



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

Distr.: General  
1 May 2014  
English  
Original: French

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

### Concluding observations of the Committee on the second periodic report of Mali\*

1. The Committee considered the second periodic report of Mali (CMW/C/MLI/2) at its 247th and 248th meetings (CMW/C/SR.247 and 248), held on 2 and 3 April 2014. At its 261st meeting (CMW/C/SR.261), held on 11 April 2014, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report in response to the list of issues to be considered (CMW/C/MLI/Q/2) prior to the submission of the second periodic report of Mali.

3. The Committee commends the State party on its high-level delegation headed by the Minister of Labour and Social and Humanitarian Affairs, Mr. Hamadou Konaté, and including a representative of the Ministry of Foreign Affairs and International Cooperation, the Permanent Representative of Mali to the United Nations Office at Geneva and other members of the Permanent Mission. The Committee appreciates the dialogue with the delegation, even though the report and the oral responses did not contain enough information — statistical information, in particular — on certain issues.

4. The Committee notes that the countries in which most Malian migrant workers 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 policies and legislative measures:

(a) The adoption of Act No. 2012-023 of 12 July 2012 on combating trafficking in persons and related practices;

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\* Adopted by the Committee at its twentieth session (31 March–11 April 2014).



(b) The adoption of Decree No. 036 PR-RM of 3 February 2011 establishing a national coordinating committee to combat trafficking in persons and related practices;

(c) The adoption of Order No. 06-1940/MPFEF-SG of 8 September 2006 establishing the National Committee to monitor programmes to combat trafficking in children in Mali;

(d) The signing on 15 March 2006 of a funding agreement (MLI 2005-081) for a co-development programme (2006–2009) between Mali and France, including reintegration plans for Malian migrants who had returned to the State party.

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

(a) International Convention for the Protection of All Persons from Enforced Disappearance, in 2009;

(b) Convention on the Rights of Persons with Disabilities, along with the Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2008.

### **C. Factors and difficulties**

7. The Committee acknowledges the difficulties the State party is facing, in particular the recent crisis it went through, the porous nature of its borders and the effects of climate change, which may interfere with 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 satisfaction the delegation's statements that the Labour Code currently being drawn up will incorporate the provisions of the Convention. The Committee is nonetheless concerned that the State party has not yet adopted legal provisions relating to implementation of the Convention.

**9. The Committee invites the State party to take all the steps necessary to ensure that the provisions of the Convention are incorporated into the Labour Code currently being drafted and that the present recommendations are effectively implemented.**

10. The Committee notes with satisfaction the delegation's statement that the State party is committed to taking the necessary steps, with all dispatch, to make the declarations provided for in articles 76 and 77 of the Convention, thereby recognizing the competence of the Committee to receive communications from States parties and individuals.

**11. The Committee recommends that the State party continue working towards making the declarations provided for in articles 76 and 77 of the Convention.**

12. While noting the difficulties mentioned by the State party, such as a lack of resources to meet the obligations that would arise from ratification of the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and of the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Committee regrets that the State is not yet party to those two conventions or to the

ILO Private Employment Agencies Convention, 1997 (No. 181) or the ILO Domestic Workers Convention, 2011 (No. 189).

**13. The Committee reminds the State party that the level of development and a lack of resources cannot justify failure on the part of the State to promote and protect human rights. The Committee recommends that the State party consider ratifying ILO Conventions No. 97, No. 143, No. 181 and No. 189.**

*Data collection*

14. The Committee takes note of the statistics available on the number of migrants in Mali, disaggregated by sex and collected during the fourth general population census in 2009; of the Malikunnafoni database on the number of migrant girls who have received assistance; and of the development since 2011 of a database on migration. Nevertheless, the Committee regrets the lack of statistics, disaggregated by sex, age and origin, on migratory flows to and from the State party, including of members of the families of migrant workers. The Committee recalls that such information is essential to understanding the migratory situation in the State party and to assessing the extent to which the Convention is applied.

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

**(a) Request the necessary technical assistance so that the existing database on migration may be centralized and disaggregated by sex, age and origin, with a view to:**

- (i) Better understanding the migration context and the situation of migrant workers in the State party, including those in an irregular situation;**
- (ii) Allowing the effective implementation of its migration policy;**
- (iii) Monitoring implementation of the Convention;**

**(b) Provide information on the number of Malian migrant workers and members of their families abroad, including those in an irregular situation, and, insofar as possible, on their situation as it pertains to the Convention. Where precise information is not available, the Committee would appreciate receiving reliable data based on studies or credible estimates.**

*Training and dissemination of information on the Convention*

16. While noting with satisfaction the delegation's commitment to enhancing the competence of public officials in migration matters, the Committee notes the lack of information on the existence of training programmes specifically on the Convention for relevant public officials, such as members of the security forces, embassy and consular staff, social workers, judges and prosecutors, as recommended by the Committee in its first concluding observations (CMW/C/MLI/CO/1).

**17. The Committee recommends that the State party institute training sessions specifically on the content and application of the Convention for all public officials working with migrant workers, in particular magistrates, members of the security forces and border guards, immigration officials, embassy and consular staff, labour inspectors and social workers.**

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

*Right to an effective remedy*

18. While noting the information received from the State party concerning the number of migrant workers who have had recourse to judicial remedies, the Committee notes the

limited number of remedies granted and the lack of specific programmes for informing migrant workers of their right to seek remedies before the courts when their rights have been violated.

19. **The Committee invites the State party to inform migrant workers and members of their families of the judicial and other remedies available to them for violations of the Convention and to address their complaints as effectively as possible, without undue delay.**

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

20. While noting the delegation's statements that imprisonment of migrant workers for violating migration legislation is virtually non-existent, the Committee remains concerned by the lack of statistics on this subject. The Committee is likewise concerned by the legislative provisions that impose prison sentences of between 3 months and 3 years on foreign nationals who stay or live in Mali without the required permit or after a permit has expired.

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

(a) **Indicate in its next periodic report the number of migrants, disaggregated by age, sex, nationality and/or origin, who are currently being detained for having violated the legislation on migration, specifying the location, average duration and conditions of detention, and providing information on the decisions taken regarding such migrants;**

(b) **Consider decriminalizing irregular migration and envisaging appropriate administrative penalties for migrants who have violated the legislation on immigration; as stated in its general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, the Committee considers that staying in a country without authorization or proper documentation or overstaying a permit of stay does not constitute a crime;**

(c) **Detain migrant workers for immigration offences only in exceptional circumstances, as a last resort, and ensure in all cases that they are held separately from ordinary prisoners and that women are held separately from men and minors from adults.**

22. The Committee is concerned by the State party's statement that, although residence permits are envisaged by the legislation, they do not currently exist, something which constitutes an obstacle to regularization of the situation of migrant workers and members of their families.

23. **The Committee recommends that the State party should introduce residence permits in practice, as envisaged by Act No. 04-058 of 25 November 2004 on the entry, stay and residence of foreigners in Mali.**

24. The Committee takes note of the delegation's statements that cases of expulsion of migrant workers in an irregular situation are rare. However, it regrets the lack of information on the number of migrant workers who have been expelled and on effective access of migrant workers in an irregular situation to remedies enabling them to dispute a decision to expel them.

25. **The Committee invites the State party to provide more specific information on the number of migrants subject to expulsion proceedings. In addition, it invites the State party to provide information on legal provisions and existing modalities, except where a final decision has been pronounced by a judicial authority, to enable migrants subject to expulsion procedures to exercise the right: (a) to submit the reasons why**

**they should not be expelled; (b) to have their case reviewed by a competent authority; and (c) pending such review, to seek a stay of the expulsion decision, in conformity with article 22, paragraph 4, of the Convention.**

26. The Committee takes note of the information received from the State party according to which consular authorities carry out consular visits to places of detention in host countries to enquire as to the condition of Malian prisoners. However, the Committee is concerned by reports that the State party does not provide sufficient assistance to Malian nationals detained abroad, including some in Mauritania, Morocco, Equatorial Guinea and Saudi Arabia who have requested consular assistance from the State party in vain. The Committee also notes that the State party did not provide information on the steps it has taken to inform the consular or diplomatic staff of the States of origin of the migrant workers who are detained in Mali.

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

**(a) Facilitate recourse by Malian migrant workers residing abroad to consular or diplomatic assistance from the State party, particularly in the event of detention or expulsion;**

**(b) Ensure a more effective response from its consular services in fulfilment of their duty to protect and promote the rights of Malian migrant workers and members of their families and, in particular, provide the necessary assistance to any such persons who are in detention or subject to an expulsion order;**

**(c) Take the steps necessary to ensure that the consular or diplomatic staff of the States of origin or of a State representing the interests of those States are systematically informed when one of their nationals is taken into custody in the State party and that this information is duly recorded in custody registers (persons contacted, date, time and so on).**

28. The Committee notes the lack of information on the access of migrant workers and members of their families, in law and in practice, to the emergency medical care that is required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State party.

**29. The Committee recommends that the State party should provide information in its next periodic report on the possibility for all migrant workers and members of their families, irrespective of their migration status, to have access, in law and in practice, to the emergency medical care that is required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State party, in accordance with article 28 of the Convention.**

30. The Committee notes with satisfaction the existence of a Ministry for Malians Living Abroad and African Integration, which provides information to potential Malian migrants on the entry and residence requirements in receiving countries and on the dangers of irregular migration. However, the Committee regrets the lack of information on the impact of these measures.

**31. The Committee recommends that the State party should step up its efforts to inform potential Malian migrants and members of their families of the rights granted to them by the Convention and of their rights and obligations in the State of employment. The State party should also provide information on the impact of these efforts in its next periodic report.**

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

32. The Committee commends the State party on the measures it has taken to ensure the participation of Malian migrant workers living abroad in the most recent presidential elections in Mali. Nevertheless, the Committee remains concerned about the very limited information it has received on the real enjoyment of this right, and especially on voter turnout among Malians living abroad. The Committee regrets that Malian migrant workers do not have the right to vote in legislative elections.

**33. The Committee encourages the State party to provide information in its next periodic report on the rates of participation of Malian nationals living abroad in presidential elections as well as further information on the actual implementation of the right to vote. The Committee also encourages the State party to consider extending the right to vote in legislative elections to Malian migrant workers living abroad.**

34. The Committee welcomes the high level of remittances received in the State party from migrant workers living abroad, the considerable boost these funds represent for the development of the State party and the availability of mechanisms for the rapid transfer of funds. However, the Committee is concerned by the lack of information available on partnerships with financial institutions for the purpose of facilitating transfers of funds and savings, including through the setting of preferential rates.

**35. The Committee invites the State party to: (a) provide information on existing partnerships with financial institutions aimed at facilitating remittance transfers to the State party from Malian migrant workers living abroad; (b) take measures to reduce the cost of sending and receiving funds; and (c) make savings more accessible.**

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

36. The Committee welcomes the bilateral agreement between the State party and Spain whose objective is to encourage the lawful migration of Malian nationals. The Committee notes the delegation's statements about a code of cooperation with neighbouring countries and about "Sikabo", a joint project with two neighbouring countries regarding cross-border workers. The Committee nonetheless regrets that, despite the very large number of Malian migrant workers living abroad, the State party has signed only a handful of bilateral and multilateral agreements to guarantee them sound, equitable and humane conditions.

**37. The Committee recommends that the State party step up its efforts towards the signing of bilateral and multilateral agreements that would be conducive to regular migration, ensure sound, equitable and humane conditions and provide procedural guarantees for Malian migrant workers living abroad.**

38. The Committee welcomes the measures taken by the State party vis-à-vis host country authorities to support Malian migrant workers in labour, property and visa disputes. However, the Committee regrets the lack of more specific information on the efforts of consular and diplomatic missions aimed at protecting the rights of Malian migrant workers and members of their families.

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

**(a) Provide information in its next periodic report on the efforts of consular and diplomatic missions aimed at protecting the rights of Malian migrant workers and members of their families;**

**(b) Ensure that consular and diplomatic authorities provide information and appropriate assistance to Malian migrant workers and members of their families living abroad, including those in an irregular situation, in respect of:**

- (i) The necessary authorizations, formalities and arrangements for their departure, travel, arrival, stay, paid employment, exit and return;**
- (ii) Working and living conditions in the country of employment and customs, currency, tax and other laws and regulations.**

40. The Committee notes with satisfaction that reintegration projects have been established for Malian migrants who have returned to the State party. However, the Committee has been informed that, upon their return, a number of Malian migrants allegedly encounter problems in accessing the funds earmarked for them and do not receive adequate support.

41. **The Committee encourages the State party to:**

**(a) Ensure that current and future readmission agreements between the State party and host countries guarantee the durable economic, social and cultural reintegration of migrant workers who return to the State party, contain procedural guarantees for migrant workers and members of their families and protect Malian migrant workers from ill-treatment if they are expelled;**

**(b) Ensure that Malian migrants who return to the State party have real access to the funds earmarked for them and are given sufficient and adequate support.**

42. While it acknowledges the actions taken by the Ministry for Malians Living Abroad to repatriate Malians who were living in the Central African Republic, the Committee notes with concern the lack of additional structures or programmes for reintegrating these repatriates.

**43. The Committee invites the State party to set up additional structures and programmes for the reception and reintegration of Malian migrant workers and members of their families recently repatriated from the Central African Republic.**

44. The Committee notes the delegation's statements that the State party has begun providing assistance for the return of Malian refugees who left the country during the crisis. Nevertheless, the Committee is concerned by reports that these refugees, upon their return to the State party, face limited access to basic services, high unemployment, the risk of arbitrary arrest or detention if they belong to specific groups, and intercommunity tensions.

**45. The Committee encourages the State party to arrange for the return of Malian refugees who left the country during the crisis, ensure that their safety and rights are protected and take steps towards their reintegration into economic, social and cultural life.**

46. The Committee welcomes the significant legislative and regulatory measures adopted by the State party to combat trafficking in persons, the establishment of a national committee to coordinate efforts against human trafficking and related practices and the conclusion of agreements with neighbouring countries to combat trafficking in children. However, the Committee is concerned by:

**(a) The lack of studies, analyses and disaggregated data that would make it possible to assess the extent of trafficking, not only into, but also in transit through and out of the State party;**

**(b) Reports about the existence of trafficking routes from Mali to Côte d'Ivoire; the recruitment of Malian women as domestic workers in Guinea; and the trafficking of**

Malian children to other countries in the region, including children who are subjected to forced labour in Gabon or forced to beg and economically exploited by marabouts in Senegal;

(c) Reports of the presence in the State party of: (i) trafficking victims from Burkina Faso, Nigeria and Uganda; (ii) Nigerian women forced into prostitution; (iii) children from Burkina Faso and Guinea who engage in artisanal gold mining, some of whom are victims of trafficking, abuse and sexual exploitation; and (iv) children from Guinea, Burkina Faso and Niger who are forced to beg and are exploited by marabouts.

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

**(a) Systematically collect data disaggregated by gender, age and origin in a bid to better combat human trafficking and smuggling;**

**(b) Step up campaigns on the prevention of trafficking and smuggling of migrant workers and take the necessary measures to stop the dissemination of misleading information regarding emigration and immigration;**

**(c) Improve the training of police officers and other law enforcement officials, border guards, judges, prosecutors, labour inspectors, teachers, health-care providers and the State party's embassy and consular personnel regarding the struggle against human trafficking and smuggling;**

**(d) Strengthen mechanisms for investigating cases of trafficking in persons and prosecuting and punishing traffickers;**

**(e) Afford protection and assistance to all victims of trafficking, in particular by providing shelters and launching projects aimed at helping them rebuild their lives;**

**(f) Increase international, regional and bilateral cooperation to prevent and combat trafficking in persons.**

48. The Committee is concerned by the large number of Malians who die attempting to immigrate to Europe, the small number of investigations carried out in countries of transit and destination with a view to bringing those responsible to justice, the lack of steps taken by those countries to identify and repatriate human remains and the little that is done by the State party for the victims' families.

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

**(a) Consider concluding agreements with or interceding in the countries of transit and destination of Malian migrant workers to:**

**(i) Ensure that Malian migrant workers attempting to immigrate, especially to Europe, do so in safe conditions that safeguard their life and physical integrity;**

**(ii) Collect data on how many Malians die attempting to immigrate and under what circumstances;**

**(b) Take appropriate action to ensure that investigations are conducted in the countries of transit and destination in order to establish responsibility for those deaths and bring to justice those responsible and to facilitate the identification and repatriation to the State party of the remains of Malians who die while attempting to immigrate;**

**(c) Inform and work together with the families of Malians who die while attempting to immigrate.**

## 6. Follow-up and dissemination

### Follow-up

50. The Committee requests the State party to include in its third 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.

51. The Committee urges the State party to ensure the wide participation of all ministries and public bodies in the preparation of the third periodic report and to consult a variety of migrant workers' and human rights organizations. The Committee invites the State party to seek relevant technical assistance from the Human Rights Division of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

### Dissemination

52. The Committee likewise requests the State party to disseminate these 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 Mali abroad and foreign migrant workers residing or in transit in the State party.

## 7. Next periodic report

53. The Committee requests the State party to submit its third periodic report by 1 May 2019. Alternatively, the State party may avail itself of the simplified reporting procedure, whereby the Committee prepares and adopts a list of issues to be 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 need to submit its report in the traditional manner. This new optional procedure was adopted by the Committee at its fourteenth session in April 2011 (A/66/48, para. 26).

54. 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 40 pages and the updated core document should not exceed 80 pages. In this respect, the State party is invited to seek technical assistance from the Office of the United Nations High Commissioner for Human Rights.