

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

4th session (Geneva, 24 to 28 April 2006)

### 1. Overview of the Committee session

At its 4<sup>th</sup> session, held from 24 to 28 April 2006, the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families (the Committee) examined the initial periodic report of Mali, the first State party report to be considered by the Committee. Attendance by NGOs throughout the session was relatively high<sup>1</sup>, while only a few international organisations<sup>2</sup> were represented. A parallel event was organised on the methodology and practice of the reporting process before the Committee on Migrant Workers in the context of Mexico, whose initial State party report will be examined at the Committee's 5<sup>th</sup> session.

The level of scrutiny of the Committee was relatively high, with many members following up on their questions. However the lack of statistics and information that the State delegation could provide meant that some important questions remained insufficiently answered or unanswered, notably with regard to figures on the flow of migration. Despite this, the level of interaction between members of the State delegation and Committee members was high and the Committee deemed it to be constructive, with members of the delegation providing perspectives from their different areas of expertise on almost all questions.

The Committee also discussed and adopted a written contribution to the General Assembly's High-Level Dialogue on Migration and Development, to be held in September 2006. The Paper was informed by the Day of General Discussion held by the Committee on 15 December 2005 on the theme "Respecting the rights of all migrant workers as a tool to enhance development"<sup>3</sup>.

### 2. Consideration of country report (Mali)

#### 2.1 Information submitted to the Committee

Mali submitted its initial report<sup>4</sup> due in 2004, as well as written replies<sup>5</sup> to the Committee's list of issues<sup>6</sup>. During the session, the State party also circulated a copy of *Act No. 04-058* of 25 November 2005 regarding conditions of entry and residence in Mali at the request of the Committee. Mali's initial report, while providing a broad range of information, remained superficial and often provided only very short answers. With regard to the constitutional and legislative framework governing the implementation of the Convention for example, the report provided a list of relevant legislative measures without describing how they applied the provisions of the Convention. In terms of practical implementation of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (the Convention), the initial report focused on Mali's general commitment to human rights rather than providing an overview of the steps taken. The almost complete lack of statistics also prevented the report from presenting a comprehensive and thorough analysis of migration affecting Mali. With regard to specific information on each article of the Convention, the report provided some more detail of relevant laws, but generally stressed the fact that Malian legislation makes no distinction between migrant workers and Malian workers, thereby providing the former the same protection and rights as the latter. The report also outlined the conventions signed by Mali, notably ILO conventions, and the bi- and multi-lateral agreements that it has entered into concerning the rights of migrant workers.

The State party's written replies, although providing some more detail on some issues, notably information on the characteristics and nature of migration flows and the issue of child trafficking, also remained generally superficial and a number of questions were left completely unanswered.

#### 2.2 Themes and issues

### Implementation

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<sup>1</sup> Represented organisations included the International NGO Platform on the Migrant Workers' Convention, December 18 (an NGO), Amnesty International, Emmaüs, Franciscans International, and the Fédération Syndicale Mondiale.

<sup>2</sup> The International Labour Organisation and the Council of Europe.

<sup>3</sup> See <http://www.ohchr.org/english/bodies/cmw/mwdiscussion.htm> for further information.

<sup>4</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CMW.C.MLI.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CMW.C.MLI.1.En?OpenDocument).

<sup>5</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CMW.C.MLI.Q.1.Add.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CMW.C.MLI.Q.1.Add.1.En?OpenDocument).

<sup>6</sup> <http://www.ohchr.org/english/bodies/cmw/docs/CMW.C.MLI.Q.1.pdf>.

The Committee identified the general implementation of the Convention as one of its main concerns, in light of the lack of detailed information in Mali's reports. More information was therefore sought on the exact status of the Convention in national legislation and on measures, policies and programs undertaken to translate it into reality and disseminate it. The delegation explained that while article 116 of the Constitution granted international conventions precedence over national legislation, a substantive instrument like the Convention needed to be reflected in national legislation to take effect. The Committee expressed concern about the extent to which this process had started and urged Mali to take the legislative measures necessary to do so. With regard to dissemination, the delegation recognised that no steps had been taken yet in light of the recent ratification of the Convention, but stressed that such measures would start to be adopted progressively, as dialogue with the Committee developed. The delegation recognised that implementation of the Convention was one of the main areas in which assistance from the Committee would be needed.

The Committee called on the State party to make a declaration under Article 77 of the Convention recognising the competence of the Committee to receive and consider communications from or on behalf of groups and individuals subject to the State party's jurisdiction who claim that their individual rights as established by the Convention have been violated by that State Party. Mali expressed its willingness to do so in the future.

### **Migration and development**

The delegation stressed that issues relating to migration are taken very seriously in Mali, in recognition of its status as an emigration country *par excellence*, and this commitment was reflected in the delegation's efforts to provide substantial information on questions regarding development. The Committee addressed several issues relating to this topic, notably remittances, the structures in place servicing Malians working abroad, government policy toward migration, contemporary forms of migration and voluntary return programs.

The Committee sought more information on the levels and impact of remittances from Malians abroad. The Malian delegation stressed Mali's interest on this issue, pointing out that the Government had participated in a conference in February 2006 in Benin on the subject, and acknowledged the important financial contribution of Malians living abroad to development, even in comparison to levels of trade in cotton and gold, citing a figure of 120 billion CFA francs (approximately 1 billion USD) coming from France alone. The delegation did not answer questions regarding State-encouraged emigration directly but emphasised that the Government was working on many different levels to make staying in Mali a viable option for young people, notably by considering the impact of social and economic policies on migration; elaborating voluntary return programs; and undertaking awareness-raising activities. The delegation emphasised the complexity of migration, notably referring to the problem of indebtedness, explaining that sometimes, whole villages subsidised the migration of one person, thereby further complicating the return of Malians to their places of origin. The delegation also recognised that the creation of a Ministry for Malians Abroad was a political decision in view of the important population of Malians living abroad and their significant contribution to the construction and development of the country.

Both the Committee and the delegation discussed the effects of contemporary forms of migration, in this case mass sub-Saharan migration through North Africa to Europe, notably referring to the October 2005 incidents on the Spanish and Moroccan border. The Malian delegation stressed that this phenomenon of mass migration was beyond Malian and general governmental control, more particularly so in the African regional and West African sub-regional context, in light of the area of free movement of persons in the Economic Community of West African States (ECOWAS). The delegation also pointed out that this was a particularly delicate issue in Mali, not only because it is both a country of origin and transit with regards to migration, but also because of its policy of promoting African integration and unity. The delegation referred to a high-level meeting scheduled in autumn between the African Union and the European Union on this subject.

### **Civil and political rights**

The Committee also focused on civil and political rights, notably non-discrimination; freedom of association; participation in public affairs; freedom of movement; and due process, particularly with regard to expulsion procedures. In this general context the Malian delegation stressed that Malian legislation does not distinguish between migrant workers and Malian workers and as such they enjoy the same rights. While this generally guarantees non-discrimination under labour, employment and social security legislation, non-discrimination is also enshrined in the Constitution and Mali has ratified *ILO Convention 111* on the subject. The equality of migrant and Malian workers before the law further implies that the former have access to the same complaints mechanisms in case of human rights violations, such as the National Advisory Committee on Human Rights.

With regard to the right of Malians abroad to participate in the political life of Mali, the delegation explained that they could only vote in presidential elections and only in certain countries. The Committee members expressed interest in the Ministry for Malians abroad and for African integration, stressing its originality and potential as an example of best practice. The delegation explained that the ministry was created to facilitate and mobilise the participation of Malians abroad in public affairs, in recognition of their important role in the construction and development of Mali.

### **International cooperation**

Both the Committee and the delegation addressed the issue of international cooperation with respect to migrant workers, particularly focusing on the need to ensure complete protection of Malian migrant workers abroad, notably through agreements or negotiations with receiving countries and promotion of the ratification of the Convention. Incidents mentioned include the August 2005 fires in Paris, the October 2005 incidents at the Spanish-Moroccan borders in Melilla and Ceuta, and the mass expulsions of Malians from France in 1996 with the Committee seeking to establish the response of the Malian Government in these events and the level of protection offered to Malian migrants. The delegation pointed out the numerous bilateral agreements it has entered into to ensure the protection of Malians abroad. The discussion also focused on Mali's relationship with other African countries. The delegation mentioned that recent events in Côte d'Ivoire had led to the Government complaining about the treatment of some Malian migrant workers living there, but in general it stressed the importance the Government attached to the issue of African integration and the free circulation of people in the ECOWAS region.

### **Trafficking**

The Committee also considered the issue of trafficking, particularly with regard to children. The delegation recognised that this was a serious problem in Mali, not only because of the high number of children affected by this phenomenon but also because of the long-term effect this had on the social and economic development of the country, calling it a by-product of poverty and under-development. The delegation outlined a number of initiatives and programs undertaken by the Government in this respect with the assistance of the ILO and referred to plans for a sub-regional project to prevent trafficking in children.

### *2.3 Conclusions and next steps*

The session was forward-looking, with both the Committee and the State delegation recognising that this was only the beginning of a long process. As a result of this, no new legislative measures or policies were announced, but the delegation stressed that areas of assistance could be delineated as dialogue developed. Although the extent to which the State delegation answered the questions varied, they were cooperative if not entirely prepared, notably with regard to provision of statistics, and they displayed genuine concern for the issue of migration, especially with regard to its link to development and provided substantive information in this regard. The Committee singled out the lack of information and statistics available as the major problem with regard to this report – the delegation was notably unable to ascertain whether the estimated 4 million Malians abroad were included in the total population figure of 12 million or to provide any rough estimates of migratory flows affecting Mali – and encouraged the delegation to provide much more detail in following reports, notably by seeking technical assistance in this area. The absence of adequate information in general was also pointed out by the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Rights of the Child (CRC) in 2003, 2002 and 1999 respectively with regard to periodic reports submitted by Mali. HRC and CERD, similarly to the Committee on Migrant Workers, particularly deplored the lack of information provided with regard to the practical implementation of their respective conventions.

The Committee called on the delegation to provide detailed information on measures taken to implement its recommendations in Mali's second periodic report and to disseminate the Committee's Concluding Observations widely. The Committee also asked the Government to set up a procedure to allow the participation of NGOs and civil society in the elaboration of the second periodic report, reflecting a concern already expressed by CERD in their 2002 Concluding Observations.

While the issue of child trafficking was addressed extensively and the Committee called on the Government to intensify its efforts in the fight against child trafficking, notably by implementing the recommendations made by the CRC in 1999, the phenomenon of trafficking of adults towards Europe and more generally of encouragement of emigration by the Government in light of the important financial benefits deriving from emigration of Malians to Europe was not discussed. The delegation did not provide an appropriate reply to the only question that was asked on this subject and no follow-up was sought. Another issue potentially requiring further discussion was the question of whether Mali's approach of making no distinction in national

legislation between migrant workers and Malian workers was an appropriate method or whether developing distinctive legislation protecting migrant workers would be a more desirable approach.