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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 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, paragraph 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/MC/2006/3 and Corr.1). 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.

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



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 by 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 with respect to reviewing the implementation of the Convention by a State party in the absence of a delegation. In this regard, 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.
5. The Committee recognizes that Nigeria is a country of origin, destination and transit.
6. The Committee notes that most 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:
 - (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 1961 Convention on the Reduction of Statelessness, 1961, in September 2011;
 - (e) The 1954 Convention relating to the status of Stateless Persons, 1954, in September 2011.
8. The Committee welcomes the adoption of the following legislative measures since the accession to the Convention:
 - (a) The 2015 Amendment to the Trafficking in Persons 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 communal attacks which may interfere with the full realization of all the rights of migrant workers and members of their families in line with the Convention. The Committee regrets the lack of information on how the situation of insecurity has impacted migrant workers in the State party as well as 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 domesticated the Convention, 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 new 2015 Immigration Act maintains broad grounds, including mental impairment and being an unaccompanied child, for declaring individuals as “prohibited immigrants” liable to be refused admission or to be deported. The Committee is also concerned that the 2015 Act extends the length of detention of persons charged with immigration offenses for a total of 90 days pending trial, while the 1963 Immigration Act capped the detention period of a person 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 ensures 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 and 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 State parties and individuals concerning violations of rights established by the Convention.**

Ratification of relevant instruments

14. **The Committee recommends that the State party consider ratifying or acceding to the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, and ILO Conventions No.143 (1975) concerning Migrant Workers) and No.189 (2011) concerning Decent Work for Domestic Workers.**

Comprehensive policy and strategy

15. The Committee is concerned at the lack of information on the specific measures taken to implement the 2015 National Migration Policy and its Implementation Plan as well as the 2014 National Labour Migration Policy and its Action Plan.

16. **The Committee recommends that the State party implement and adequately resource and monitor the 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 to implement the rights of migrant workers set-out in the Convention, both in law and practice, with 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. The Committee is

however concerned about the lack of information on the effectiveness of this co-ordination as well as on allocation of human and financial resources and capacity-building 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 as well as mandate 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 for 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 that data is collected 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 and departure from the country, and the type of work performed in order to effectively impact relevant policies and the application of the Convention in line with the Sustainable Development Goals (Target 17.18).¹ 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 would request that the State party provide data based on studies or estimates.

Independent monitoring

21. While welcoming that the National Human Rights Commission (NHRC) is a status “A” institution, the Committee shares the concerns of the International Coordinating Committee of National Human Rights Institutions regarding the selection process of the Commissioners as well as budgetary cuts limiting the effectiveness of the Commission. The Committee is also concerned at the lack of information about 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 International Coordinating Committee of National Human Rights Institutions and requests that the State party include in its combined initial and second periodic report detailed information about 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.” The Committee is however

¹ The 2030 Agenda for Sustainable Development was adopted on 25 September 2015 by world leaders at the United Nations in New York. It comprises 17 Sustainable Development Goals, which are further broken down into target (<https://sustainabledevelopment.un.org/?menu=1300>)

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 created amongst labour officers in all 36 State offices of the Ministry of Labour and Productivity. The Committee is however concerned that no information is available on migration-specific training programmes and materials on the Convention or the dissemination of information about the Convention among 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 that such programmes be 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 by 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 to promote the Convention throughout the State party.**

Participation of civil society

25. While noting the information that the Labour Migration Policy has been developed with the active involvement of key stakeholders including civil society organisations and that the Policy addresses the role of civil society in migration management, the Committee is concerned at the lack of information about the role civil society has played in the implementation of the Convention.

26. **The Committee recommends that the State party pro-actively 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 ground whatsoever and that the Labour Act of 1974/2004 protects “all persons in employment”, the Committee is concerned that:

(a) The guarantees for privacy and freedom of movement and 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 of 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 necessary measures to extend the guarantees for privacy and freedom of movement and against racial discrimination to migrant workers and to remove all discriminatory provisions against foreign men in relation to acquisition of nationality;**

(b) **Include a prohibition of direct and indirect discrimination on all the grounds enumerated in the Convention (art. 1, para. 1 and art. 7), with respect to all aspects of employment and occupation, and covering all workers, including domestic workers and workers in the informal sector in the draft Labour Standards Bill and speed up its adoption;**

(c) **Take all necessary legislative and policy measures to ensure that all migrant workers and members of their families, both documented and undocumented, within the territory 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 put in place at the Headquarters and all the six Zonal Offices of the Federal Ministry of Labour and Productivity to handle all complaints of human rights violations free of charge. The Committee is however concerned that knowledge about 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 labour inspectors or any other competent authorities or detected by them.

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 labour inspectors or any other competent authorities or detected by them.**

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 the Sustainable Development Goals (Targets 8.7 and 16.2);**

(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 detention and expulsion. The Committee is concerned that migrant children might be put into detention 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 detention and expulsion proceedings, 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 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, consistent with the best interest of the child principle as well as the child's right to family life.**

Consular assistance

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

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

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

(b) **Ensure that its embassy and consulate personnel abroad have appropriate knowledge about 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 at the lack of information as to whether in cases of departure from the State party, including expulsions, foreign migrant workers who have participated in or contributed to the national pension scheme are entitled to the maintenance of their acquired social security rights and whether the Employee's Compensation Act, 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 guarantee guaranteeing social security for Nigerian migrant workers.

38. The Committee recommends that the State party ensures through national legislation as well as 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 join freely trade unions.

40. The Committee recommends that the State party take all necessary measures, including legislative amendments, to guarantee to all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to join freely 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 to open up 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 and to make it possible to enter and remain in the education system, especially for the children of migrant workers in an irregular situation.

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 longstanding debate about the need to guarantee Nigerian migrant workers the right to vote and be elected at elections in the State party while residing in the countries of employment, no concrete measures have been taken to make it 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 with a view to facilitating the exercise of the right to vote by its nationals residing and working abroad in the 2019 general elections.

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. The Committee is however 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 the Sustainable Development Goals (Target 10.c), and to make savings 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 Sustainable Development Goals (Target 8.8), 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 as well as 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 skills and experience, which should apply to all workers in all destination States and be included in bilateral agreements;**

(c) **Ensure that abused migrant domestic workers seeking help from Nigerian Missions abroad are provided with shelter, legal assistance, medical and psycho-social 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 (FMLP) has commenced with licensing private employment agencies and recruiters for overseas and local job placement, the Committee is concerned at 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 who facilitate the employment of migrant workers abroad be licensed in both 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) **Train labour inspectors in human rights norms and labour standards, and in indications of exploitation, as well as develop clear and effective accountability mechanisms;**

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

(f) **Ratify the 1997 ILO Private Recruitment Agencies Convention 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 as well as to a wide range of services, the Committee is concerned at the lack of information about a comprehensive strategy to help migrant returning workers reintegrate in the State party.

54. **The Committee recommends that the State party take comprehensive measures to ensure the appropriate social, economic or other necessary conditions to facilitate the return and durable 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 the Sustainable Development Goals (Target 10.7).**

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

55. The Committee notes that the State party sustains significant efforts to protect trafficking victims as well as anti-trafficking law enforcement efforts by investigating, prosecuting, and convicting numerous traffickers; by collaborating on international investigations; and by providing extensive specialized anti-trafficking training to officials from various government ministries and agencies. The Committee is however 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 for children employed by a member of his family or light work of an agricultural, horticultural or domestic character may make children vulnerable to be trafficked into domestic work by their family members;

(c) According to information received by the Committee, the 2015 amendment to the Trafficking in Persons Enforcement and Administration Act removed judges' ability to sentence traffickers with fines in lieu of prison time, the State party's courts continue in some cases to penalize traffickers with only fines;

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

(e) There is lack of information on mechanisms for victim identification, support, and rehabilitation and their availability throughout the State party;

(f) Trafficking-related corruption and complicity at all levels of the State party's government remains pervasive.

56. **The Committee recommends that the State party persons, in line with the Sustainable Development Goals (Target 5.2):**

(a) **Continue to vigorously pursue trafficking investigations, prosecutions, and adequate sentences for convicted traffickers; to provide regular training to police and immigration officials to identify trafficking victims among vulnerable populations; to 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 their family members;**

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

(e) **Strengthen the National Agency for the Prohibition of Trafficking 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 for victim identification, support, and rehabilitation and their availability throughout the State party;**

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

6. Dissemination and follow-up

Dissemination

57. **The Committee requests the State party to ensure the timely dissemination of these concluding observations, in the official languages of the State party, to the relevant State institutions at all levels, 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 technical cooperation from the international community for the implementation of these recommendations and 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 present concluding observations, and to also ensure that a delegation is present at the next review of the State party to allow for 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 (CMW/C/2008/1).
