



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**
Sixteenth session
16–27 April 2012

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

Paraguay

1. The Committee considered the initial report of Paraguay (CMW/C/PRY/1) at its 186th and 187th meetings (see CMW/C/SR.186 and SR.187), held on 16 and 17 April 2012, and adopted the following concluding observations at its 199th meeting, held on 25 April 2012.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the initial report of the State party and appreciates the constructive dialogue held with its delegation. The Committee thanks the State party for its replies to the list of issues and the exhaustive additional information provided by the delegation. It regrets, however, that the report and the written replies did not provide sufficient information on certain legal and practical matters.

3. The Committee realizes that Paraguay is primarily a country of origin of migrant workers, most of whom migrate to neighbouring countries. It also notes, however, that various groups of migrant workers, including, in particular, Brazilians, are residing in the State party.

4. The Committee notes that some of the countries in which Paraguayan migrant workers are employed are not yet parties to the Convention, which could constitute an obstacle to those workers' enjoyment of their rights under the Convention. It also observes that some of the countries in which Paraguayans have settled belong to the Southern Common Market (MERCOSUR) and that they therefore may have access to benefits under MERCOSUR agreements.

B. Positive aspects

5. The Committee notes with satisfaction that, pursuant to a referendum held on 9 October 2011, Paraguayans residing abroad gained the right to vote and that article 120 of the Constitution has been amended to indicate that Paraguayans abroad are entitled to vote.
6. The Committee welcomes the State party's efforts to assist Paraguayans who decide to return to their country under the "My Country, My Home" Programme.
7. The Committee welcomes the State party's efforts to combat trafficking in persons and, in particular, its establishment of the Inter-Agency Board on Trafficking in Persons by Executive Decree No. 5093 of 15 April 2005 and its creation of a specialized unit within the Public Prosecution Service (*Ministerio Público*) in 2008 to combat human trafficking and the sexual exploitation of children.
8. The Committee welcomes the regularization agreements which the State party has signed with neighbouring member and associate member countries of MERCOSUR and, in particular, the migrant regularization programme launched in 2009 within the framework of MERCOSUR Residency Agreement Act No. 3565/08, under which 12,000 migrants have been regularized to date, and the recent passage of Amnesty Act No. 4429/11.
9. The Committee welcomes the efforts of the Directorate-General for Migration to work more closely with migrants in the State party and takes note, in particular, of its distribution of the magazine entitled *Migración e Integración* ("migration and integration") free of charge. It also takes note of the work of the National Secretariat for Paraguayan Returnees and Refugees, which organizes open days and meetings with returnees, and welcomes the creation of the Directorate for Paraguayan Communities Abroad.
10. The Committee welcomes the progress made in Paraguay in the promotion and protection of human rights and, in that connection, the State party's close cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), as attested to by the presence of an OHCHR Human Rights Adviser in the capital city since 2010.
11. The Committee notes with appreciation that the State party ratified the International Convention for the Protection of All Persons from Enforced Disappearance on 3 August 2010.

C. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

12. The Committee notes that Paraguay has not yet made the declarations provided for in articles 76 and 77 of the Convention, whereby it would recognize the competence of the Committee to receive communications from States parties and individuals.
13. **The Committee invites the State party to consider the possibility of making the declarations provided for in articles 76 and 77 of the Convention.**
14. The Committee notes that Paraguay has not yet become party to the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) or the ILO Private Employment Agencies Convention, 1997 (No. 181). The Committee also notes that Paraguay is considering the possibility of ratifying the ILO Domestic Workers Convention, 2011 (No. 189).

15. **The Committee invites the State party to consider ratifying ILO Conventions Nos. 97, 143 and 181 and to continue to work towards ratifying ILO Convention No. 189.**

16. The Committee takes note of the creation of a number of institutions to deal with migration-related issues, such as the Directorate-General for Migration and the National Secretariat for Paraguayan Returnees and Refugees. It is concerned, however, by the fact that some of these institutions and services are not yet in operation and that there appears to be a lack of coordination among them.

17. **The Committee recommends that the State party strengthen its institutional structure for dealing with migration-related issues. It would like to encourage the State party to establish a coordination mechanism with a view to improving services for migrant workers and their families while, at the same time, working to ensure its compliance with and the uniformity of regional and international treaties to which Paraguay is party. The Committee also encourages the State party to make certain that the Convention is taken into account in the design and application of all policies having to do with the rights of migrant workers.**

18. The Committee regrets the lack of information on the application of the Convention in Paraguayan courts.

19. **The Committee invites the State party to provide information on the application of the Convention in Paraguayan courts in its next periodic report.**

Data collection

20. The Committee finds it particularly regrettable that detailed statistics and information are lacking on a number of migration-related subjects, such as migration flows to and from the State party and the number, employment status and access to basic services of all migrant workers and members of their families, including those in an irregular situation. The Committee recalls that such information is necessary in order to assess the status of migrant workers in the State party and to evaluate the State party's observance of the Convention. It regrets the lack of information on the status of migrant workers in transit through the State party.

21. **The Committee encourages the State party to:**

(a) **Take advantage of the fact that a population census is to be conducted in 2012 in order to build a systematic database covering all aspects of the Convention at the greatest level of disaggregation possible with a view to adopting an effective migration policy and effectively implementing the Convention;**

(b) **Include disaggregated information in its next report on the number of migrant workers and members of their families in the State party, including those in an irregular situation, on the areas in which migrant workers are employed and their working conditions, and on their and their family members' enjoyment of their rights under the Convention and under Migration Act No. 978/96. In cases where precise information is not available, the Committee would appreciate receiving data based on studies or estimates;**

(c) **Provide information in its next periodic report on migrants in transit.**

Training on the Convention and its dissemination

22. While taking note of the work of the Directorate-General for Migration, the Committee is concerned about the lack of ongoing efforts by the State party to promote the Convention or to disseminate information about it to all stakeholders. In particular, the

Committee is concerned by the fact that there is little interaction between the State party and civil society organizations in addressing migration issues.

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

(a) **Intensify its efforts to provide training to all civil servants working in areas related to migration, especially police officers and border officials, as well as local staff who deal with migrant workers;**

(b) **Take the necessary steps to ensure that migrant workers are informed about their rights under the Convention; and**

(c) **Continue to work with civil society organizations to promote the Convention and disseminate information about it. It invites the State party, in particular, to consult with civil society on the preparation of the next periodic report.**

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

Right to an effective remedy

24. The Committee notes that the State party has informed it that effective remedies are available to all workers in the event of breaches of employment contracts, subject to action being initiated at the request of the aggrieved party in a labour court of first instance. The Committee remains concerned, however, about the fact that, in practice, migrant workers, irrespective of their legal status, have limited access to justice due to their lack of knowledge about the administrative and judicial remedies to which they are entitled.

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

(a) **Redouble its efforts to inform migrant workers about the administrative and judicial remedies to which they are entitled and to ensure that their complaints are dealt with effectively;**

(b) **Ensure that, both in law and in practice, migrant workers and members of their families, including those in an irregular situation, enjoy the same rights as nationals of the State party do in terms of lodging complaints and obtaining effective redress from labour and other courts.**

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

26. The Committee is concerned by the fact that migrant workers, particularly those in an irregular situation, are generally more likely to be subjected to forced labour, abuse and other forms of exploitation such as excessively low wages and excessively long working hours. This is particularly true in the case of those employed in agriculture or domestic service. It is also concerned that women migrants in an irregular situation who are employed as domestic workers are especially vulnerable to exploitation and sexual violence and have limited access to judicial remedies.

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

(a) **Conduct more labour inspections and increase the fines and other penalties imposed on employers who exploit migrant workers or who subject them to forced labour or abuse, especially in the informal economy;**

(b) **Monitor employment practices in agriculture and in domestic service to ensure that migrant workers enjoy the same working conditions as Paraguayan nationals do;**

(c) **Improve migrant workers' access to employment in the formal sector by further increasing their access to regularization procedures and vocational training opportunities; and**

(d) **Ensure that women migrant workers, especially those employed in domestic service, have access to effective mechanisms for lodging complaints against their employers and that persons who abuse such workers are tried and punished in accordance with the Committee's general comment No. 1 (2010) on migrant domestic workers.**

28. The Committee notes with concern the absence of measures for assisting migrant children in the State party who are unaccompanied or who have been separated from their parents.

29. **The Committee urges the State party to take into consideration the need to provide protection for migrant children who have been separated from their parents and to design an effective strategy for dealing with unaccompanied or separated migrant children who enter the country and for ensuring that they receive the assistance that they need in accordance with international standards of child protection.**

30. The Committee is concerned at reports of conflicts along the border between Brazil and Paraguay in the Ñacunday District in 2012. According to these reports, large-scale Brazilian soybean and wheat producers are hiring Brazilian citizens to work on farms located in Paraguayan territory, while leaders of Paraguayan organizations are demanding the right of Paraguayans to have access to those jobs. The Committee is also concerned at reports that there is opposition to the presence of Brazilian workers on Paraguayan territory in this connection.

31. **The Committee urges the State party to cooperate with the Brazilian authorities and take immediate steps to prevent these conflicts from escalating. It also recommends that the State party adopt measures to prevent such conflicts in the future and encourages the State party to monitor the working conditions of Brazilian workers in Paraguay.**

32. The Committee is concerned about the difficulties experienced by migrant workers and members of their families in gaining access to basic health care and about the lack of information regarding their inclusion in the State party's social security system.

33. **The Committee recommends that the State party take the necessary steps to guarantee access to basic health-care services, including, as applicable, benefits provided under the social security system, for all migrant workers and members of their families.**

34. The Committee is concerned by the lack of information on access to education for the children of migrant workers, particularly children belonging to the Brazilian community in the State party.

35. **The Committee recommends that the State party take the necessary steps to ensure that all children of migrant workers have access to primary and secondary education on an equal footing with nationals of the State party. The Committee requests the State party to include information on such measures and on school enrolment rates for migrant boys and girls, including those in an irregular situation, in its second periodic report.**

36. The Committee takes note of the high level of remittances received in the State party and of the fact that they are an important source of assistance for Paraguayans.

37. **The Committee invites the State party to continue taking steps to expedite and ensure the effectiveness of procedures for sending and receiving remittances and to lower their cost.**

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

38. While welcoming the amendment of article 120 of the Paraguayan Constitution to grant Paraguayan workers residing outside the State party the right to vote, the Committee is concerned that those migrant workers may not have sufficient time to register to vote before the 2013 elections. It is also concerned by the fact that Paraguayans are required to present an identity card in order to register to vote and that a passport does not suffice for this purpose, given that many Paraguayans who reside abroad have only a passport.

39. **The Committee encourages the State party to take steps to assist Paraguayan migrant workers living outside the country to exercise their right to vote by, inter alia, allowing them to use their passports to register to vote.**

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

40. While noting the State party's efforts to improve and expand its consular services, which have included the creation of the Directorate for Paraguayan Communities Abroad within the Ministry of Foreign Affairs under Decree No. 3514/09, the Committee is concerned by the delays experienced by Paraguayan migrants seeking to obtain travel documents.

41. **The Committee encourages the State party to step up its efforts to ensure that its consular services are more effective in meeting Paraguayan migrant workers' and their family members' need for protection and, in particular, that travel documents are issued without delay to all Paraguayan migrant workers and members of their families, including those who wish to or must return to Paraguay.**

42. The Committee takes note of the mechanisms that are in place to assist Paraguayan migrant workers and members of their families who voluntarily return to Paraguay, such as, in particular, the National Secretariat for Paraguayan Returnees and Refugees, which was created in accordance with Act No. 277/93, and the "My Country, My Home" Programme. Nonetheless, in view of reports that some 15,000 Paraguayans returned to the country between 2005 and 2010, the Committee is concerned that there are not enough programmes or resources to assist these returnees.

43. **The Committee recommends that the State party continue to facilitate the voluntary return of Paraguayan migrant workers and members of their families, as set out in the proposed public policy on social development for 2010–2020, which supplements the strategic economic and social plan for 2008–2013. It also recommends that the State party continue to undertake such initiatives as the creation of local institutional mechanisms to facilitate the voluntary return of Paraguayan migrant workers and members of their families and to contribute to their sustainable social and cultural reintegration.**

44. The Committee takes note of the State party's efforts to address the problem of human trafficking, as demonstrated by its creation of Inter-Agency Boards on Trafficking in Persons at the departmental level, its work to systematize data on the subject and its preparation of a road map for the fight against trafficking. The Committee recalls, nonetheless, the concern expressed by the Committee on the Elimination of Discrimination against Women (CEDAW/C/PRY/CO/6, para. 22) regarding the alarming scale of

trafficking in the State party, which is a host, source and transit country in this regard. It is, in particular, concerned by:

- (a) The lack of a law on human trafficking;
- (b) The lack of sufficient human and financial resources to effectively combat the problem of trafficking and of the exploitation of prostitution or to offer protection and services to victims; and
- (c) The fact that the State party has not adopted a national policy aimed at preventing and combating human trafficking, although the Committee does note that such a policy is being developed.

45. **The Committee underscores the need to continue working with neighbouring countries to tackle the problem of human trafficking. The Committee urges the State party to:**

- (a) Step up its efforts to adopt anti-trafficking measures that will enable it to take a comprehensive, exhaustive approach encompassing all the complex aspects of human trafficking and of the exploitation of prostitution;**
- (b) Expedite the passage of the comprehensive anti-trafficking bill that was submitted to the Chamber of Deputies in December 2011;**
- (c) Put in place effective referral and victim-identification mechanisms;**
- (d) Conduct research on the scale and causes of trafficking in women and children with a view to the development and implementation of a national policy to prevent and combat human trafficking;**
- (e) Reinforce its mechanisms for investigating cases of human trafficking and for prosecuting and punishing traffickers; and**
- (f) Intensify its cooperation at the international, regional and bilateral levels with countries of origin, transit and destination aimed at combating trafficking through information exchange.**

46. The Committee notes with concern that, according to information brought to its attention, members of the indigenous population settled near the border between Bolivia and Paraguay regularly cross the border to work in the State party and that some of them, particularly agricultural workers, are subject to threats of abuse, forced labour and debt servitude. In view of the fact that indigenous migrants are generally in a vulnerable position, the Committee is concerned about the consequences of this migration flow.

47. **The Committee invites the State party to provide for the protection of the rights of this group of migrant workers in accordance with the Convention.**

6. Follow-up and dissemination

Follow-up

48. The Committee requests the State party to include detailed information in its second periodic report on the measures taken to give effect to the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including their transmission to the members of the Government and Congress and to local authorities.

49. The Committee requests the State party to involve civil society organizations in the preparation of its second periodic report.

Dissemination

50. The Committee also requests the State party to disseminate these concluding observations widely, to ensure that, in particular, public agencies and the judiciary, non-governmental organizations and other members of civil society are made aware of them, and to take steps to make them known to Paraguayan migrants abroad and to foreign migrant workers residing in or in transit through Paraguay.

7. Next periodic report

51. The Committee requests the State party to submit its second periodic report by 1 May 2017 at the latest.
