



**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

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 74 OF THE CONVENTION**

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

BOLIVIA

1. The Committee considered the initial report of Bolivia (CMW/C/BOL/1) at its 74th and 75th meetings (see CMW/C/SR.74 and SR.75), held on 16 and 17 April 2008, and adopted the following concluding observations at its 85th meeting, held on 24 April 2008.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party and thanks the State party for its written replies to the list of issues (CMW/C/BOL/Q/1/Add.1). The Committee is gratified by the willingness to cooperate displayed by the delegation during the constructive dialogue with the Committee. It regrets, however, that the report and the written responses do not contain sufficient information on several important questions of both a legal and practical nature, and that the written responses were not submitted well in advance to allow timely translation into the other Committee's working languages. The Committee also regrets the fact that no expert on the subjects covered by the Convention, discharging relevant responsibilities in the country, was present during the presentation of the report, which made the dialogue between the Committee and the State party difficult.

3. The Committee recognizes that Bolivia is mainly a country of origin of migrant workers, however with significant numbers of migrant workers in transit or staying in its territory, in particular Peruvians.

4. The Committee takes note of the fact that some countries in which Bolivian migrant workers are employed are not yet parties to the Convention, which may constitute 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 appreciates the State party's commitment to the rights of migrant workers, as illustrated by the fact that it expressly recognizes that immigration represents an important asset for the country.

6. The Committee appreciates the programme implemented to assist migrants abroad (*Programa de Atención al Boliviano en el Exterior*), the "mobile consulates", which provide direct assistance to migrants, and the programme *Matrícula Consular* implemented in one country of destination of Bolivian migrants, facilitating the registration of migrants.

7. The Committee welcomes the National Development Policy for 2007-2010 (*Plan Nacional de Desarrollo*), aimed at supporting microenterprises and creating new jobs, and which refers specifically to migrant issues.

8. The Committee welcomes the fact that, pursuant to Electoral Code, art. 93 (b), foreigners have the right to vote in municipal elections.

9. The Committee welcomes the fact that the State party has recently adhered to the following instruments:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 3 June 2003 and 22 December 2004 respectively;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 18 May 2006;

(c) The International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified on 6 June 2003;

(d) The Inter-American Convention on International Traffic in Minors of 1994, ratified on 4 December 2003.

C. Factors and difficulties impeding implementation of the Convention

10. The Committee notes that the State party is currently in a process of profound institutional and legal changes, in particular in the process of adopting a new constitution.

D. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

11. The Committee notes that Bolivia has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

12. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

13. The Committee notes with concern that, despite the fact that many of the provisions of administrative decree No. 24423 regulating issues related to migration are obsolete, have been derogated, or declared unconstitutional by the Supreme Court, this decree has not yet been replaced by a law incorporating the Convention into the national legislation. The Committee takes note of the State party's assurance that a draft bill on migration (*Anteproyecto de Ley Migratoria*) is being prepared.

14. The State party is encouraged to strengthen its efforts to fully incorporate the Convention into the domestic law. The State party should ensure that a migration law fully harmonized with the international treaties be promptly adopted.

15. The Committee notes that Bolivia has still not acceded to ILO Convention No. 97 (1949) concerning Migration for Employment, or to Convention No. 143 (1975), concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

16. The Committee invites the State party to consider acceding to ILO Conventions No. 97 and No. 143 as soon as possible.

Data collection

17. While noting the difficulties faced by the State party in this regard, the Committee regrets the lack of adequate information and statistics on migration flows and on other migration-related issues. The Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

18. The Committee encourages the State party to create a sound database in line with all aspects of the Convention including systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When precise information is not possible, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.

Training in and dissemination of the Convention

19. While taking note of the seminars on migration organized in the State part in coordination with the Ombudsman, the Committee notes with concern that there is no further information showing that the State party has taken measures to disseminate information and promote the Convention among all the relevant stakeholders, in particular civil society organizations.

20. The Committee encourages the State party to intensify training for all officials working in the area of migration, in particular police and border personnel, as well as officials at the local level dealing with migrant workers. It also encourages the State party to take the necessary steps to ensure access by migrant workers to information about their rights under the Convention. In addition, the Committee encourages the State party to continue to work with civil society organizations, in order to disseminate information and to promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

21. While noting the actions undertaken by the State party to combat discrimination, the Committee is concerned that some migrants and members of their families, including Peruvians, have allegedly suffered from discrimination and stigmatization resulting from the behaviour of State authorities, including the National Migration Service (SENAMIG) and police. In particular, the Committee is concerned by reports that some individual cases have been politicised by the media, and have contributed to the continued stigmatization of migrants.

22. The Committee encourages the State party to intensify its efforts:

(a) To ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;

(b) To promote information campaigns for public officials working in the area of migration, especially at the local level, and to continue its efforts to change perceptions and the attitude of the general public towards migrant workers, and to combat their social marginalization and stigmatization. The State party should take measures in order to prevent stigmatization of migrants by the media.

Right to an effective remedy

23. The Committee takes note of the information received from the State party that every individual, citizen or alien, has access to the courts of law and enjoys protection of the rights laid down in the legislation, and that complaint mechanisms before the Ombudsman (*Defensor del Pueblo*) are available for migrant workers. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them.

24. **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and to address their complaints in the most effective manner. It recommends that the State party ensure that in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress mechanisms before the courts, including the labour courts.**

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

25. The Committee regrets the lack of information from the State party regarding: (a) the number and situation of migrants currently held in administrative or judicial custody for violations of provisions relating to migration, and (b) the length and place of their detention.

26. **The Committee recommends that the State party ensures that migrants or members of their families when detained for violation of provisions relating to migration are deprived of their liberty for as short a time as possible and that it take steps to guarantee that they are held separately from convicted persons or persons detained pending trial, in accordance with article 17, paragraph 3, of the Convention.**

27. While taking into account the efforts undertaken by the State party to improve and extend its consular services, the Committee is concerned at the long delays that Bolivians have to suffer to obtain documents which could assist them in the full enjoyment of their rights.

28. **The Committee recommends that consular services respond more effectively to the need for protection of Bolivian migrant workers and members of their families, and, in particular, promptly issue travel documents to all Bolivian migrant workers and members of their families, including those who wish or have to return to Bolivia.**

29. The Committee is concerned that it is not clear from the information provided by the State party, whether migrants have access to appeal procedures in relation to expulsion decisions.

30. **The State party is invited to ensure that migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by the competent authority in conformity with the law, and that this decision can be reviewed on appeal.**

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

31. The Committee is concerned at reports that long delays, failure to meet procedural deadlines and the cost of procedures, hinder the regularization of migrant workers and may discourage them from pursuing the procedure for regularization, hence perpetuating their illegal or irregular situation. The Committee notes with concern that decree 24423 does not provide specific protection for migrants while undergoing registration procedures.

32. **The Committee recommends the State party take all appropriate measures to make regularization procedures more accessible, including through the revision of tariffs and elimination of delays. The State party should set up a protection regime for migrants during the time in which their migratory status is being decided.**

33. The Committee is concerned that Bolivian migrant workers abroad are not able to exercise their right to vote.

34. **The Committee encourages the State party to take steps to facilitate the exercise of voting rights by Bolivian migrant workers residing abroad.**

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

35. The Committee takes note of the institutions created to deal with migration matters, as the National Migration Service (SENAMIG), the National Council of Migrations, the Department for Aliens, the Department of Legal Affairs, the Department of Inspections and Settlement, and the Departmental Migration Authorities. It is nevertheless concerned that some of them are not yet operational and at the seeming lack of coordination among these institutions and services.

36. **The Committee encourages the State party to establish a coordination mechanism to improve the services provided to migrant workers and members of their families, while ensuring uniformity and conformity with the international and regional treaties to which Bolivia is a party. The institutions and services created to deal with the various aspects of migration should be made operational as soon as possible. In addition, the Committee encourages the State party to ensure that the Convention is taken into account in the formulation and implementation of all policies concerning the rights of migrant workers.**

37. The Committee notes the information provided by the State party according to which 60 per cent of its indigenous population has migrated abroad. The Committee is concerned about the effects of this mass migration, taking into account the often vulnerable situation of indigenous migrants.

38. **The Committee invites the State party to contemplate measures for the protection of this group of migrants.**

39. The Committee is concerned about the situation of children staying in Bolivia, whose mothers have migrated abroad, and the lack of information in this regard. As recognized by the State party, this situation has a very negative impact on their social development.

40. **The Committee encourages the State party to support a comprehensive study on the situation of children of migrant families, with the aim of developing adequate strategies to ensure their protection and the full enjoyment of their rights.**

41. While noting the State party's willingness to address the problem of trafficking in persons, the Committee regrets that no mechanism exists to facilitate the identification of refugees or

victims of trafficking among migrants, and that the assistance provided to victims of trafficking is very limited.

42. The Committee encourages the State party to create mechanisms to facilitate the identification of vulnerable migrant groups, such as refugees and victims of trafficking, in illegal or clandestine movements of migrant workers and members of their families. The Committee also requests the State party to impose effective sanctions on persons and/or groups who orchestrate or assist such movements, and to provide appropriate assistance to the victims.

43. Aware of the needs of Bolivians abroad, the Committee is concerned at the absence of mechanisms to assist the voluntary return of Bolivian workers and members of their families to Bolivia.

44. The Committee invites the State party to adopt measures and to consider setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.

6. Follow-up and dissemination

Follow-up

45. While the Committee welcomes the detailed description in the initial report of the State party of the laws and regulations related to the provisions of the Convention, the Committee notes that many of these laws and regulations are in the process of being revised. The Committee requests the State party therefore to provide detailed information in its second report on the progress made in the revision of these laws and regulations and on their practical application.

46. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Parliament, as well as to local authorities.

47. The Committee requests the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

48. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to inform Bolivian migrants abroad and foreign migrant workers in transit or residing in Bolivia of the rights they and members of their families enjoy under the Convention.

7. Next periodic report

49. The Committee requests the State party to submit its second periodic report by 1 July 2009.
