



# 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 Nigeria in the absence of a report\*

1. In the absence of a report by the State party, the Committee considered the situation in Nigeria with respect to the implementation of the Convention at its 347th meeting (CMW/C/SR.347), held on 5 April 2017. On the basis of information from, inter alia, other United Nations bodies and mechanisms, the Committee adopted at its 359th meeting, held on 13 April 2017, the following concluding observations.

#### A. Introduction

2. Nigeria acceded to the International Convention on the Protection of All Migrant Workers and Members of Their Families on 27 July 2009. The State party was under the obligation to submit its initial report under article 73 (1), of the Convention by 1 November 2010. At its twenty-third session in September 2015, the Committee adopted a list of issues prior to the submission of the initial report (CMW/C/NGA/QPR/1), based on rule 31 bis of the Committee's rules of procedure (A/67/48, para. 26), which was transmitted to the State party on 29 September 2015.

3. The Committee regrets that the State party did not submit a reply to the list of issues, which would have constituted its report under article 73 of the Convention, despite numerous requests to do so. The Committee also regrets that the State party has not submitted factual information about the country, in line with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN.2/Rev.61). The Committee considers that the State party's failure to honour its reporting obligations under the Convention amounts to a breach of article 73. The Committee also regrets that the State party did not send a delegation, which prevented it from engaging in a constructive dialogue with the State party. The Committee wishes to impress upon the State party that non-compliance with its reporting obligations creates serious obstacles to the effective functioning of the mechanism set up to monitor the implementation of the Convention.

4. Following reminders transmitted by notes verbales dated 22 September 2016 and 16 December 2016, as well as informal reminders, the State party was notified in a note verbale, dated 21 March 2017, of the Committee's procedure regarding the non-submission of replies to the list of issues, in accordance with rule 31 bis of the rules of procedure of the Committee, and the review of the implementation of the Convention by a State party in the absence of a delegation. Thus, the Committee proceeded to review the implementation of the Convention in the State party, in the absence of a report and without the presence of a delegation, on the basis of information that was available to it.

\* Adopted by the Committee at its twenty-sixth session (3-13 April 2017).



5. The Committee recognizes that Nigeria is a country of origin, destination and transit.
6. The Committee notes that most of the countries in which Nigerian 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**

7. The Committee notes with appreciation the ratification of or accession to the following instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in September 2012;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in September 2010;

(c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in September 2010;

(d) The Convention on the Reduction of Statelessness, in September 2011;

(e) The Convention relating to the Status of Stateless Persons, in September 2011.

8. The Committee welcomes the State party's adoption of the following legislative measures since its accession to the Convention:

(a) The 2015 amendment to the Trafficking in Persons (Prohibition), Enforcement and Administration Act;

(b) The 2015 Immigration Act.

9. The Committee welcomes the following institutional and policy measures:

(a) The adoption of the National Migration Policy and its implementation plan, in May 2015;

(b) The adoption of the National Labour Migration Policy and its action plan in October 2014.

## **C. Factors and difficulties impeding the implementation of the Convention**

10. The Committee acknowledges that the State party is facing difficulties due to the violence linked to Boko Haram attacks against communities in the State party which may interfere with the full realization of all the rights of migrant workers and members of their families under the Convention. The Committee regrets the lack of information on how the lack of security has affected migrant workers in the State party and the cross-border movements of Nigerian migrant workers.

## **D. Principal subjects of concern and recommendations**

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

#### **Legislation and application**

11. While noting that the State party has, to a large degree, incorporated the Convention into its domestic legislation, the Committee is concerned that further legislative and administrative measures are needed to fully harmonize domestic laws and practice with the provisions of the Convention. In particular, the Committee is concerned that the 2015 Immigration Act maintains broad grounds, including mental impairment and being an unaccompanied child, for classifying individuals as "prohibited immigrants" liable to be refused admission or to be deported. The Committee is also concerned that the 2015 Immigration Act extends the length of pretrial detention for persons charged with

immigration offences to a total of 90 days, whereas the 1963 Immigration Act capped the detention period for persons accused in similar cases at two months.

**12. The Committee recommends that the State party amend the 2015 Immigration Act and ensure that its legislation is in full conformity with the Convention. The Committee also recommends that the State party ensure that migration management measures respect the rights of migrants, including children, guaranteed by international human rights, refugee and humanitarian law, including the principle of non-refoulement.**

#### Articles 76-77

**13. The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of the rights established under the Convention.**

#### Ratification of relevant instruments

**14. The Committee recommends that the State party consider ratifying or acceding to the first Optional Protocol to the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights and the following International Labour Organization (ILO) conventions: the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Domestic Workers Convention, 2011 (No. 189).**

#### Comprehensive policy and strategy

15. The Committee is concerned about the lack of information on the specific measures taken to implement the 2015 National Migration Policy and its implementation plan and the 2014 National Labour Migration Policy and its action plan.

**16. The Committee recommends that the State party implement, allocate adequate resources to and monitor the above-mentioned implementation and action plans, in line with the Convention. The Committee requests that the State party include in its combined initial and second periodic report detailed information, supported by statistics, on the concrete measures taken, both in law and in practice, to implement the rights of migrant workers as set out in the Convention, paying special attention to the rights of women migrant workers.**

#### Coordination

17. The Committee notes that the Federal Ministry of Labour and Productivity is responsible for coordinating the implementation of the Convention. However, the Committee is concerned about the lack of information on the effectiveness of this coordination and on the allocation of human and financial resources and capacity-building programmes for government agencies handling migration-related issues.

**18. The Committee recommends that the State party provide the Federal Ministry of Labour and Productivity with the human, technical and financial resources, and the mandate, necessary to effectively coordinate comprehensive migration policies at all levels and to assess the impact of such policies and programmes on the rights of migrant workers and members of their families.**

#### Data collection

19. While noting that the National Policy on Labour Migration and its implementation plan include provisions on the collection and dissemination of migration data, the Committee is concerned that there is a general lack in the State party of disaggregated statistical information on all aspects of the Convention.

20. **The Committee recommends that the State party establish a centralized and comprehensive database, covering all aspects of the Convention, and collect data on the status of migrant workers in the State party. It encourages the State party to compile information and statistics that are disaggregated by sex, age, nationality, reason for entry or departure from the country and the type of work performed, in order to effectively inform relevant policies and the application of the Convention, in line with target 17.18 of the Sustainable Development Goals. In cases where it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee requests that the State party provide data based on studies or estimates.**

#### **Independent monitoring**

21. While welcoming the fact that the National Human Rights Commission is a status “A” institution, the Committee shares the concerns of the Global Alliance of National Human Rights Institutions regarding the selection process for commissioners and budgetary cuts limiting the effectiveness of the Commission. The Committee is also concerned about the lack of information on the Commission’s mandate pertaining to the rights of migrant workers.

22. **The Committee recommends that the State party address the concerns raised by the Global Alliance of National Human Rights Institutions and requests that the State party include in its combined initial and second periodic report detailed information on the Commission’s mandate pertaining to the rights of migrant workers.**

#### **Training on and dissemination of information about the Convention**

23. The Committee notes that the National Policy on Labour Migration mandates the Federal Ministry of Labour and Productivity to conduct pre-employment seminars and intensified information campaigns, especially in rural communities, to provide potential migrant workers with sufficient information to enable them to make informed decisions, as well as to design and, together with other relevant agencies, implement pre-departure training programmes for migrants intending to travel abroad. However, the Committee is concerned that no information is available on the provision of such seminars, campaigns and trainings. The Committee also notes that awareness about the rights of migrant workers has been raised among labour officers in all 36 state offices of the Ministry of Labour and Productivity. However, the Committee is concerned that no information is available on migration-specific training programmes and materials on the Convention or on the dissemination of information about the Convention to all relevant stakeholders, including government bodies, domestic courts and civil society organizations.

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

(a) **Develop education and training programmes on the rights of migrant workers and members of their families under the Convention, incorporating gender issues, and ensure that such programmes are made available to all officials and persons working in the area of migration, in particular law enforcement and border authorities, judges, prosecutors and relevant consular officials, as well as national, regional and local officials, social workers and civil society organizations;**

(b) **Ensure access for migrant workers to information and guidance on their rights under the Convention, in particular through pre-employment and pre-departure orientation programmes;**

(c) **Work with civil society organizations and the media to disseminate information about and promote the Convention throughout the State party.**

#### **Participation of civil society**

25. While noting the information that the National Labour Migration Policy has been developed with the active involvement of key stakeholders, including civil society organizations, and that the policy addresses the role of civil society in migration

management, the Committee is concerned about the lack of information on the role that civil society has played in the implementation of the Convention.

**26. The Committee recommends that the State party proactively and systematically involve civil society and non-governmental organizations in the implementation of the Convention.**

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

### **Non-discrimination**

27. While noting that the Constitution guarantees equal pay for equal work without discrimination on any grounds and that the Labour Act of 2004 protects “all persons in employment”, the Committee is concerned that:

(a) The guarantees relating to privacy, freedom of movement and protection against racial discrimination contained in sections 37, 41 and 42 of the Constitution do not extend to non-citizens;

(b) The list of prohibited grounds for discrimination in employment and occupation in the draft Labour Standards Act does not include nationality;

(c) The constitutional provision on the acquisition of nationality (section 26 (2) (a)) stipulates that a foreign man is unable to acquire Nigerian nationality in the same manner as a foreign woman;

(d) There is a lack of information on measures taken by the State party to ensure non-discrimination for all migrant workers in law and in practice.

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

(a) **Take all measures necessary to extend the guarantees relating to privacy, freedom of movement and protection against racial discrimination to migrant workers and to remove all provisions that discriminate against foreign men in relation to the acquisition of nationality;**

(b) **Include a prohibition of direct and indirect discrimination on all the grounds enumerated in the Convention (arts. 1 (1) and 7), applicable to all aspects of employment and occupation and covering all workers, including domestic workers and workers in the informal sector, in the bill on labour standards and speed up its adoption;**

(c) **Take all legislative and policy measures necessary to ensure that all migrant workers and members of their families, both documented and undocumented, within the territory of the State party or subject to its jurisdiction enjoy, without discrimination, the rights recognized by the Convention, in accordance with article 7 thereof.**

### **Right to an effective remedy**

29. The Committee notes that a complaint mechanism has been established at the headquarters and all six zonal offices of the Federal Ministry of Labour and Productivity to handle all complaints relating to human rights violations, free of charge. However, the Committee is concerned that public awareness of this complaint mechanism is limited. The Committee is also concerned about the lack of information on other administrative and judicial remedies available to migrant workers and members of their families in the State party, as well as on cases of unequal treatment of migrant workers brought to the attention of, or detected by, labour inspectors or any other competent authorities.

**30. The Committee recommends 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 opportunities equal to those of nationals of the State party to file complaints and obtain effective redress in the courts, and that they have access to information about other available remedies. The Committee requests that the State party include in its combined initial and second periodic report detailed information**

**on administrative and judicial remedies available to migrant workers and members of their families in the State party, as well as on cases of unequal treatment of migrant workers brought to the attention of, or detected by, labour inspectors or any other competent authorities.**

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

**Labour exploitation and other forms of ill-treatment, including child labour**

31. The Committee is concerned about the lack of information on measures taken to prevent the engagement of children trafficked from neighbouring countries in forced child labour in agriculture, construction, mining and quarrying.

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

(a) **Ensure the effective enforcement of applicable sanctions against persons violating existing legislation on child labour, including by raising awareness of international standards relating to child labour among labour inspectors, the general public and law enforcement agencies;**

(b) **Prosecute, punish and sanction persons or groups exploiting migrant workers or subjecting them to forced labour and abuse, especially in the informal economy, in line with targets 8.7 and 16.2 of the Sustainable Development Goals;**

(c) **Provide adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to victims of sexual and labour exploitation, especially women and children.**

**Due process, detention and equality before the Courts**

33. The Committee is concerned at the lack of information regarding due process guarantees for migrant workers and members of their families in criminal and administrative proceedings, including those relating to detention and expulsion. The Committee is concerned that migrant children might be placed in detention along with their families.

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

(a) **Take the steps necessary to ensure that in administrative and judicial proceedings, including those relating to detention and expulsion, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process, on an equal basis with nationals of the State party, before the courts and tribunals;**

(b) **Ensure that administrative detention is used only as a measure of last resort and that non-custodial alternatives are provided, in line with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;**

(c) **Cease the detention of children on the basis of their or their parents' immigration status and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being reviewed, in line with the principles of the best interests of the child and the child's right to family life.**

**Consular assistance**

35. The Committee welcomes the feasibility study on the possibility of establishing labour migration attachés in Nigerian missions in principal countries of destination prepared by the International Organization for Migration. However, the Committee is concerned about reports that Nigerian migrant workers, particularly those in an irregular situation, frequently face violence, abuse, arrest, detention or expulsion in transit or in destination countries and that there is lack of statistical data on this issue and a lack of information on the consular, diplomatic and legal assistance provided to these workers.

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

(a) **Ensure that all migrant workers and members of their families, particularly those in detention, have recourse to consular support to protect the rights set out in the Convention;**

(b) **Ensure that its embassy and consulate personnel abroad have appropriate knowledge of the laws and procedures of the countries of employment of Nigerian migrant workers;**

(c) **Provide in its combined initial and second periodic report detailed, disaggregated information on the number of nationals working abroad who have been arrested, detained and expelled, as well as qualitative and quantitative information on Nigerian migrant workers who have suffered violence and abuse in transit and destination countries and the assistance provided to them.**

#### **Social Security**

37. The Committee is concerned about the lack of information on whether in cases of departure, including expulsion, from the State party, foreign migrant workers who have participated in, or contributed to, the national pension scheme are entitled to keep their acquired social security rights and whether the Employees Compensation Act of 2010 (Act No. 13) applies to migrant workers on an equal footing with nationals. The Committee is also concerned about the lack of information on bilateral and multilateral agreements concluded in the area of migration guarantees relating to social security for Nigerian migrant workers.

38. **The Committee recommends that the State party ensure, through national legislation and through bilateral and multilateral social security agreements, that all migrant workers and members of their families have adequate social protection.**

#### **Trade unions**

39. The Committee is concerned about the lack of information as to whether the State party guarantees to all migrant workers the right to take part in trade union activities and to freely join trade unions.

40. **The Committee recommends that the State party take all measures, including legislative amendments, necessary to guarantee to all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to freely join trade unions, in accordance with article 26 of the Convention.**

#### **Medical care and education**

41. The Committee is concerned about the lack of information on specific programmes to guarantee access to medical care and education to migrant workers and members of their families who are in an irregular situation in the territory of the State party.

42. **The Committee recommends that, in accordance with articles 28 and 30 of the Convention, the State party adopt concrete and effective measures to ensure access to medical care, especially for the children of migrant workers in an irregular situation, and to make it possible for such children to enter and remain in the education system.**

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

##### **Right to vote and to be elected in the State of origin**

43. The Committee is concerned that, despite the long-standing debate about the need to guarantee Nigerian migrant workers the right to vote and be elected in the State party while residing in countries of employment, no concrete measures have been taken to make those rights a reality.

44. **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**

**Nigerian migrant workers residing abroad and, in the near future, to increase its efforts to enable Nigerian nationals residing and working abroad to exercise their right to vote in the 2019 general election.**

#### **Family reunification**

45. The Committee regrets the lack of information on measures taken by the State party to facilitate family reunification and to protect the right to family life of Nigerian migrant workers and their families in the context of expulsion procedures in destination countries.

**46. The Committee recommends that the State party provide specific information in its combined initial and second periodic report on practical measures taken to facilitate family reunification and to protect the right to family life of Nigerian migrant workers and their families in the context of expulsion procedures in destination countries.**

#### **Transfer of earnings and savings**

47. The Committee notes that the National Labour Migration Policy calls for bilateral agreements on the transferability of migrant workers' earnings and savings. However, the Committee is concerned about the lack of information on any measures taken in this regard and on any initiatives to encourage the transfer of earnings and savings by Nigerian migrant workers to productive projects in the State party and on partnerships with financial institutions to facilitate the transfer of earnings and savings for Nigerian migrant workers abroad and for migrant workers in the State party.

**48. The Committee encourages the State party to facilitate the transfer of remittances by Nigerian migrant workers abroad. It also recommends that the State party undertake measures to facilitate the transfer of earnings and savings by migrant workers in Nigeria with preferential transfer and reception fees, in line with target 10.c of the Sustainable Development Goals, and to make savings plans more accessible to migrant workers and members of their families.**

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

#### **Domestic migrant workers**

49. The Committee is concerned that Nigerian domestic migrant workers face harassment and exploitation in the workplace.

**50. In the light of its general comment No. 1 (2011) on domestic migrant workers, and in line with target 8.8. of the Sustainable Development Goals, the Committee recommends that the State party:**

(a) **Include in all bilateral agreements a standard contract for domestic workers that is legally enforceable in the State party and in the State of employment and includes provisions on, inter alia, wages, working hours, working conditions, overtime pay, annual leave and effective remedies;**

(b) **Establish a reference wage for domestic workers that reflects their skills and experience and is applicable to all workers in all destination States, and include that reference wage in bilateral agreements;**

(c) **Ensure that abused migrant domestic workers seeking help from Nigerian diplomatic missions abroad are provided with shelter, legal assistance, medical and psychosocial care and interpreters;**

(d) **Ratify the ILO Domestic Workers Convention, 2011 (No. 189).**

#### **Recruitment agencies**

51. While noting that the Federal Ministry of Labour and Productivity has commenced licensing private employment agencies and recruiters for overseas and local job placement, the Committee is concerned about the insufficient regulation of recruitment agencies.



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

(a) **Develop robust, transparent and publically accountable licensing systems for recruitment companies, ensuring that such companies are subject to rigorous human rights and labour law due diligence, as well as ongoing regulation and monitoring;**

(b) **Require recruitment agencies that facilitate the employment of migrant workers abroad to be licensed in both the countries of origin and destination, in order to ensure more effective bilateral oversight of recruitment practices;**

(c) **Ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;**

(d) **Provide training to labour inspectors on human rights norms, labour standards and methods for identifying exploitation, and develop clear and effective accountability mechanisms;**

(e) **Investigate and punish illegal practices by recruiters;**

(f) **Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).**

#### **Return and reintegration**

53. While noting that steps have been taken to ensure that returning migrant workers can have access to relevant migration information online and to a wide range of services, the Committee is concerned about the lack of information on a comprehensive strategy to facilitate the reintegration of returning migrant workers in the State party.

54. **The Committee recommends that the State party take comprehensive measures to ensure the appropriate social, economic or other conditions necessary to facilitate the return and long-term reintegration of Nigerian migrant workers and members of their families in the State party, as provided for in article 67 of the Convention, and in line with target 10.7 of the Sustainable Development Goals.**

#### **Illegal or clandestine movements and employment of migrant workers in an irregular situation**

55. The Committee notes that the State party is making significant efforts to protect trafficking victims and to enforce anti-trafficking law by investigating, prosecuting and convicting traffickers, by collaborating on international investigations and by providing extensive specialized anti-trafficking training to officials from various government ministries and agencies. However, the Committee is concerned that:

(a) The State party remains a source, transit, and destination country for women and children subjected to forced labour and sex trafficking;

(b) The exception in national legislation to the prohibition of child labour applicable to children employed by family members or who take on light work of an agricultural, horticultural or domestic nature may make children vulnerable to be trafficked into domestic work by family members;

(c) According to information received by the Committee, although the 2015 amendment to the Trafficking in Persons (Prohibition), Enforcement and Administration Act removed judges' ability to impose a fine in lieu of a prison sentence for trafficking offences, the State party's courts continue, in certain cases, to penalize traffickers with only fines;

(d) The National Agency for the Prohibition of Traffic in Persons needs to be strengthened in order to provide effective support throughout the State party;

(e) There is a lack of information on mechanisms to identify victims, provide support and facilitate their rehabilitation and on the availability of such mechanisms throughout the State party;

(f) Trafficking-related corruption and complicity at all levels of government remains pervasive.

56. **The Committee recommends that, in line with target 5.2 of the Sustainable Development Goals, the State party:**

(a) **Continue to vigorously pursue trafficking investigations and prosecutions, ensure adequate sentences for convicted traffickers, provide regular training to police and immigration officials to identify trafficking victims among vulnerable populations and strengthen the capacity of Nigerian embassies to identify and provide assistance to victims abroad, including through regular and specialized training for diplomatic and consular personnel;**

(b) **Implement the United Nations Global Plan of Action to Combat Trafficking in Persons;**

(c) **Take measures to ensure that children are not trafficked into domestic work by family members;**

(d) **Ensure, in conformity with the 2015 amendment to the Trafficking in Persons (Prohibition), Enforcement and Administration Act, that traffickers are in no instance penalized with only fines;**

(e) **Strengthen the National Agency for the Prohibition of Traffic in Persons so that it can provide effective support throughout the State party;**

(f) **Provide in its combined initial and second periodic report detailed information on mechanisms to identify victims, provide support and facilitate their rehabilitation and on the availability of such mechanisms throughout the State party;**

(g) **Take proactive measures to investigate and prosecute government officials suspected of trafficking-related corruption and complicity in trafficking offences.**

## **6. Dissemination and follow-up**

### **Dissemination**

57. The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official languages of the State party, to the relevant State institutions, including to government ministries, the legislature, the judiciary and relevant local authorities, as well as non-governmental organizations and other members of civil society.

### **Technical assistance**

58. **The Committee recommends that the State party avail itself of international assistance for the implementation of the recommendations contained in the present concluding observations in line with the 2030 Agenda for Sustainable Development.**

### **Next periodic report**

59. **The Committee requests the State party to submit its combined initial and second periodic report by 1 May 2018 and to include therein information on the implementation of the recommendations contained in the present concluding observations, and to also ensure that a delegation is present at the next review of the State party to facilitate a constructive dialogue with the Committee on the implementation of the Convention. The State party may wish to follow the simplified reporting procedure in this regard. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (HRI/GEN.2/Rev.6).**