



# **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 Thirteenth session**

22 November–3 December 2010

### **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**

##### **Senegal**

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the initial report of Senegal (CMW/C/SEN/1) at its 142nd and 143rd meetings (CMW/C/SR.142 and 143), held on 24 and 25 November 2010, and adopted the following concluding observations at its 153rd meeting (CMW/C/SR.153), held on 2 December 2010.

##### **A. Introduction**

2. The Committee welcomes the initial report of the State party and is gratified by the commitment to cooperation the State party has shown by sending a high-level delegation to engage with the Committee. The Committee regrets that during the dialogue several of the questions went unanswered, that it did not receive in writing all the replies to its list of issues and that the replies that it did receive did not arrive in time to be translated into the Committee's other working languages.

3. The Committee notes that many Senegalese nationals are migrant workers and that Senegal is a transit and destination country for migration flows.

4. The Committee takes note of the State party's observation that Senegal shares borders with five countries and a vast expanse of ocean that is difficult to monitor.

5. The Committee notes that some of the countries that employ Senegalese migrant workers are not parties to the Convention, which could impede those workers' enjoyment of their rights under the Convention.

## **B. Positive aspects**

6. The Committee notes with satisfaction that the Convention forms part of the domestic legal order, that it takes precedence over other laws and that State institutions in Senegal are required to enforce it.

7. The Committee notes with interest the adoption of Act No. 2005-06 of 10 May 2005 on combating trafficking in persons and related practices and on protection of victims of trafficking.

8. The Committee notes with interest the establishment of the Ministry for Senegalese Abroad to provide social assistance to Senegalese living abroad and develop reintegration policies that facilitate their return.

9. The Committee is gratified that the State party has recently ratified the following instruments:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2003;

(b) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2003;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2003;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2004.

## **C. Principal subjects of concern, suggestions and recommendations**

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

#### *Legislation and application*

10. The Committee notes with regret that the State party has not made the declarations provided for in articles 76 and 77 of the Convention, which recognize the Committee's competence to receive communications from States parties and individuals.

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

11. The Committee notes that the State party has not yet ratified the relevant conventions of the International Labour Organization (ILO) on migrant workers, namely the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143).

**The Committee encourages the State party to consider ratifying ILO Conventions No. 97 and No. 143 on migrant workers as soon as possible.**

#### *Data collection*

12. The Committee notes with concern the lack of statistics on migration flows, particularly statistics on economic migration to Senegal and on expatriate Senegalese. The Committee stresses that these data are essential to understanding the situation of migrant

workers in the State party and evaluating the implementation of the Convention in the State party.

**The Committee strongly encourages the State party to create a solid database, disaggregated by sex, age and origin, in order to make it possible to improve understanding of the migration context and the situation of migrant workers in Senegal, including those in an irregular situation, monitor the implementation of each of the Convention rights, and collect data on the effective exercise of each of those rights.**

*Training in and dissemination of the Convention*

13. The Committee notes with interest that the State party has devised information strategies to keep migrants and Senegalese living abroad abreast of legislation and Government policies and programmes that aim to promote and protect their rights. It regrets, however, that there is no specific training programme on the Convention for public officials working in the field of migration.

**The Committee encourages the State party to provide training in the content of the Convention for all public officials working in the field of migration, including members of the judiciary, the police (including border police) and social workers, in order to ensure that the rights of migrants are protected and respected.**

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

*Non-discrimination*

14. The Committee takes note of the State party's statement that the Senegalese Labour Code makes no distinction between national and migrant workers when prohibiting discrimination against workers in terms of recruitment, wages, penalties and social security. The Committee is concerned, however, to find that the rights of migrant workers in an irregular situation, migrant workers in the informal sector, and migrant workers in transit are not adequately respected. The Committee is equally concerned to find that migrant workers in the formal sector do not benefit from equal treatment with regard to social security and, in particular, the payment of retirement pensions.

**The Committee recommends that the State party should take the necessary measures to ensure equal treatment for all migrants. The Committee also recommends that the State party should make sure that no distinction is made between national and migrant workers in the formal sector with regard to social security and, in particular, the payment of retirement pensions.**

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

15. The Committee is concerned that migrant workers in an irregular situation are placed in detention with persons either accused or convicted of crimes and that young people are not separated from adults.

**The Committee recommends that the State party should take the necessary steps to ensure that the detention of migrant workers in an irregular situation is only a measure of last resort and that, in all circumstances, such detention is carried out in accordance with article 16 and with article 17, paragraph 2, of the Convention.**

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

16. Although the State party has ratified the ILO Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), the Committee notes with regret that under article L.9 of the Senegalese Labour Code (Act No. 97-17 of 1 December 1997), the right of migrant workers to serve as officials of associations and trade unions is subject to a reciprocal agreement with the migrant worker's country of origin and is therefore not guaranteed equally to all migrants.

**The Committee recommends that the State party should take all necessary measures to guarantee to all migrant workers and members of their families legally residing in Senegal their right to serve as officials of associations or trade unions to which they belong, without the condition of reciprocity with their country of origin.**

**5. Promotion of sound, equitable, humane and lawful international migration conditions for migrant workers and members of their families (arts. 64–71)**

17. While taking note of the memorandums of understanding and bilateral agreements signed with countries hosting Senegalese migrant workers, the Committee notes with concern that the State party has not taken sufficient steps to protect the rights of its migrant workers, given the significant number of Senegalese migrant workers being deported or expelled from Europe and certain North African countries.

**The Committee recommends that the State party should ensure that its memorandums of understanding and bilateral agreements with countries hosting Senegalese migrant workers include provisions that are in accordance with articles 22 and 67 of the Convention and that its nationals in host countries are able to seek protection and assistance from the consular authorities, including legal assistance if needed, so that their rights may be respected.**

18. The Committee notes with concern that more than half of the children who are forced to beg in the Dakar region come from neighbouring countries and that the State party has not taken any practical steps to end regional trafficking in children for the purpose of begging. The Committee also regrets that the State party has not paid sufficient attention to the large-scale economic exploitation of *talibés* from neighbouring countries, most of them subjected to violence and ill-treatment by *marabouts*, despite the 2006 recommendations of the Committee on the Rights of the Child (CRC/SEN/CO/2, paras. 60 and 61) in that regard.

**The Committee encourages the State party to introduce, in cooperation with the States concerned, all necessary measures to prevent and combat the trafficking of children from neighbouring countries for the purpose of begging. The Committee also urges the State party to take all necessary steps to ensure that those responsible for the trafficking and exploitation of children are brought to justice and receive heavy sentences. The Committee also recommends that the State party introduce programmes to take children who are forced to beg, including *talibés*, off the streets and ensure they receive the necessary psychosocial rehabilitation services.**

19. The Committee regrets that, despite studies conducted by international organizations on the impact of migration on children left behind in countries of origin while one or both parents work abroad, the State party has not paid sufficient attention to the issue, as illustrated by the lack of legislation and policies in that regard, particularly social protection policies for such children.

**The Committee encourages the State party to ensure that the vulnerable situation in which children find themselves when one or both of whose parents have migrated is**

**fully taken into consideration in the formulation of laws, policies and measures in all areas, in particular those related to social protection.**

20. The Committee takes note of bilateral agreements and programmes between certain countries and the State party on the recruitment of Senegalese migrants for work abroad. The Committee regrets, however, that civil society is not consulted prior to the negotiation of bilateral agreements.

**The Committee encourages the State party to consult civil society prior to the negotiation of bilateral agreements on the recruitment of Senegalese migrants for work abroad and to take the necessary steps to ensure that such agreements are in full compliance with the Convention.**

21. The Committee takes note of the existence in the State party of an operational service specializing in the repatriation of Senegalese abroad in crisis situations. The Committee also notes that the Ministry for Senegalese Abroad is responsible for creating favourable conditions for such return. The Committee regrets, however, that no details were provided on the activities of the Ministry for Senegalese Abroad or on measures to ensure the orderly return of Senegalese migrants after their stay abroad.

**The Committee requests the State party to provide additional information in its next report on the activities of the Ministry for Senegalese Abroad, in particular regarding the orderly return of its nationals to Senegal.**

22. The Committee notes with interest that the State party has strengthened the capacity of the security forces responsible for border control. However, the Committee regrets that the labour inspectorate lacks the staff and resources necessary for monitoring and investigating cases of trafficking in persons and related practices.

**The Committee recommends that the State party should ensure that adequate human and material resources are allocated to the labour inspectorate and that the staff of the inspectorate receive appropriate training, including on the content of the Convention, so that it can perform its work with full respect for human rights.**

23. The Committee notes with concern that the responsibility for ending the irregular situation in which migrant workers may find themselves lies with the migrant workers themselves, who are required to contact the services of the Department of Aliens Police and Travel Documents to obtain information on how to regularize their situation. The Committee regrets the lack of adequate measures to provide migrant workers with information and support during that process and emphasizes that it is the responsibility of the State party to take appropriate measures to implement articles 68 and 69 of the Convention.

**The Committee recommends that the State party take proactive and effective measures to ensure that migrant workers and members of their families do not remain in an irregular situation. In this regard, the State party is encouraged to launch an information campaign on the rights of migrant workers and the procedure to be followed for regularizing the situation of migrant workers in an irregular situation. The Committee recommends that this regularization procedure be accessible and expeditious and that migrant workers in an irregular situation be supported throughout this process.**

## **6. Follow-up and dissemination**

### *Follow-up*

24. 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 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 local authorities.

*Dissemination*

25. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to inform Senegalese migrants abroad and foreign migrant workers in transit or residing in Senegal of the rights they and members of their families enjoy under the Convention.

**8. Next periodic report**

26. The Committee requests the State party to submit its second and third periodic reports in a single document by 1 November 2014.

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