



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

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

Concluding observations on the second periodic report of Colombia, adopted by the Committee at its eighteenth session (15–26 April 2013)

1. The Committee considered the second periodic report of Colombia (CMW/C/COL/2) at its 214th and 215th meetings (see CMW/C/SR.214 and 215), held on 15 and 16 April 2013, and adopted the following concluding observations at its 228th meeting (CMW/C/SR.228), held on 24 April 2013.

A. Introduction

2. The Committee welcomes the second periodic report of the State party, its replies to the list of issues (CMW/C/COL/Q/2/Add.1) and the additional information provided in oral form by the delegation, all of which has given the Committee a clearer understanding of how the Convention is applied in the State party. The Committee appreciates the open and constructive dialogue held with the delegation.

3. The Committee is aware that Colombia, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals abroad. However, Colombia also faces formidable challenges in terms of the protection of migrant workers' rights as a transit and destination country.

4. The Committee notes that some countries where Colombian migrant workers are employed have still not become parties to the Convention and that this may make it difficult for migrant workers to avail themselves of the rights to which they are entitled thereunder.

B. Positive aspects

5. The Committee applauds the State party's efforts to promote and protect the rights of Colombian migrant workers abroad. It also welcomes the entry into force of Act No. 1465 of 2011, which provides for the establishment of the National Migration System as a means of strengthening links between the State party and Colombian communities outside the country, and the launch of the Positive Return Plan in 2009.

6. The Committee welcomes the fact that the State party signed the Memorandum of Understanding between the Republic of Ecuador and the Republic of Colombia for the Prevention and Investigation of Human Trafficking Offences and for Victim Assistance and Protection in September 2012.

7. The Committee also welcomes the State party's accession to the following international human rights instruments:

- (a) The Convention on the Rights of Persons with Disabilities (2011);
- (b) The International Convention for the Protection of All Persons from Enforced Disappearance (2012);
- (c) The Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (2012); and
- (d) The International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) (2012).

C. Main subjects of concern, suggestions and recommendations

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

Legislation and implementation

8. The Committee notes that the State party acceded to the Convention by means of Act No. 146 of 1994 and has adopted Act No. 1465 of 2011 and Act No. 1565 of 2012, which focus on the protection and return of Colombian migrant workers. It is concerned, however, by the fact that the State party does not have a comprehensive regulatory framework for matters related to migration that is in accordance with the Convention and other applicable international instruments.

9. **The Committee recommends that the State party take the necessary steps to develop a comprehensive regulatory framework for matters related to migration that is in accordance with international instruments for the protection of the rights of migrant workers and the members of their families, including, in particular, the Convention.**

10. The Committee takes note of the explanations provided by the State party concerning the possibility of reviewing its reservations to articles 46 and 47 of the Convention. It would also like to reiterate its concern about these reservations and the reservation to article 15 of the Convention, as these articles do not appear to conflict in any way with the State party's laws on the subjects in question.

11. **The Committee reiterates its recommendation that the State party take the necessary steps to withdraw its reservations to articles 15, 46 and 47 of the Convention.**

12. The Committee observes that the State party has not given consideration to making the declarations provided for in articles 76 and 77 of the Convention.

13. **The Committee encourages the State party to make the declarations provided for in articles 76 and 77 of the Convention.**

14. The Committee reiterates its concern about the fact that the State party has not ratified the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) or the Protocol against the Smuggling of Migrants by Land, Sea and Air of 2000, supplementing the United Nations Convention against Transnational Organized Crime.

15. **The Committee recommends that the State party take the necessary steps to ratify ILO Convention No. 97, ILO Convention No. 143 and the Protocol against the Smuggling of Migrants by Land, Sea and Air.**

Data collection

16. The Committee takes note of the State party's efforts to improve its system for collecting data on migration flows, particularly at migration checkpoints. It regrets, however, that so few statistics have been provided to it and that insufficient information is available on the various factors to be considered in evaluating the implementation of the Convention, particularly migrants in transit, women migrants, unaccompanied child migrants, and frontier and seasonal migrant workers.

17. The Committee recommends that the State party step up its efforts to ensure that the system for the compilation of migration-related statistics covers all aspects of the Convention and that detailed data is collected on the status of migrant workers in the State party, those who are in transit and emigrants. It encourages the State party to compile information and statistics that are disaggregated by sex, age, reason for entry and departure from the country, and the type of work performed. In cases where it is not possible to obtain precise information (as in the case of migrant workers in an irregular situation, for example), the Committee would appreciate being supplied at least with information based on studies or estimates.

Training and the dissemination of the Convention

18. The Committee observes with concern that no information is available on the development or implementation of programmes specifically devoted to providing ongoing training regarding the Convention to appropriate civil servants, such as the staff of the Special Administrative Unit for Migration of Colombia.

19. The Committee recommends that the State party develop programmes to provide education and training concerning the Convention on an ongoing basis. It also recommends that this training be provided to all civil servants who work in areas related to migration at the local and other levels. The Committee encourages the State party to ensure that migrant workers have access to information about their rights under the Convention and to work with civil society organizations to disseminate information on the Convention and to promote its implementation.

Participation of civil society

20. The Committee is concerned by the fact that members of civil society play such a limited role in the implementation of the Convention, particularly with regard to the preparation of reports.

21. The Committee encourages the State party to explore more proactive ways of having members of civil society participate on an ongoing basis in the implementation of the Convention and in the preparation and drafting of the next report.

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

22. The Committee takes note that the Special Administrative Unit for Migration of Colombia is the State party's oversight agency for migration-related matters. It is concerned, however, by the lack of detailed information on the migration status checks conducted by the Unit's staff and on the procedures and criteria used on the ground to differentiate between migrants in transit or in an irregular situation and asylum seekers. It is also concerned by the lack of information on the types of facilities in which migrant workers and members of their families are held and the conditions in those facilities (particularly in temporary holding centres).

23. The Committee recommends that the State party take the necessary steps to ensure that migration status checks are conducted in a way that does not violate the

rights of the persons concerned, particularly the right to integrity of the person. The Committee also recommends that the State party ensure that the procedures used when detaining migrant workers and members of their families who are in an irregular situation, including those who are in transit, are in accordance with articles 16 and 17 of the Convention. The Committee invites the State party to make sure that conditions in temporary migrant holding centres meet international standards.

24. The Committee notes that administrative deportation and expulsion orders can be appealed in the State party by means of the remedies established in the Code of Administrative Litigation Procedure (Act No. 1437 of 2011). It is concerned, however, by the lack of information on the actual exercise of this right by migrant workers and members of their families who are subject to deportation and/or expulsion proceedings. The Committee also reiterates its concern about the fact that no appeal may be lodged when the administrative expulsion order is issued for any of the reasons cited in article 105 of Decree No. 4000 of 2004 or when the Ministry of Foreign Affairs decides to cancel a visa.

25. **The Committee recommends that the State party take the necessary steps to ensure that migrants who are subject to an administrative deportation or expulsion order are aware of their right to appeal against that order and have the opportunity to do so. The Committee likewise recommends that the State party take the necessary steps to ensure that, in conformity with article 22 of the Convention, all such persons have the right to submit the reasons why they should not be deported or expelled.**

26. The Committee notes that the priorities of the Ministry of Labour include the management of international migration and upholding the principle of non-discrimination between Colombian and foreign workers. Nevertheless, the Committee is concerned by the lack of specific measures and information on existing mechanisms that guarantee and protect the labour rights of all migrant workers in the State party.

27. **The Committee recommends that, in conformity with articles 25, 26 and 27 of the Convention, the State party guarantee, both in law and in practice, the labour rights of all migrant workers in Colombia, particularly unskilled workers.**

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

28. The Committee takes note of the amended agreement between the State party and Ecuador to facilitate the movement of seasonal and frontier workers between the two countries. Nevertheless, it is concerned by the lack of detailed information on the specific measures adopted to protect the rights of frontier and seasonal workers in accordance with the Convention.

29. **The Committee invites the State party to provide information in its next periodic report on the measures taken to ensure that frontier and seasonal workers may enjoy the rights to which they are entitled by reason of their presence and work in the territory of the State party, in accordance with article 57 of the Convention.**

30. The Committee reiterates its concern over the lack of clear information about how the State party guarantees the right of association of migrant workers.

31. **The Committee recommends that the State party take the necessary steps so that migrant workers and members of their families are guaranteed the right to form associations and trade unions and to sit on their executive bodies, as established in article 40 of the Convention and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which the State party has ratified.**

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

32. The Committee takes note of the role of the Ministry of Foreign Affairs as the lead agency for the State party's comprehensive migration policy and of the creation of the National Migration System. Nevertheless, it is concerned that neither this policy nor the mandate of the National Migration System devotes sufficient attention to the situation in the State party of migrant workers and members of their families, particularly those in transit. The Committee is likewise concerned by the lack of detailed information about inter-agency coordination on migration matters at the national and local levels.

33. The Committee recommends that, in accordance with article 65 of the Convention, the State party take the necessary steps to formulate and implement a migration policy to deal with questions concerning international migration. It also urges the State party to clearly define the roles of the authorities with competence in migration matters and to step up its efforts to ensure that they coordinate their work effectively at the national and local levels, especially in border areas.

34. The Committee takes note of the State party's efforts to support returning Colombian migrant workers through the Positive Return Plan and the Referral and Opportunities Centres for Colombians Returning from Abroad that have been set up in the country. Nevertheless, it is concerned that these efforts seem to focus more on the economic reintegration of returning migrants than on their social and cultural reintegration.

35. The Committee recommends that the State party develop a programme that is in keeping with the principles of the Convention to help returning migrants to achieve their lasting reintegration into the economic, social and cultural affairs of Colombia.

36. The Committee is concerned by the steady increase in recent years in the number of migrant workers in the State party who are in transit to the United States of America and Canada. It is also concerned by the information received by the State party concerning an increase in reported cases of illicit trafficking of migrants who are in transit through Colombia, particularly Cuban and Chinese migrants, and by the lack of detailed information on measures that have been drawn up or adopted to prevent and combat the irregular migration of its nationals.

37. The Committee recommends that the State party take steps to detect and put a stop to the illegal or clandestine movement of migrant workers in transit through its territory and to investigate, prosecute and punish individuals, groups or other entities that organize or direct such movements. It likewise recommends that the State party step up campaigns at the local level to inform the general public about the risks involved in irregular migration.

38. The Committee takes note of the State party's untiring efforts to combat the crime of human trafficking. Nevertheless, the Committee reiterates its concern about the fact that the State party is one of the main countries of origin of victims of trafficking, especially women and girls. It is also concerned about the lengthy delay in the adoption of the implementing regulations for Act No. 985 of 2005, on the prevention of trafficking in persons and on victim assistance and protection, and about the lack of information on the mechanisms in place for the protection of victims.

39. The Committee recommends that the State party continue its efforts to combat trafficking in persons, in particular by:

(a) Adopting the implementing regulations for Act No. 985 of 2005 in order to ensure its application;

(b) Providing ongoing training throughout the country on the problem of trafficking to government employees, particularly police officers, the staff of the Special Administrative Unit for Migration, criminal court judges and officers, tax officials, labour inspectors, teachers and health-care professionals, and diplomats and other staff members in Colombian embassies and consulates;

(c) Collecting disaggregated data on a systematic basis with a view to combating trafficking in persons more effectively;

(d) Adopting measures to ensure that human traffickers, including traffickers who are government officials, are tried and are given appropriate sentences;

(e) Stepping up campaigns to prevent trafficking in persons;

(f) Developing effective mechanisms for identifying and protecting victims of trafficking;

(g) Drawing up a strategy for ensuring respect for the rights of victims of trafficking, preventing their secondary victimization and helping them to develop individual plans for moving forward that take into account the physical, psychological and social impact of trafficking on its victims;

(h) Stepping up international, regional and bilateral cooperation through agreements on the prevention of trafficking in persons with countries of origin, transit and destination.

40. The Committee takes note with satisfaction of the information provided on the regularization of the status of migrant workers carried out from 14 November 2008 to 14 May 2009. Nevertheless, the Committee is concerned by the lack of clarity regarding the situation of migrants whose applications for regularization were turned down.

41. The Committee encourages the State party to redouble its efforts to draw up and implement comprehensive migrant regularization procedures and to disseminate information about them. These procedures should be in keeping with the principle of non-discrimination and should be readily accessible to migrant workers and members of their families who are in an irregular situation.

5. Follow-up and dissemination

Follow-up

42. The Committee requests the State party to include detailed information in its third periodic report on the measures taken to give effect to the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate steps to ensure that these recommendations are put into effect by, inter alia, transmitting them to Congress and to local authorities for consideration and action.

Dissemination

43. The Committee also requests the State party to disseminate these concluding observations in particular to public agencies, the judiciary, non-governmental organizations and other members of civil society, as well as to universities and the general public, and to take the necessary steps to bring them to the attention of Colombian migrant workers abroad and to foreign migrant workers in transit or residing in Colombia.

6. Next periodic report

44. The Committee requests the State party to submit its third periodic report by 1 May 2018 at the latest. Alternatively, the State party could avail itself of the simplified reporting procedure whereby the Committee draws up a list of issues to which the State party responds. The State party's replies to the list of issues will then constitute its report due under article 73 of the Convention, and the State party will not need to submit a traditional periodic report. This new optional reporting procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, paragraph 26).
