



# 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 Cabo Verde in the absence of a report\*

1. In the absence of a report by the State party, the Committee considered the situation in Cabo Verde with respect to the implementation of the Convention at its 292nd meeting (CMW/C/SR.292), held on 31 August 2015. On the basis of information from, inter alia, other United Nations bodies and mechanisms, the Committee adopted, at its 301st meeting held on 7 September 2015, the following concluding observations.

#### A. Introduction

2. Cabo Verde acceded to the Convention on the Protection of All Migrant Workers and Members of Their Families on 16 September 1997. The State party was under the obligation to submit its initial report under article 73 (1) of the Convention by 1 July 2004. At its twentieth session in April 2014, the Committee adopted a list of issues prior to the submission of the initial report (CMW/C/CPV/QPR/1), based on rule 31 bis of the Committee's provisional rules of procedure (see A/67/48, para. 26), which was transmitted to the State party on 2 May 2014.

3. The Committee notes with concern that the State party has not submitted any replies to the list of issues, which would have constituted its report under article 73 of the Convention, despite numerous reminders. The Committee also notes with concern that the State party has not submitted factual information about the country in accordance 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.

4. Following the transmission of the list of issues prior to reporting by note verbale dated 2 May 2014 and subsequent reminders transmitted by notes verbales dated 12 March

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\* Adopted by the Committee at its twenty-third session (31 August-9 September 2015).



and 5 May 2015, as well as informal reminders, the State party was notified by note verbale dated 1 June 2015 and subsequent reminders of the Committee's procedure regarding the non-submission of replies to the list of issues, in accordance with rule 31 bis of the provisional 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 Cabo Verde is traditionally a country of origin but notes that recently it has increasingly become a country of destination and transit.

6. The Committee notes that most countries in which Cabo Verdean 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 that the State party has concluded bilateral and multilateral agreements, at the regional and international levels, and encourages the conclusion of such agreements in so far as they promote and protect the rights of migrant workers and members of their families. The Committee notes in particular the State party's ratification of/accession to:

(a) The United Nations Convention against Transnational Organized Crime, on 15 July 2004;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 15 July 2004;

(c) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 15 July 2004;

(d) The International Labour Organization Minimum Age Convention, 1973 (No. 138), on 7 February 2011;

(e) The International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182), on 7 February 2011;

(f) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 10 October 2011;

(g) The Convention on the Rights of Persons with Disabilities, on 10 October 2011; and

(h) The Convention on the Prevention and Punishment of the Crime of Genocide, on 10 October 2011.

8. The Committee also welcomes the following institutional and policy measures:

(a) The Third Growth and Poverty Reduction Strategy Paper, covering the period 2012-2016, adopted in December 2012;

(b) The National Migration Strategy and the corresponding action plan (2013-2016), adopted in 2012; and

(c) The National Emigration Strategy for Development, adopted in November 2013.

9. The Committee notes as positive the establishment of the Immigration Coordination Unit in 2011, its six working groups and a National Taskforce which was created to implement the National Immigration Strategy and to mainstream immigration-related themes into the institutions and their work.

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

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

#### **Legislation and application**

10. The Committee welcomes the adoption of several policies which protect the rights of migrant workers, including the National Migration Strategy and National Emigration Strategy for Development, as well as the establishment of the Immigration Coordination Unit to implement and mainstream these policies. The Committee notes with concern, however, that the Convention has not yet been fully incorporated into domestic legislation, and that the regulatory framework for matters relating to migration remains fragmented and incomplete.

**11. The Committee recommends that the State party strengthen its efforts to fully incorporate the Convention into its domestic legislation. The Committee also recommends that the State party ensure that its national laws and policies are in accordance with the provisions of the Convention and that these laws and policies are streamlined. Furthermore, the Committee recommends that the State party adopt and implement without further delay the Immigration Law, the Investment Code for Migrants and the Asylum Law.**

12. The Committee notes that the State party has not made the declarations under articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals.

**13. The Committee encourages the State party to consider making the declarations under articles 76 and 77 of the Convention as soon as possible.**

14. The Committee notes with appreciation that the State party is a party to a number of International Labour Organization conventions, but that it has not yet acceded to the Minimum Wage Fixing Convention, 1970 (No. 131), the Safety and Health in Construction Convention, 1988 (No. 167), the Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) nor the Migration for Employment Convention (Revised), 1949 (No. 97).

**15. The Committee invites the State party to consider acceding to those International Labour Organization conventions to which it is not yet a party as soon as possible.**

16. While noting the information provided by the State party in its national report as part of its universal periodic review (A/HRC/WG.6/16/CPV/1) in February 2013 that the draft of the new statute of the National Commission for Human Rights and Citizenship was prepared in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), the Committee is concerned that, according to the State party, the statute will not come into force until the Office of the Ombudsman envisaged in article 21 of the Constitution is established. The Committee also notes with concern that specific information on the Commission's operations, independence and comprehensive mandate pertaining to the rights of migrant workers is lacking.

17. **The Committee recommends that the State party adopt the new statute of the National Commission for Human Rights and Citizenship without further delay, ensure the independence of the Commission and provide it with adequate financial and human resources to enable it to effectively discharge its mandate in compliance with the Paris Principles. The Committee also recommends that the State party provide the Commission with a broad mandate to carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention.**

#### **Data collection**

18. The Committee is concerned about the paucity of information and detailed statistics on many questions related to migration, in particular on the number and situation of foreign migrant workers in the State party, as well as on the number of migrant workers who are nationals of the State party abroad, especially in Angola and Equatorial Guinea, and their conditions of employment, the number and situation of returnees, migrants in transit, and women and unaccompanied child migrants. The Committee recalls that such information is crucial to assessing the situation of migrant workers, evaluating the implementation of the Convention and developing adequate measures for its implementation.

19. **The Committee recommends that the State party establish a national information system on migration for the compilation of migration-related statistics and information covering all aspects of the Convention. This centralized database should include detailed information on the status of all migrant workers in the State party, including those in transit and emigrants, as well as migrant workers in an irregular situation. The Committee encourages the State party to gather information and statistics disaggregated by sex, age, nationality, reason for entry and departure from the country, and the type of work performed, as a tool for an effective migration policy and for the application of various provisions of the Convention. In cases where it is not possible to obtain precise information, such as information on migrant workers in an irregular situation, the Committee would request the State party to submit data based on studies or estimates.**

#### **Coordination**

20. The Committee takes note of the information that the Immigration Coordination Unit for emigration issues has been created. The Committee is concerned, however, about the insufficient coordination between the institutions and services that deal with migration-related issues. The Committee is also concerned about the lack of information on the allocation of human and financial resources and capacity-building for government agencies handling migration-related issues.

21. **The Committee recommends that the State party strengthen its efforts to enhance coordination between ministries and agencies at the State and local levels in order to effectively implement the rights protected under the Convention. Measures should include the allocation of adequate human and financial resources and the provision of capacity-building to ministries and agencies handling migration issues.**

#### **Training on and dissemination of the Convention**

22. The Committee notes the efforts taken by the State party to provide training on the Convention between 2010 and 2013, including the seminar on migration management and the development of migration policies, which gathered together representatives from various governmental institutions, non-governmental organizations and academia, the subsequent assessment missions and the workshop on the development of the national action plan on immigration. The Committee is concerned, however, about the very limited

dissemination of information about the Convention and the rights enshrined therein among all relevant stakeholders, including national, regional and local government bodies, civil society organizations and migrant workers and members of their families.

23. **The Committee recommends that the State party continue and strengthen the provision of training on the rights of migrant workers and members of their families under the Convention for all public officials 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 public officials and social workers. Furthermore, the Committee recommends that the State party:**

(a) **Step up its information campaigns and programmes for migrant workers and members of their families on their rights under the Convention;**

(b) **Strengthen its work with civil society organizations and the media to disseminate information about and to promote the Convention throughout the State party.**

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

### **Non-discrimination**

24. While noting that the principle of non-discrimination figures in the State party's laws and international obligations, the Committee regrets that fundamental rights of migrant workers are guaranteed only to migrant workers in a regular situation, and on the basis of reciprocity.

25. **The Committee reminds the State party that the respect for human rights is not based on the principle of reciprocity and recommends that the State party amend its domestic laws in order to ensure that all migrant workers and members of their families residing within the State party enjoy the rights under the Convention without any discrimination, in accordance with articles 1 and 7 of the Convention, and in line with general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families.**

26. The Committee notes with concern the lack of information on the measures taken to guarantee the principle of non-discrimination in practice, particularly with regard to migrant workers from West Africa, who are reportedly subjected to prejudice and social stigmatization.

27. **The Committee recommends that the State party take all measures necessary to ensure that no discriminatory policies are pursued on the State party's territory. The Committee furthermore recommends that the State party take immediate and effective measures, including the provision of mandatory training to public officials working in all areas of immigration at State and local levels, as well as awareness-raising campaigns for the general public on the rights of all migrant workers and members of their families and on how to recognize and combat prejudices and social stigmatization faced by them.**

### **Right to an effective remedy**

28. The Committee is concerned about the absence of information on administrative, judicial and other remedies available to migrant workers and members of their families in the State party. The Committee also regrets the lack of information on cooperation with countries of origin.

29. **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, whose rights under the Convention have been violated have equal opportunities with 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.

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

30. The Committee regrets the lack of information regarding access by migrant workers and members of their families to due process safeguards with respect to criminal and administrative proceedings, as well as the lack of information on detention and expulsion proceedings concerning migrant workers or members of their families in Cabo Verde.

31. **The Committee recommends that the State party ensure that migrant workers and members of their families have access to legal aid and consular services and that the minimum guarantees enshrined in the Convention are assured with regard to criminal or administrative procedures, in full compliance with articles 16 and 17 of the Convention. The Committee also recommends that the State party promote alternatives to detention for migrant workers and members of their families. The Committee further recommends that the State party provide detailed information on the number of migrants arrested, detained and expelled for immigration-related infractions, as well as the reasons for the detention and expulsion of these migrant workers.**

32. The Committee notes with concern that in the period between 2002 and 2005 there have been several violent clashes between Cabo Verdean law enforcement officials and migrants of West African regions, which have led to the death of 12 persons.

33. **The Committee recommends that the State party conduct serious and diligent investigations with respect to the root causes of these clashes and deaths, and take action to punish those responsible. The Committee furthermore recommends that the State party adopt the policies and programmes necessary to avoid clashes of this nature, including ongoing human rights training for all law enforcement officials.**

34. The Committee is concerned about the lack of information on the consular, diplomatic and legal assistance offered by the State party to Cabo Verdean migrant workers, including those in irregular situations, particularly in cases of abuse, arrest, detention or expulsion.

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

(a) **Ensure that all migrant workers and members of their families 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 Cabo Verdean migrant workers;**

(c) **Provide detailed disaggregated information on the number of nationals working abroad who have been arrested, detained and expelled.**

36. The Committee notes with concern that the Labour Code does not provide for protection against discrimination on the ground of national origin. The Committee is furthermore concerned about:

(a) The limitation by Decree Law No. 6/97 of May 1997 relating to the Legal Situation of Foreigners on the National Territory of the rights of migrants in a regular situation concerning the rights to education, to assemble, to demonstrate, to strike and to join trade unions and professional associations;

(b) Reports that foreign workers from the Gambia, Guinea, Guinea-Bissau, Mauritania and Senegal receive salaries considerably lower than those of national workers performing the same jobs, which is in contravention of section 15(1) of the Labour Code;

(c) The lack of information on the reform of the legislation concerning employment injury compensation that would allow the Government to introduce specific provisions guaranteeing the payment of pensions in cases of residence abroad.

**37. The Committee recommends that the State party take the legislative and practical measures necessary to ensure that workers are also protected against discrimination on the ground of national origin. Furthermore, the Committee recommends that the State party:**

(a) **Repeal all provisions of Decree Law No. 6/97 of May 1997 which are in violation of the Convention;**

(b) **Intensify efforts to ensure equal treatment of all foreign migrant workers, placing a particular focus on equal remuneration for equal work, and ensure that employers who resort to unequal remuneration of migrant workers performing the same jobs as national workers are duly sanctioned;**

(c) **Expedite the reform of the legislation concerning employment injury compensation;**

(d) **Strengthen information campaigns targeting migrant workers to prevent and address abuse and exploitation in the workplace, including by setting up hotlines for migrant workers whose rights have been violated.**

38. The Committee welcomes the establishment by the State party, in the context of the Mobility Partnership with the European Union, of the Centre for Migrant Support in the Origin Country, which provides pre-departure orientation sessions for nationals of the State party leaving for Portugal or other European countries and information about Cabo Verde for returning nationals. The Committee notes with concern, however, that the same services are not provided to nationals intending to work in other geographical regions. There is also a lack of information concerning the funding and capacities of the project.

**39. The Committee recommends that the State party expand the pre-departure orientation sessions to include other destination countries. The Committee also recommends that the State party provide further information on the activities of the Centre, its services and funding.**

40. The Committee notes that the State party has concluded social security agreements with several countries. The Committee is concerned, however, about the lack of information on specific agreements, such as on the application of the Convention on Social Security with Senegal.

**41. The Committee recommends that the State party provide detailed information on the existing social security agreements, in particular on the social security schemes available to Cabo Verdean migrants, and their implementation in practice. Furthermore, the Committee recommends the State party increase its conclusion of bilateral and multilateral social security agreements with the countries of destination for Cabo Verdean migrant workers to guarantee their full social protection.**

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

42. Noting that article 282 of the Labour Code stipulates that under certain circumstances employment contracts of foreign migrant workers do not need to be in writing, the Committee is concerned that this article leaves room for illicit hiring of migrant

workers, especially when they have arrived recently in the country and have only a little knowledge of the language and the law. The Committee notes with concern, furthermore, that the inspection of workplaces where many migrant workers are employed is frequently inadequate and that the Labour Code is reportedly insufficiently enforced.

43. **The Committee recommends that the State party amend article 282 of the Labour Code and require written contracts for all migrant workers. The Committee also recommends that the State party ensure adequate and frequent inspection of the employment conditions of migrant workers. Furthermore, the Committee recommends that the State party increase its efforts to enforce the Labour Code and train law enforcement officials, labour inspectors, judges, prosecutors and social service providers on the Code.**

44. The Committee notes that national legislation recognizes the right of Cabo Verdeans residing and working abroad to vote and to be elected into public office in Cabo Verde and that these rights are not affected by dual or multiple nationality. The Committee is, however, concerned at the lack of information on how these rights are implemented in practice and at the low level of election participation of the diaspora, especially outside of the Economic Community of West African States.

45. **The Committee encourages the State party to provide detailed information on the implementation of the right by Cabo Verdean migrant workers to vote and to be elected. The Committee furthermore recommends that the State party increase its efforts to raise awareness among Cabo Verdean migrant workers, in particular those residing outside the Economic Community of West African States, on their electoral rights and ensure that all formal and practical requirements necessary to enable and manage external voting are in place.**

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

46. The Committee notes with appreciation the Diaspora for Development of Cabo Verde programme aiming to involve skilled migrants in the development of Cabo Verde. The Committee notes with concern, however, that:

- (a) The responsibility for providing assistance to returning migrants is carried by the municipalities and the conditions of assistance reportedly vary between municipalities;
- (b) Returning migrants may not be aware of existing assistance services;
- (c) Financial incentives for returnees are reportedly limited, the Investment Code for Emigrants has not yet been adopted and many banks do not provide favourable conditions for investments by returnees.

47. **The Committee recommends that the State party develop a programme, in accordance with the principles of the Convention, to assist in the durable reintegration of returning migrant workers and members of their families into the economic, social and cultural fabric of Cabo Verde, and allocate earmarked funds to each municipality to ensure uniform implementation of the programme throughout the State party. The Committee recommends that the State party develop awareness-raising campaigns on this programme and on all other assistance measures which are already in place. Furthermore the Committee recommends that the State party expedite the adoption of the Investment Code for Emigrants and take all appropriate measures, including legal amendments, to facilitate investment conditions for them.**

48. The Committee is concerned about the reportedly increasing number of forcibly returned migrants and the lack of information on their social and economic integration into the State party.



49. **The Committee recommends that the State party ensure the provision of all assistance necessary to facilitate the social and economic integration of forced returnees, including Portuguese language lessons, and avoid their stigmatization in Cabo Verde.**

50. The Committee notes with concern that the State party is a source, destination and transit country for the purpose of human trafficking and is concerned that, at present, the State party does not have any comprehensive legislation prohibiting and criminalizing trafficking in persons. The Committee furthermore notes with concern that the National Plan to Combat Gender-based Violence does not cover trafficking or the exploitation of women and children by prostitution, and is also concerned about:

(a) The prevalence of trafficking in persons, particularly for the purpose of exploitation in prostitution and domestic servitude;

(b) The exploitation of women and girls who are compelled to resort to prostitution as a survival strategy, and the potential negative impact that increased tourism could have on the incidence of prostitution;

(c) The lack of information on the number of investigations, prosecutions and convictions for trafficking and exploitation of prostitution, as well as on any prevention and protection mechanisms for victims, including rehabilitation schemes.

51. **The Committee recommends that the State party adopt and implement comprehensive anti-trafficking legislation in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. This legislation should include a broad definition of trafficking, which relies on evidence of exploitation rather than evidence of movement. The Committee furthermore recommends that the State party:**

(a) **Increase services for the protection, rehabilitation and reintegration of trafficking services and ensure that they are adequately resourced and that trafficking victims have access to remedies;**

(b) **Provide police officers, border personnel, judges, lawyers and other relevant personnel with adequate training to enable them to identify potential victims of trafficking and immediately refer them to assistance services, and ensure that trafficking victims are never treated as criminals;**

(c) **Ensure that trafficking and exploitation of prostitution is duly prosecuted and develop and adopt a national action plan on trafficking with measurable indicators and targets;**

(d) **Collect data on the scope, extent and root causes of human trafficking, which should be disaggregated by age, sex and ethnic origin, and focus on trafficking flows from, to and in transit through its territory.**

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

### **Follow-up**

52. **The Committee requests the State party to include in its next periodic report detailed information on measures taken to follow up on the recommendations contained 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 the National Assembly, as well as to local authorities.

53. The Committee requests the State party to involve civil society organizations in the implementation of recommendations contained in the present concluding observations.

#### Dissemination

54. The Committee also requests the State party to disseminate the Convention and these concluding observations widely, including to public agencies, the judiciary, non-governmental organizations and other members of civil society, so as to increase awareness thereof among judicial, legislative and administrative authorities, civil society and the public in general.

#### Technical assistance

55. The Committee recommends that the State party avails itself of international assistance, including technical assistance to develop a comprehensive programme aimed at the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system, including by seeking technical assistance and capacity-building with respect to reporting from the Office of the United Nations High Commissioner for Human Rights.

#### Next periodic report

56. The Committee requests the State party to submit its combined initial and second periodic reports by 9 September 2016 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.

57. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (CMW/C/2008/1) and reminds it that periodic reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.

58. The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all relevant stakeholders, including civil society, migrant workers and human rights organizations.

59. The Committee also invites the State party to submit a common core document, not exceeding 42,400 words, in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).