers and members of their families to form associations and trade unions, in accordance with article 40 of the Convention.**

36. **The Committee recognizes the efforts of the State party to facilitate the right to vote of Bolivian migrant workers living abroad but regrets that, in the 2009 presidential elections, only migrant workers at four destinations were taken into consideration.**

37. **In the light of the forthcoming presidential elections in 2014, the Committee encourages the efforts of the State party to guarantee the right to vote of Bolivian migrant workers living abroad.**

38. The Committee regrets the lack of information on measures taken by the State party to facilitate family reunification in practice.

39. **The Committee urges the State party to provide specific information in its next periodic report on practical measures taken to facilitate family reunification.**

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 reiterates its concern about the lack of coordination and clarity of the mandates of the various governmental bodies and institutions involved in the management of migration-related matters (CMW/C/BOL/CO/1, para. 35). It observes that no information has been provided on how or by which public entity current or potential migrant workers are informed and advised about all the issues related to the migration process and about their rights and obligations.

41. The Committee recommends that priority should be given to the establishment of a single mechanism to coordinate and supervise the government institutions and bodies responsible for protecting and assisting all migrant workers and members of their families. It also recommends that the State party should consider establishing clear procedures for the participation of civil society organizations working in the field of migration in drawing up the State party's rules and regulations. The Committee reiterates its recommendation that the State party should ensure that the Convention is taken into account in the formulation and implementation of all policies related to the rights of migrant workers (CMW/C/BOL/CO/1, para. 36).

42. The Committee regrets the lack of information on the impact of the arrangements for providing assistance under the programme of voluntary return to the State party. The Committee is also concerned that there is no comprehensive return strategy to help migrant workers during the process of return and for self-employment.

43. The Committee reiterates its recommendation that the State party should continue to facilitate the voluntary return of Bolivian migrant workers and members of their families, as well as their durable social and cultural reintegration. It also encourages the State party to promote the participation of Bolivian migrant workers and members of their families in drawing up voluntary return programmes.

44. The Committee takes note of the State party's efforts to deal with human trafficking but expresses concern at the lack of data on the scale of the phenomenon in the State party and, especially, on the number of cases in vulnerable groups such as women and children. It also reiterates its deep concern about the limitations of the policy on prevention, protection and assistance for the victims of trafficking (CMW/C/BOL/CO/1, para. 42).

45. The Committee recommends that the State party should draw up and implement a national strategy to combat trafficking in persons, and particularly trafficking in women and children, which includes the following measures:

- (a) Systematically collecting disaggregated data on human trafficking;
- (b) Ensuring compliance with Comprehensive Act No. 263 on human trafficking and smuggling and allocating sufficient financial and human resources to the Plurinational Council on Human Trafficking and Smuggling to make sure that the Act is implemented;
- (c) Stepping up its campaigns to stop human trafficking, especially in border areas where the highest numbers of trafficking victims are recorded;
- (d) Affording protection and assistance to all victims of human trafficking, particularly by providing shelters and implementing projects to help the victims of trafficking to rebuild their lives;
- (e) Reinforcing training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers and the staff of the State party's embassies and consulates, and distributing more widely the Single Protocol for Special Assistance to the Victims of Trafficking and Smuggling.

6. Follow-up and dissemination

Follow-up

46. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in these 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 Plurinational Legislative Assembly, as well as to local authorities.

47. The Committee requests the State party to involve civil society organizations more closely in the preparation of the State party's third periodic report.

Dissemination

48. The Committee likewise requests the State party to disseminate these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to bring them to the attention of Bolivian migrants abroad and foreign migrant workers in transit or residing in Bolivia.

7. Next periodic report

49. The Committee requests the State party to submit its third periodic report by 1 July 2018. 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).
