



**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
Tenth session, 20 April – 1 May 2009

**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**

Bosnia and Herzegovina

1. The Committee considered the initial report of Bosnia and Herzegovina (CMW/C/BIH/1) at its 104th and 106th meetings (CMW/C/SR/104 and SR106), held on 23 April 2009 and 24 April 2009, and adopted at its 113th meeting, held on 29 April 2009, the following concluding observations.

A. Introduction

2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent, multi-sectoral, representative delegation. It regrets, however, that the report and the written responses do not contain sufficient information on several important questions pertaining to the practical implementation of the Convention.

3. The Committee acknowledges the State party's information to the effect that Bosnia and Herzegovina is primarily a country of origin for migrant workers, with significant and increasing numbers of migrant workers in transit or living on its territory.

4. The Committee notes that many of the countries in which Bosnia and Herzegovina migrant workers are employed are not yet parties to the Convention, which may constitute an

obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee welcomes the conclusion by the State party of bilateral and multilateral agreements, in so far as they promote the rights of migrant workers and combat crimes such as trafficking in persons.

6. The Committee notes with appreciation recent ratification of the following instruments:

- (a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict;
- (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- (c) The Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- (d) International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. .

7. The Committee notes with appreciation that Bosnia and Herzegovina is party to the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143), and is one of only a few States to have ratified all the treaties relating to the rights of migrant workers.

C. Factors and difficulties

8. The Committee notes the State party's information that its political and administrative structure, which grants extensive autonomy to the two Entities established under the Dayton Peace Agreement of 1995 (the *Republika Srpska* and the Federation of Bosnia Herzegovina), may create constraints in planning, developing and implementing comprehensive and coordinated laws and policies for the implementation of the Convention at all levels.

D. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

9. The Committee, while acknowledging the oral information provided by the delegation during the dialogue with the Committee, regrets that the State party's report does not contain adequate information in relation to practical measures taken by the State party to implement the legal framework, in particular the degree to which the constitutional and other legal protections of migrant workers and members of their families are enforced.

10. The Committee recommends that the State party incorporate, in its next periodic report, detailed information on the practical implementation of the legal framework.

11. The Committee welcomes the State party's efforts to address rights related generally to employment, including the rights of non-citizens, through the promulgation of a number of laws at the national and Entity levels. It is concerned, however, that the proliferation of legislation at the national and Entity levels has resulted in a lack of consistency between the respective laws and regulations at national and Entity level which, in turn, undermines the State party's ability to protect the rights of migrant workers as envisaged by the Convention. In particular, the Committee is concerned that the different laws in the Entities regulating the issuing of work and residence permits may not be in compliance with national law and the Convention.

12. The Committee recommends that the State party take all necessary measures to harmonize its legislation with the Convention in order to implement its provisions.

13. The Committee notes that Bosnia and Herzegovina has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

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

Data collection

15. While noting the State party's efforts in gathering data relating to migrant inflows, including the State party's proposed plans to merge all migration-related databases, the Committee is concerned that the continuing existence of several databases containing similar information may hinder efforts to effectively manage this information. The Committee is also concerned at the lack of adequate information on transmit migration patterns.

16. The Committee recommends that the State party expedite its efforts to integrate all migration-related databases in order to ensure the effective management of information and assist the development of sound migration policies. The Committee also recommends that the State party include, in its next report, information relating to transit migration.

Training in and dissemination of the Convention

17. The Committee notes the information provided by the delegation in relation to the training of border police on the Convention but notes the absence of detailed information thereon. The Committee is concerned that current efforts at training may be limited in their reach and that

there is no information on measures to disseminate information and promote the Convention among other relevant stakeholders, in particular civil society organizations.

18. The Committee encourages the State party:

(a) To strengthen and expand its training programmes to include all officials working in the area of migration, including social workers, judges and prosecutors and invites the State party to provide information in its second periodic report on any such training programmes;

(b) To take the necessary steps to ensure access by migrant workers to information about their rights under the Convention;

(c) To work with civil society organizations in order to disseminate information on and to promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

19. The Committee welcomes the promulgation of the Law on Movement and Stay of Aliens and Asylum, which entered into force in October 2003, and provides that non-citizens shall not be subject to discrimination on any grounds. The Committee also notes that the Constitutions of Bosnia and Herzegovina and the Entities, similarly, prohibit discrimination. However, the Committee is concerned that there is no precise information available as to the extent to which the legal framework has been effective in protecting the rights of migrant workers from discrimination.

20. The Committee recommends that the State party include, in its next periodic report, detailed information on the effective application of the anti-discrimination provisions in practice.

Right to an effective remedy

21. The Committee is concerned at information indicating violations of the rights of migrant workers to an effective remedy, in particular in relation to the revocation of rights of citizenship and subsequent expulsion orders. In this regard, the Committee is concerned that migrant workers who have been stripped of their right to citizenship are particularly vulnerable to having their due process rights violated.

22. The Committee encourages the State party to strengthen the legal framework available to migrant workers for the effective redress of such complaints. It recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress before the courts.

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

23. The Committee is concerned at the lack of information regarding the extent, if any, to which migrant workers and members of their families in an undocumented or irregular situation enjoy in practice the rights set out in Part III of the Convention.

24. **The Committee recommends that the State party review its legislation to ensure that migrant workers and members of their families in an undocumented or irregular situation enjoy the rights under Part III of the Convention.**

25. The Committee is concerned about reports that the conditions of detention in the immigration holding centre are not in accordance with the Convention. In particular, the Committee notes with concern that the immigration centre does not provide adequately for the accommodation of families. The Committee is, moreover, concerned that no information was provided in relation to the maximum period for which migrants may be detained.

26. **The Committee recommends that the State party take steps to ensure that migrant workers and members of their families who are held in detention centres have access to legal aid and consular services, that they are not detained except in accordance with clear legal criteria and that their treatment is otherwise in full compliance with the Convention.**

27. The Committee notes the existence of public employment services which provide information on migration. The Committee, however, notes (as did the ILO Committee of Experts on the Application of Conventions and Recommendations in its Direct request of 2008 in relation to the Migration for Employment Convention (Revised), 1949 (No. 97)), that the existence of official information services in itself is not enough to guarantee that migrant workers are sufficiently and objectively informed on migration-related issues. The Committee reiterates the concern of the ILO Committee of Experts that there is inadequate protection for migrant workers from misleading information from intermediaries who might have an interest in encouraging migration in any form, regardless of the consequences for the workers involved.

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

- (a) **Take adequate measures to combat misleading propaganda relating to migration, through, inter alia, the full implementation of article 33 of the Convention;**
- (b) **Take such steps as may be necessary to protect migrant workers from any abuses due to misleading information on the migration process.**

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

29. The Committee notes the fact that the State party's electoral laws make it possible for citizens of Bosnia and Herzegovina who reside temporarily abroad to participate in elections through the consulate or other diplomatic representation of the country where they are residing or by mail. The Committee, however, notes the significant reduction in the number of State party nationals abroad who participate in elections and regrets the lack of clarity in relation to the implementation of this right.

30. The Committee urges the State party to strengthen measures to facilitate voting by its nationals abroad. The Committee requests the State party to provide, in its second periodic report, additional information on the legislative framework for facilitating the exercise of this right, as well as its practical implementation in the case of workers resident outside of Bosnia and Herzegovina.

31. In light of the high percentage of citizens of Bosnia and Herzegovina abroad, the Committee is concerned that no information has been provided regarding procedures or institutions through which account may be taken of the special needs, aspirations and obligations of the State party's migrant workers and members of their families abroad.

32. The Committee recommends that the State party consider the establishment of such procedures and institutions in accordance with article 42, paragraph 1) of the Convention and provide, in its next report, information on any measures taken pursuant to that provision.

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

33. The Committee is concerned that there are no precise data available on the number of seasonal workers employed in the State party. Furthermore, the Committee notes that there is no system by which seasonal workers are registered nor are there any bilateral or multilateral agreements on the movement of seasonal workers. The Committee is concerned that the lack of information and control may make seasonal workers vulnerable to inequitable conditions of work and to abuse.

34. The Committee recommends that the State party:

- (a) Develop and implement a system of registration as well as a system of data collection on seasonal workers;**
- (b) Consider negotiating bilateral and multilateral agreements with neighbouring and other countries, as appropriate, with a view to promoting sound, equitable and humane conditions in connection with the migration of seasonal workers and in accordance with the Convention;**

- (c) **Take all necessary steps to ensure to seasonal workers the enjoyment of the right to the same treatment as national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of compliance with international standards in this regard.**

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

35. The Committee notes that several agencies are responsible for the implementation of laws and policies relating to labour migration and is concerned that there may be areas of overlap and duplication in the planning and coordination of activities and responsibilities relating to the rights of migrant workers among agencies and ministries at the national and Entity levels.

36. **The Committee recommends that the State party, with a view to improving the coordination and implementation of measures to protect the rights of migrant workers and their families, take the necessary steps to ensure effective coordination between its ministries and agencies at all levels of government.**

37. The Committee notes with appreciation the efforts of the State party to combat trafficking, including through cooperation with the international community, the implementation of two national action plans and extensive legislative and institutional reforms. The Committee, furthermore, welcomes the State party's efforts to prosecute persons involved in trafficking. The Committee, however, remains concerned about the phenomenon of trafficking in Bosnia and Herzegovina.

38. **The Committee recommends that the State party continue its efforts to address trafficking, including through measures aimed at prevention as well as the care and rehabilitation of victims of trafficking. The Committee encourages the State party to continue to combat trafficking through the prosecution of those responsible.**

7. Follow-up and dissemination

Follow-up

39. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and legislature, as well as administrative and other relevant authorities responsible at the national and Entity levels.

40. The Committee regrets the limited involvement of non-governmental organizations (NGOs) and other civil society organizations in the preparation of the present report and encourages the State party to take all the necessary measures to ensure the involvement of civil

society organizations in the implementation of the Convention and the preparation of the State party's second periodic report.

Dissemination

41. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to take steps to make them known to Bosnia and Herzegovina migrant workers abroad and foreign migrant workers residing or in transit in Bosnia and Herzegovina.

8. Next periodic report

42. The Committee invites the State party to submit its common core document in accordance with the 2006 harmonized guidelines for the preparation of a common core document (HRI/MC/2006/3 and HRI/MC/2006/3/Corr.1).

43. The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.
