



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 Burkina Faso, adopted by the Committee at its nineteenth session (9–13 September 2013)

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the initial report of Burkina Faso (CMW/C/BFA/1) at its 233rd and 234th meetings (CMW/C/SR.233 and 234), held on 9 and 10 September 2013, and adopted the following concluding observations at its 241st meeting (CMW/C/SR.241), held on 13 September 2013.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the initial report of the State party and thanks the State party for its replies (CMW/C/BFA/Q/1/Add.1) to the list of issues, which were submitted in the allotted time.

3. The Committee commends the State party for sending a high-level delegation led by the Secretary-General of the Ministry of Human Rights and the Promotion of Civic Responsibility, Mr. Amadou Consigui, and including the Permanent Representative of Burkina Faso with the United Nations Office at Geneva, the Assistant Permanent Representative of Burkina Faso with the United Nations Office at Geneva and representatives of the various ministries and of the Permanent Mission. The Committee highly values the dialogue held between the delegation and its members, notwithstanding the fact that some of the written and oral replies were not sufficiently precise or lacked statistical data.

4. The Committee notes that the countries where most of the migrants from the State party are employed are not yet parties to the Convention, which is an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee notes with satisfaction the following legislative and policy measures:

(a) Adoption of Act No. 062-2009/AN and Decree No. 2010-559/PRES/PM/MPDH governing the new National Human Rights Commission, which has

the power to carry out investigations and to receive communications relating to the situation of individuals, including migrant workers, and to carry out visits to places of detention;

(b) Conclusion of the Agreement between Burkina Faso and France on the Joint Management of Migration and Development Solidarity, signed in 2009, which touches upon several fields covered by the Convention;

(c) The signing, in 2013, of an agreement for the coordinated management of migration between Burkina Faso and Malta.

6. The Committee notes with satisfaction the ratification by the State party of the following international treaties:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2010;

(b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2012;

(c) The Employment Policy Convention, 1964 (No. 122) of the International Labour Organization (ILO), in 2009.

C. Factors and difficulties impeding implementation of the Convention

7. The Committee recognizes the difficulties faced by the State party, in particular the porous nature of its borders, sociopolitical crises in certain neighbouring countries and the effects of climate change, that may impede the full realization of all the rights and fundamental freedoms of migrant workers and members of their families.

D. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

8. The Committee notes with regret 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 invites the State party to consider making the declarations provided for under articles 76 and 77 of the Convention.

10. While taking note of the fact that the State party has undertaken to ratify the ILO Domestic Workers Convention, 2011 (No. 189) in the near future, the Committee notes that the State party is not yet a party to this instrument.

11. The Committee recommends that the State party ratify ILO Convention No. 189 and set a specific deadline for its ratification.

12. The Committee notes the State party's intention to draw up and approve a national strategy on migration for the period 2014–2025, together with a three-year rolling plan for 2014–2016. It regrets, however, that the strategy has not yet been adopted. Furthermore, the Committee welcomes the implementation of the Convention by the State party, but is concerned about shortcomings in coordination between the various ministries.

13. The Committee encourages the State party to expedite the adoption of the national strategy on migration, making available the resources necessary to ensure its implementation and to guarantee regular follow-up. The Committee recommends that

the State party ensure better coordination between the ministries involved in implementing the Convention.

Data collection

14. While noting the State party's efforts to disaggregate the data from population censuses and to provide some statistical data in its oral replies, the Committee regrets the lack of precise statistical data on issues related to migration, such as migratory flows into and from the State party and the total number of migrant workers and their family members. It points out that such information is essential to understanding the migratory situation in the State party and to assessing the degree to which the Convention is applied.

15. The Committee strongly encourages the State party, as part of its new national strategy on migration and three-year plan of action, to set up a centralized database with data disaggregated by sex, age and origin, with a view to better understanding the migration context and the situation of migrant workers in the country, including those in an irregular situation, to allow the effective implementation of its migration policy and to monitor implementation of the Convention. If no exact information is available, the Committee would welcome data based on studies or estimates.

Training on and dissemination of the Convention

16. The Committee notes with interest the training sessions held for police officers, border guards and judges in the State party. However, it notes with concern that this training is not mandatory and is not offered on a systematic basis to all public servants who deal with migrant workers.

17. The Committee recommends that the State party step up its efforts to systematically provide mandatory training on the content and direct applicability of the Convention to all public servants who work with migrant workers, particularly judges, police officers and border guards, immigration officials and consular staff, labour inspectors and social workers.

2. General principles (arts. 7 and 83)

Right to an effective remedy

18. The Committee takes note of the information from the State party that all persons, whatever their nationality, have access to the courts and enjoy protection of the rights guaranteed by law. While welcoming with interest the information on the judicial and administrative bodies that are competent to receive complaints from migrant workers, the Committee is concerned to note that no information has been provided on the number of cases and/or appeals heard by the various bodies, including the National Human Rights Commission, since ratification of the Convention by the State party, which may indicate that migrant workers are unaware of the remedies available, or that the relevant legislation is ineffective. Furthermore, the Committee is concerned at the shortcomings in the judicial system mentioned by the State party that prevent migrant workers from having real access to effective remedies if their rights are violated. The Committee also regrets the absence of any information on the implementation of Decree No. 2009-558/PRES/PM/MJ/MEF/MATD on legal assistance and procedures for migrant workers to obtain access to such assistance.

19. The Committee invites the State party to:

(a) Ensure, both in law and in practice, that migrant workers and members of their families, including those in an irregular situation, have the same rights as

nationals of the State party to file complaints and to obtain effective redress in the courts when their rights have been violated;

(b) Inform migrant workers and members of their families of the judicial and other remedies available to them for violations of the Convention, and address their complaints as effectively as possible;

(c) Ensure that migrant workers are duly informed of the procedure for obtaining legal assistance and, in its next periodic report, provide information on cases in which migrant workers have benefited from legal assistance.

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

20. The Committee notes the State party's efforts to prevent forced labour. It remains nevertheless concerned about the fact that the practice is continuing and persisting, in particular in the case of migrant workers, who are often victims of forced labour, abuse and other forms of exploitation, such as inadequate pay or excessive working hours, notably in agriculture, mining and domestic work. The Committee notes with concern the situation of migrant women in an irregular situation employed as domestic workers, who are vulnerable to exploitation as well as prostitution. The Committee is concerned about the lack of information on action taken against employers who use forced labour, despite the provisions that exist, including for use by the labour inspectorate, which is authorized to bring any violations or abuse in the workplace to the attention of the authorities.

21. The Committee urges the State party to:

(a) Ensure that the labour inspectorate monitors the working conditions of both regular and irregular migrant workers more consistently, extending application of the Convention to the informal sector and systematically reporting cases of abuse to the authorities;

(b) Ensure that all migrant workers, in particular migrant women in domestic employment, have access to effective mechanisms to complain against those who exploit them and violate their rights, and are duly informed of the procedures available;

(c) Step up its efforts to implement its legal provisions and impose fines and other more severe penalties on employers who exploit migrant workers or submit them to forced labour and other abuses.

22. While noting the development of an annual plan of action on child beggars and the creation of a monitoring committee, the Committee is concerned about the particular vulnerability of *talibé* or *garibou* migrant children forced into begging, particularly those who are in an irregular situation, separated from their families or unaccompanied, and the absence in the action plan of measures that take them fully into account. Although it takes note of the State party's efforts for the reintegration of unaccompanied children, the Committee is concerned about the absence of measures to provide them with protection and specialized assistance.

23. In the light of the recommendations of the Committee on the Rights of the Child in its concluding observations of 1 February 2013 (CRC/C/OPSC/BFA/CO/1, 2013, paras. 19 and 31), the Committee recommends that the State party ensure that the implementation of the national plan of action on child beggars and unaccompanied children make provision for measures to identify and protect children in a situation of servitude, and allocate sufficient human and financial resources for its implementation.

24. The Committee takes note that the State party has stated that no migrant worker has been detained since 2010. The Committee nevertheless remains concerned that migrant workers arrested for violations of Order 84-49 (1984) may be held in a detention facility for foreign nationals, guarded by the security forces or imprisoned for a period of 1 to 6 months, and is concerned about the contradiction between articles 10, 11 and 12 of the Order. The Committee has indeed taken account of the challenges faced by the State party, but is extremely disturbed by the fact that migrant workers are not held separately from persons accused or found guilty of crimes, and is also concerned about the conditions in prisons.

25. **The Committee invites the State party to:**

(a) Harmonize the content of articles 10, 11 and 12 of Order 84-89 and ensure that the Order is in conformity with the Convention and other international standards;

(b) Ensure that any form of detention of migrant workers for offences against immigration law is not arbitrary and is used only as a measure of last resort;

(c) Take measures to improve conditions of detention, including in detention facilities for foreign nationals, in the light of international standards.

26. Although the State party indicated that no migrant worker or family member had been the subject of an expulsion order since 2010, the Committee notes with concern the lack of information on effective access for migrant workers in an irregular situation to remedies that would allow them to challenge an expulsion decision against them.

27. The Committee recommends that the State party amend its legislation with a view to ensuring that migrant workers and members of their families may be expelled only in application of a decision taken by a competent authority and in accordance with the law, and that it guarantee their right to file an appeal with suspensive effect against such a decision.

28. The Committee welcomes the free birth registration campaign introduced by the State party, but regrets that the campaign has ended, and is concerned about the problems encountered by migrant workers in registering the birth of their children in the State party.

29. The Committee recommends that the State party step up its efforts to ensure that all children of migrant workers are registered at birth and provided with personal identity documents in accordance with article 29 of the Convention, and encourages the State party to relaunch the free birth registration campaign if at all possible. The Committee also recommends that the State party continue to facilitate the presence of the civil registry services in maternity wards, particularly in rural areas, and to raise the awareness of migrant workers and members of their families, particularly those in an irregular situation, of the importance of birth registration.

30. The Committee takes note of the high level of remittances received in the State party from migrant workers abroad and the fact that they are an important source of assistance to development in the country. However, the Committee notes the lack of information available on partnerships with financial institutions to consider introducing preferential rates for remittance transfers and savings.

31. The Committee invites the State party to provide information on existing partnerships with financial institutions and to continue taking steps to expedite and ensure the effectiveness of procedures for sending and receiving remittances, to lower their cost and to make savings as accessible as possible.

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

32. The Committee welcomes the State party's efforts, through its embassies and consulates, aimed at ensuring that migrant workers from Burkina Faso can take part in elections, particularly through awareness-raising and the new statutory provisions on voting for Burkina Faso nationals abroad (Act No. 003-2010/AN of 25 January 2010). The Committee regrets, however, that the effective exercise of the Act has been postponed to 2015.

33. The Committee encourages the State party to guarantee that migrant workers from Burkina Faso will be able to exercise their right to vote during the elections to be held in 2015, in accordance with the new provisions amending the Electoral Code, and to take all necessary measures, including targeted information campaigns, to ensure the effective exercise of this right.

34. The Committee notes the bilateral and multilateral agreements on social security signed with neighbouring countries, such as Côte d'Ivoire, as well as with destination countries of migrant workers from Burkina Faso; it is nevertheless concerned that such agreements should be properly implemented, and it regrets the lack of data in that respect. Furthermore, the Committee notes with interest the system set up in the State party by which migrant workers are registered by their employers, but is concerned about the fact that no information was provided on measures taken to ensure that migrant workers have proper knowledge of the registration procedure.

35. The Committee recommends that the State party promote the proper implementation of bilateral and multilateral agreements and requests the State party to provide information relating to the agreements in its next report. The Committee further recommends that the State party take the necessary measures to ensure that migrant workers are fully aware of the registration system governing their social protection.

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

36. The Committee welcomes the efforts made by the State party to set up mechanisms to support Burkina Faso nationals subject to forced return from countries in crisis, including those of the permanent secretariat of the National Council for Emergency Assistance and Rehabilitation (CONASUR) and the Higher Council for Burkina Faso Nationals Living Abroad. The Committee notes, however, that these are mostly emergency measures, indicating the absence of any overall long-term focus on the forced or voluntary return of thousands of Burkina Faso nationals to the State party. The Committee is particularly concerned about the lack of reception structures, the lack of support for returnees and the absence of measures to facilitate their durable resettlement in economic, social and cultural terms. The Committee is pleased to note the work that the Higher Council for Burkina Faso Nationals Living Abroad has done for migrant workers, as well as its involvement in fostering development in the State party, but is concerned about its lack of visibility in the host countries and about the shortcomings in coordination between the institutions involved in the management of migration, particularly labour migration. Furthermore, it regrets the lack of information on the Council's links with the diaspora and on the results of its activities.

37. The Committee recommends that the State party:

(a) Increase the visibility of the Higher Council for Burkina Faso Nationals Living Abroad in the host countries, and primarily in respect of the diaspora;

(b) Improve coordination between all the institutions involved in managing migration and protecting the rights of migrant workers;

(c) Provide information on the results of the work of the Higher Council for Burkina Faso Nationals Living Abroad;

(d) Develop a national strategy to ensure the durable reintegration into the economic, social and cultural life of the State party of migrant workers who have been forcibly or voluntarily repatriated, including by providing for long-term measures to assist them in the process of return. The Committee invites the State party to provide information on the progress made in this regard in its next periodic report.

38. The Committee welcomes with satisfaction the regional, multilateral and bilateral agreements on combating the trafficking of children and women, the adoption of Act No. 029-2008/AN of 15 May 2008, the Decree of 17 July 2009 establishing a National Watchdog and Monitoring Committee, the Consolidated National Plan to Combat Trafficking of and Violence against Children (for the period from 2008 to 2011) and the partnership agreements with organizations such as the International Organization for Migration and the United Nations Children's Fund (UNICEF), which help to identify cases of trafficking. The Committee is, however, disturbed by the persistence of the practice and notes with concern the inadequacy of the measures taken by the State party to combat the existence of rings that traffic children and women, who are subjected inter alia to forced labour, domestic slavery and prostitution. The Committee is also concerned about the small number of prosecutions brought and convictions handed down, the lack of information on the development of a new plan of action and the absence of victim identification procedures or measures to encourage migrant workers to report violations.

39. The Committee recommends that the State party:

(a) Develop and implement a new national action plan to combat trafficking in persons, especially women and children, together with indicators and measurable objectives, and including the systematic collection of disaggregated data on human smuggling or trafficking;

(b) Intensify prevention campaigns, particularly in the border areas where most trafficking victims are found, and provide the National Watchdog and Monitoring Committee with adequate financial and human resources to allow it to fulfil its mandate;

(c) Strengthen legal proceedings through the strict application of the legal framework to ensure that those responsible for smuggling and trafficking in persons are brought to justice and duly punished, and apply penalties that are sufficiently effective and dissuasive;

(d) Adopt procedures and protocols to allow border guards, labour inspectors, immigration officers and other persons responsible for such activities to rapidly identify victims of trafficking, and to provide those who need protection with access to the asylum procedure if necessary, as well as to appropriate psychological, medical and legal support towards their reintegration;

(e) Build up international, regional and bilateral cooperation, fully implementing existing agreements with countries of origin, transit and destination in order to prevent smuggling and trafficking in persons, and quickly finalize the draft cooperation agreement with Côte d'Ivoire on combating cross-border smuggling and trafficking in persons.

40. The Committee congratulates the State party on the measures it has taken in response to the crises in Côte d'Ivoire and Libya and also for the action it recently took to

help refugees from Mali. The Committee is, however, concerned about the fact that the identity cards issued to refugees are not recognized, or are poorly recognized, in the State party, preventing the refugees from fully enjoying their rights. In particular, the Committee notes the absence of information on specific measures taken with a view to facilitating the regularization of migrant workers in an irregular situation.

41. **The Committee recommends that the State party ensure that the identity cards issued to refugees are fully recognized in the State party and urges it to take all appropriate measures to regularize the situation of migrant workers and members of their families who are in an irregular situation, to avoid them remaining in that situation for an extended period and to ensure that they have effective access to information on the procedures in force for the regularization of their situation.**

6. Follow-up and dissemination

Follow-up

42. **The Committee requests the State party to include in its second periodic report detailed information on the measures taken to follow up on the recommendations made in these concluding observations. It recommends that the State party take all appropriate measures to ensure that these recommendations are implemented.**

43. **The Committee requests the State party to involve the civil society organizations working on migration issues at the national level in the preparation of its second periodic report.**

Dissemination

44. **The Committee likewise requests the State party to disseminate the present concluding observations widely, including to government agencies, the National Assembly, the judiciary, relevant local authorities, non-governmental organizations and other members of civil society, and to take steps to make them known to migrant workers from Burkina Faso abroad and foreign migrant workers residing or in transit in the State party.**

7. Next periodic report

45. **The Committee invites the State party to submit its second periodic report by 13 September 2018 at the latest. Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues. The State party's replies to the list of issues would thus constitute its report under article 73 of the Convention, without the State party having to submit a report according to the usual procedure. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).**

46. **The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next report and to consult a variety of organizations defending migrants' rights and human rights during that phase.**

47. **The Committee invites the State party to follow the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6), and in particular the guidelines on a common core document and treaty-specific documents. The document relating to the Convention itself should not exceed 50 pages and the updated core document should not exceed 80 pages.**