



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

Distr.
GENERAL

CMW/C/SR.32
28 November 2006

ENGLISH
Original: FRENCH

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 32nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 25 April 2006, at 3 p.m.

Chairperson: Mr. KARIYAWASAM

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (continued)

* No summary record was prepared for the second part (closed) of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.06-41546 (E) 241106 281106

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (agenda item 6) (continued)

1. The CHAIRPERSON invited the Malian delegation to reply to the questions that had been put by the Committee at the previous meeting.
2. Mr. DIALLO (Mali) said, in response to a question about the refoulement of aliens, that foreigners could be returned on any of the four following grounds: if they were in an irregular situation; if they lacked sufficient resources for entry into the country; if they could not justify their presence in Mali; or if they were subject to a restricted residence order following a criminal conviction. Refoulement was carried out under police escort if the person concerned was dangerous or showed signs of resistance. Anyone who had simply entered the country without a visa was placed under the supervision of the captain.
3. Mr. Cissé (Mali) said, with reference to the question about whether the 4 million Malian migrants were included in the country's total population of 12 million, that the Malian diaspora was estimated at 4 million, of whom about 3.6 million (or over 85 per cent) were in Africa, 102,000 (or 2.7 per cent) in Europe, 1,705 (or 0.1 per cent) in the United States of America and 26,000 (or 0.7 per cent) in Asia. That information was, however, incomplete, since there had never been an exhaustive survey of Malians living abroad. The numbers were an estimate on the basis of statistics provided by consular offices for electoral purposes. He was not in a position to say whether the 4 million were included in the total population or not; he would reply to that question at a later date.
4. With regard to remittances to Mali, he said that the data were incomplete in that case, too. However, he was able to say, by way of example, that the Malian community in France alone sent about CFA 120 billion a year home. That amounted to less than the revenue from cotton or mining, but the money received made it possible to develop small enterprises, schools, health centres and transport and, above all, to improve the living conditions of the families that had remained in Mali.
5. Mr. KONÉ (Mali) said, in reply to the question about the functions of the Ministry of Malians Living Abroad and African Integration, that the ministry had been established in 2002 to assist and protect Malian expatriates. Every time a problem affected Malians abroad, as had recently been the case in Paris and in Ceuta, the minister had gone there in person. From the time of independence to the rise of democracy in 1991, Malians abroad had been the responsibility of the Ministry of Foreign Affairs. The transitional Government had then become aware of their essential role in development and in the economy and had decided to establish a ministry devoted exclusively to their interests. As for cooperation between the Ministry of Foreign Affairs and International Cooperation and the Ministry of Malians Living Abroad and African Integration, he said that the two ministries had complementary functions. The former provided representation and assistance through its diplomatic and consular missions, in accordance with the two Vienna conventions.

6. Mr. KASSÉ (Mali) said that political and economic reasons had been behind the establishment of a ministry entirely devoted to Malian expatriates. A 4-million-strong diaspora was a force of considerable power, which should be able to participate in decision-making and nation-building. The establishment of the ministry had been an innovative step, and was probably unique, since, in most other African countries, nationals living abroad relied on the Ministry of Foreign Affairs.
7. Ms. DICKO (Mali) said, with reference to the question about trafficking in children, that the practice did exist in Mali but that legislation had been adopted to combat it. Such trafficking could not, however, be eliminated overnight, since it was the consequence of poverty and underdevelopment. Mali was engaged in the prevention of child labour, which was one aspect of trafficking in children. There were no reliable statistics in that regard, but it was known that the rural sector was the worst affected. The International Labour Organization (ILO), through its International Programme on the Elimination of Child Labour (IPEC), helped the Government and its social partners to implement policies and programmes of action to strengthen institutional capacity, raise public awareness, promote the social and economic integration of children in their home communities and prevent the employment of children at too young an age or in dangerous conditions. Programmes had been implemented to assist children in rural areas, girls employed in urban areas, children engaged in the underground economy and street children. A subregional programme to combat the economic exploitation of children had, moreover, just been launched in Mali.
8. Improved school enrolment rates, which had risen continuously since 1996, especially among girls, also acted as a check on child labour and, accordingly, on child-trafficking. In addition, the National Labour Department ensured the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and Minimum Age Convention, 1973 (No. 138). She also emphasized that Mali had requested technical assistance from ILO to conduct a survey on the extent and the nature of child labour.
9. With regard to the question of whether the Convention took precedence over domestic legislation, she said that, under article 116 of the 1992 Constitution, treaties and conventions ratified by Mali took legal precedence over national laws and were thus applicable to all workers, including migrant workers. In practice, however, the instruments in question needed to have been incorporated into domestic law before they could be invoked.
10. Mr. KASSÉ (Mali) said that the incorporation of international instruments into domestic law was a particularly difficult procedure for developing countries.
11. Ms. DICKO (Mali) said, with regard to the question about equality between Malian workers and migrant workers, that Mali had ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and that the Convention had been incorporated into domestic law. There was thus no discrimination against migrants in the application of labour legislation. There was no specific mechanism for dealing with claims by migrants who considered their rights to have been violated, but the administrative, legislative and judicial authorities could hear claims from all workers, including migrant workers.

12. Mr. KASSÉ (Mali) reiterated that there was no discrimination against migrant workers and that Mali was bound by ILO Convention No. 111. There also existed in Mali a unique mechanism known as the Forum for Democratic Challenge (Espace d'interpellation démocratique), which gave any Malian or any foreigner the opportunity, for one day every year, to question the Government about a particular issue. Any migrant worker living in Mali who felt they had been discriminated against, despite the provisions described earlier, could take advantage of that opportunity, which was available on 10 December of every year to mark Human Rights Day. Migrant workers in Mali who considered that their interests had been violated by Malian law could also take their grievance to their embassy, which could request the Ministry of Foreign Affairs and International Cooperation to seek a solution from the department concerned. Similarly, if a Malian national living abroad lodged a complaint with the Malian consulate, consular officials were obliged to give him or her a hearing and submit a complaint to the local authorities.

13. Mr. DIALLO (Mali) said, with regard to the repatriation of remains, that the implementing decree of Act No. 04-058 did not deal specifically with the conditions for repatriation of remains but chapter 3 contained guarantees on repatriation. Under article 43 of the decree, any foreigner who wished to enter Malian territory and did not hold a return ticket or a ticket for a destination outside Mali was required to pay a repatriation deposit or to hold a document guaranteeing their repatriation. The payment had to be made to the Treasury, against a receipt, within 15 days of arrival in national territory. Another rule was that, when a foreigner died in Malian territory, the embassy of his or her country of origin made all the necessary arrangements, in cooperation with the national authorities, to repatriate the remains, if the deceased's family so wished. The following were exempt from payment of the repatriation deposit: holders of diplomatic or service passports and members of their families; military officials and members of their families in possession of, for example, a movement order or a travel authorization; nationals of adjacent countries, provided that their journey was overland; tourists using private vehicles; and children and young people officially registered with secondary or higher educational establishments in Mali.

14. Ms. DICKO (Mali) said that in Mali, as in most French-speaking countries, there were three kinds of offence, for which there were corresponding penalties: minor offences, which were punishable by a fine; ordinary offences, which were punishable by imprisonment or a fine; and serious offences, which generally gave rise to a sentence of imprisonment, often accompanied by a fine. Migrant and Malian workers were subject to the same procedures. A breach of migration law was subject to administrative measures or deportation. A breach of criminal law might lead to the imprisonment of the perpetrator in a place apart from other prisoners and detainees, but only for the period of time necessary to arrange his or her expulsion or deportation. Such offences might also be punishable by a fine.

15. With regard to suffrage, she said that, like Malians living abroad, Malian workers returning to the country enjoyed the same right to vote and be elected as nationals living in Malian territory, provided that they had not been stripped of their civic rights. Malians living abroad, however, were entitled to vote only at presidential elections. The opportunities for Malians to exercise their right to vote when they were abroad also depended on the size of the

Malian community in a given country, since ballots were not organized in all host countries. Malians unable to vote in their country of residence could, however, go to another country to do so. As for Malians returning to their country, they could vote only if they were listed in the electoral register.

16. Mr. KASSÉ (Mali), replying to a question about voluntary repatriation, offered to give the Committee a concrete example. Such repatriation often took place within a framework agreed beforehand, as in the case of Switzerland, with which Mali had reached an agreement concerning the return, under humane and acceptable conditions, of some of its nationals who had been refused asylum. Under the agreement, which had been in force since September 2004, three Malians had left Switzerland voluntarily to return to Mali. The repatriation programme established by the agreement provided for the opportunity to receive training in Switzerland, to be given the working equipment corresponding to that training and to receive a lump-sum payment. The programme, which had been implemented in cooperation with the International Organization for Migration (IOM), also contained support and follow-up measures, under which a committee made up of representatives of various ministries, IOM and the Swiss Cooperation Office met the people concerned in Bamako and helped them to get established. The scheme was a pilot project, which might be extended to other countries in West Africa.

17. As for the question of polygamy, he said that it was difficult for the Malian authorities in Paris to find a solution to the kinds of problems raised. Mali did not have the administrative or legal resources to compel a Malian with several wives, of whom only one could enjoy her rights, to enable the other wives to exercise their rights. It was true that polygamy was accepted in Mali. If, however, for example, a civil servant with several wives left the country, the State would be responsible for only one wife. As for other nationals who left the country, Mali did not have the resources to provide them with any protection in that regard. It was a difficult question, on which regular consultations were held with the authorities of other countries, including France.

18. With regard to the incidents in Ceuta and Melilla, he recalled that they had been condemned by the Malian authorities at the highest level. The Minister of Malians Living Abroad and African Integration had visited Paris and Morocco and the Spanish Minister for Foreign Affairs had gone to Bamako, where he had been received by the President of Mali in February 2006 to discuss the issues involved. There was, however, more to the incidents than the condemnation to which they had given rise: the phenomenon of migration was not restricted to Mali, the West African subregion or even Africa as a whole. It had therefore been decided within the African Union, and in conjunction with such partners as IOM, to give the matter further consideration. Several workshops and meetings had been held, in Brussels and elsewhere, from which it had emerged that the countries of neither the North nor the South were able to come up with an immediate solution to the problem. The situation was particularly complicated for Mali, in that it was a country of transit as well as migration. There were large migration flows throughout the region. It was worth noting, in that context, that all the Sahelians who had come to Mali in the 1990s were automatically considered Malians. The current direction of migration flows was to the west, towards Morocco, Mauritania and even Senegal. The question would be the focus of a special meeting in autumn 2006 between the African Union and the European Union.

19. Mali made every effort to keep its population at home, especially its young people, but there was no getting away from the fact that, if the problem of cotton subsidies in the countries of the North was not settled, a large proportion of Malian youth, whose livelihood depended on cotton, would want to migrate to the countries of the North. There had been a recent addition to the various factors affecting migration, although it was often overlooked by the international community, namely debt. Many young people fell into debt in an attempt to brave the crossing of the Sahara, the Mediterranean or the Atlantic. Sometimes all the inhabitants of a village would club together, selling their property so that two or three villagers could leave. If they failed, the young men felt a sense of shame and humiliation that prevented them from returning to their village. Psychological and cultural factors should therefore also be taken into account. The question of migration and development, which was currently on the agenda at all the major meetings, and the search for solutions to related problems, affected the countries of the South and the North equally. Mali, for its part, tried to persuade its nationals that leaving was not the solution to their difficulties, but it needed assistance in that respect.

20. As for what Mali expected from the Committee, he said that the Malian delegation would not reply to that question immediately. It would begin by reporting on its mission in Bamako and would then engage in wide consultations with the treaty bodies and the non-governmental organizations (NGOs) concerned. Only after that could it give a clear answer to the question. The dialogue had only just begun and Mali, which was the first country to have worked with the Committee, would not hesitate to approach it for assistance in implementing the Convention.

21. Ms. DICKO (Mali) said, with regard to the question of whether NGOs had been consulted during or after the preparation of Mali's report, that, whenever a report was submitted under a convention, a questionnaire was sent to all the technical departments and NGOs concerned. A meeting was then arranged to consider the replies received. A report was drafted on the basis of those replies and submitted to the Council of Ministers. NGOs had thus been consulted during the preparation of the report that had been submitted to the Committee. Moreover, in order to improve the preparation of reports submitted under United Nations conventions, the Malian Human Rights Association, supported by the Belgian Technical Cooperation Agency, organized regular seminars with the aim of training members of government departments and NGOs in the technical aspects of preparing reports.

22. As for the question of whether Act No. 04-058 of 25 November 2004 had been adopted in consequence of Mali's ratification of the International Convention on the Protection of All Migrant Workers and Members of Their Families, she said that the adoption of the law was not a consequence of that ratification but had taken place in response to a recommendation by the Economic and Social Council and to fill a gap in Malian legislation in that regard.

23. Mr. KASSÉ (Mali) said that the Government was anxious to be transparent in its work and to honour its international commitments, particularly in the field of human rights. It was therefore making every effort to involve civil society in its deliberations and discussions and in the implementation of the instruments that the country had ratified. He assured the Committee that, when the delegation returned to Mali, the measures that would be taken in implementation of the Convention would be discussed with Malian NGOs working for the protection of migrants.

24. Mr. ALBA asked whether the State party accepted dual or multiple nationality and, if so, how many holders of such nationality there were.
25. Mr. EL-BORAI asked whether Act No. 04-058 of 25 November 2004 on the entry, stay and residence of foreigners in the Republic of Mali, and its implementing decree, made any provision for migrant workers who had been turned back by the border police to be able to bring their case before a competent authority, especially a judge or a court. He also asked about the status of international conventions in Malian law, including the possibility of judges applying the provisions of the Convention directly.
26. Mr. TAGHIZADE requested an estimate of the numbers of foreigners involved in migration flows to Mali, the number of Malian citizens abroad and the number of foreigners using Mali as a transit country. Such information would enable the Committee to get a better understanding of the difficulties faced by the Government of the State party in fulfilling the commitments that it had undertaken.
27. Mr. SEVIM asked whether international conventions ratified by the State party had to be incorporated into domestic legislation before they could be invoked by the courts; whether the provisions of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) had been incorporated into Malian law; and whether, in accordance with the principle of non-discrimination between Malians and foreigners, a migrant worker could be employed in the public sector.
28. Mr. KASSÉ (Mali) said that dual nationality existed in Mali; indeed, Malian nationality was automatically acquired on marriage. With regard to the status of the Convention in Malian law, he said that, once Mali had completed the formalities of accession or ratification of an international instrument, that instrument took legal precedence over domestic legislation. Depending on the nature and the technical aspects of a given instrument, however, it might also be necessary to undertake a complementary process of incorporating its provisions into domestic law.
29. Mali did not currently have any exact figures on the number of migrants entering the country, largely owing to the length of its borders, its geographical situation - much of it was desert - and the tradition whereby any African in Malian territory should be considered a Malian. People with dual nationality worked in the Malian administration, but senior posts were reserved for Malian citizens.
30. Ms. DICKO (Mali) said that, under article 116 of the Malian Constitution, treaties, conventions and agreements that had been ratified took precedence over domestic law. Any Malian - and, by extension, any migrant worker - could thus invoke international instruments that had been ratified. In practice, the provisions of such instruments had to be incorporated into national legislation, and specifically into the Labour Code, the Social Welfare Code and migration law. The provisions of ILO Convention No. 111 had already been incorporated into Malian law.
31. Any expulsion order in respect of a migrant worker could be challenged before the administrative courts. As for migration flows, they were difficult to measure for the purposes

of obtaining reliable statistics, owing to the length and extreme permeability of Mali's borders and the free movement of persons and goods under the rules of the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). Another factor was clandestine immigration, which was extensive and uncontrolled. Possible estimates had been compiled on the basis of travel documents. Thus, for example, the Malian authorities had, in 2005, issued 53,549 passports (which indicated potential travellers), 219 admission visas, 4,604 entry visas, 2,678 short-stay visas and 5,938 long-stay visas.

32. Mr. KONÉ (Mali) said that under article 116 of the Constitution, Malian citizens could invoke the provisions of international treaties, subject to the application of the treaty by the other party under bilateral agreements.

33. Mr. DIALLO (Mali) explained that the Director of the Border Police had no authority to expel migrants. In accordance with the implementing decree of Act No. 04-058, expulsion orders were issued by the Ministry of Internal Security for migrants who had committed and been convicted of an offence, and they were subsequently prohibited from residing in the country. However, if at the border foreigners were found to be in an irregular situation or to have insufficient means, steps were taken to return them to their country of origin, in accordance with the legislation in force.

34. Ms. DICKO (Mali) said that in Mali, as in many other countries in the world, employment in the civil service was subject to a nationality requirement. Migrant workers could nevertheless apply for posts open to competition in public administrative or scientific institutions. In the private sector, there was no nationality requirement. Migrants' contracts simply needed to be stamped by the National Labour Department.

35. Mr. EL JAMRI said it was necessary to draw a distinction between voluntary repatriation and readmissions, the latter being the forcible or negotiated return of persons who had been unable to regularize their situation in the country of emigration. He wished to ask the delegation of Mali a few technical questions. First, had Mali's ratification of the Convention been published in the Official Gazette? In some cases, the local courts argued that the failure to publish the act ratifying an international instrument was reason enough not to apply it, which sometimes gave rise to difficult situations. Second, as migration and terrorism were often lumped together, and pressure was sometimes put on countries to adopt migration laws that gave them greater control over migration flows at the international level, was Mali aware of any problems in that regard? Third, given the complexity of the migration problem in Mali, owing to its subregional and regional location, and the fact that any African could acquire Malian nationality, was there a countrywide civil registration system? Fourth, had Mali been the subject of any complaints by neighbouring States or had it lodged complaints itself concerning emigration or immigration issues? And had it envisaged making the declaration that would enable the Committee to receive complaints about it under the Convention? Lastly, how did the different departments dealing with migration issues, in particular the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Malians Living Abroad, cooperate at the national level?

36. Mr. KASSÉ (Mali) said that further information on the conditions of the voluntary repatriation of Malians who had lived abroad for a long time would be submitted to the Committee in writing. He then replied to the questions raised. First, the act ratifying the Convention had been published in the Official Gazette of 10 January 2003. Second, the Malian authorities, who condemned terrorism at the highest level, sometimes had the feeling that terrorism and migration issues were being lumped together. Africa intended to broach the issue of migration flows during forthcoming negotiations with the European Union with a view to resolving that problem. As for the third point, one of the problems of migration in West Africa was the deepening integration of States in the subregion in ECOWAS and WAEMU; however, Mali did plan to modernize its civil registration system. On the subject of complaints between neighbouring States concerning migration issues, he said that Mali had officially requested the authorities of Côte d'Ivoire to provide greater protection for Malian workers who had settled in that country, some of whom had been subjected to abuse. However, it was too early to say whether Mali intended to make the declaration authorizing the Committee to receive communications concerning it. Lastly, he said that the different bodies dealing with migration issues did their best to cooperate with the greatest transparency, and a group comprising representatives of the various departments involved in the implementation of the Convention had been established to draft the report to the Committee. There was also an inter-ministerial committee of experts on migration issues headed by the Ministry of Labour, which had been opened up to representatives of civil society.

37. The CHAIRPERSON thanked the delegation of Mali for its interesting presentation and for engaging in such an excellent dialogue with the Committee, which augured well for the implementation of the Convention. Since Mali's report was the first to be considered and since Mali was on a traditional migration route and was both a country of origin and transit, it was important that the Committee should reflect carefully on its concluding observations. He welcomed the positive steps taken by Mali in the spirit of the Convention, including the establishment of a sound institutional framework to ensure the protection of migrant workers, but noted that further improvements were of course possible. There were some contradictions between the provisions of the Convention and Malian legislation and social customs, such as polygamy, which would need to be resolved. An effort should also be made to seek solutions, both at the international and national levels, to the crucial and complex problem of the link between the rights of migrant workers on the one hand and economic and commercial rights on the other. Further consideration should also be given to security problems and xenophobic tendencies and their consequences for migrant workers from Mali and other States in the region. As a developing country, Mali had some difficulty in compiling the statistics required, owing to a shortage of resources, but it should nonetheless make an effort to provide as detailed information as possible. In that connection, it would be useful for countries such as Mali to receive technical assistance to help them implement the Convention.

38. It would be far easier to monitor the full observance of the rights of Malian migrant workers if the countries hosting them ratified the Convention. He therefore encouraged those countries to support Mali, and invited the Malian authorities to pursue their efforts to implement the Convention and to submit in writing before the next session any additional information that

might be found useful. In closing, he said that a copy of the Committee's draft concluding observations concerning Mali's initial report would be given to the delegation before the end of the session.

39. Mr. KASSÉ (Mali) thanked the Committee for giving his country the opportunity to present its initial report. He appealed for technical assistance and urged the countries which hosted Malian migrant workers to accede to the Convention and to ratify it. He assured the Committee that the Malian authorities would continue to cooperate closely with it and would endeavour to furnish, without further delay, additional written replies, with some statistics, if possible.

The public part of the meeting rose at 4.55 p.m.