



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 Twenty-third session

Summary record of the 298th meeting

Held at the Palais Wilson, Geneva, on Thursday, 3 September 2015, at 3 p.m.

Chairperson: Mr. Carrión-Mena

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

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Initial report of Timor-Leste (CMW/C/TLS/1; CMW/C/TLS/QPR/1)

1. *At the invitation of the Chairperson, the delegation of Timor-Leste took places at the Committee table.*

2. **Mr. da Silva** (Timor-Leste), supplementing the information contained in his country's initial report (CMW/C/TLS/1), said, in relation to migration, that since gaining independence, Timor-Leste had faced challenges in providing its people with work and finding countries willing to provide Timorese nationals both with work and knowledge. Timor-Leste was not only the country of origin of many migrants abroad, but also a host country to many foreign nationals, and therefore could not be qualified as being a closed country. Prior to the country's independence referendum in 1999, many Timorese had been living in countries such as Mozambique, Portugal and Australia, but they had started to return after independence.

3. The role of the Office of the Ombudsman for Human Rights and Justice was to ensure the observance of human rights and prevent violations by the State authorities. Training programmes had also been organized by national bodies and international partners to curb violations. Nonetheless, where violations occurred, Timor-Leste had an active civil society that provided assistance to victims. Furthermore, Timorese legislation provided for equal rights and prohibited discrimination and the State guaranteed access to mechanisms to uphold those rights.

4. Timor-Leste protected its citizens working abroad, including by covering the costs of repatriating their remains. As for the rights of children of migrant workers to Timorese nationality, an awareness-raising campaign had been launched to encourage people to register the birth of their children with the Ministry of Justice civil registry.

5. Regarding access to education, the two official languages of Timor-Leste were Portuguese and Tetum which were used in State schools. The country's working languages, however, tended to be Indonesian and English, and migrant workers usually preferred to send their children to international private schools to improve the children's Indonesian or English. Nonetheless, there was no discrimination in State schools on the basis of languages.

6. As Timor-Leste had gained its independence only relatively recently, new mechanisms were being established to tackle new challenges as they arose. Some problems like trafficking and smuggling were difficult to face alone and solutions had to be found at the regional level. In that connection, Timor-Leste had been very active in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and in the Bali Democracy Forum. Timor-Leste was in the process of joining the Association of Southeast Asian Nations (ASEAN).

7. The aim of establishing the border-crossing pass between Indonesia and Timor-Leste had been to facilitate the movement of citizens so that they would no longer need to go to Jakarta and Dili to obtain a visa to cross the border. The pass was restricted to people living near the border and was exclusively intended for family, cultural and traditional reasons. People travelling for business purposes still required a visa.

8. **Mr. Brillantes** (Country Rapporteur), while welcoming the delegation particularly since its attendance at the session had not been guaranteed until two days previously, said that the late submission of the State party's report had prevented the Committee from studying it in depth. He had therefore hoped that the delegation's

introductory statement would have shed more light on the contents of the report. Members of the Committee had, however, been able to draw on a rich body of shadow, alternative and special agency reports. Although some of the comments that the Committee would make during the dialogue might appear harsh, they were intended to guide and encourage the nascent State. Timor-Leste had made perceptible progress following years of conflict and occupation, however, it required further time, effort and resources, not to mention greater connectivity with bodies like ASEAN to address remaining challenges. Fortunately, accession to ASEAN already seemed a foregone conclusion, not least thanks to the country's prominent role in migration in the Asia-Pacific region.

9. The Committee welcomed the information provided on laws adopted relating to labour and migration rights, but wished to know how the State party had harmonized those laws with the provisions of the Convention. The delegation should also explain how the Convention was disseminated in Timor-Leste. The establishment of the Office of the Ombudsman was a welcome development, but it would be interesting to know the extent of the Ombudsman's jurisdiction. Also welcome were the State party's efforts to combat trafficking in persons, and its hosting of an international conference on the matter.

10. Alternative reports mentioned discriminatory treatment by migration police, labour officials and employers of migrant workers on the basis of language, age and physical appearance and concerning such issues as wages and time off. They also mentioned incidents of physical and sexual violence against migrant workers, of their intimidation and negative attitudes towards them. Detention facilities were reportedly inadequate, with no distinction apparently made among facilities for criminals, those charged with administrative violations and migrant workers accused of other violations. The delegation was requested to provide clarification on those points.

11. Other areas of concern were the perceived lack of attention by the Inspectorate-General for Labour towards migrant workers and their employment conditions and the difficulty in joining trade unions. He requested the delegation to elaborate on the challenges the State party faced in connection with the latter in particular. Badly needed pre-departure programmes were not in place, and the two recruitment agencies in Timor-Leste required more regulation.

12. The Committee would welcome information on family reunification, a right enshrined in the Convention but for which no provision appeared to have been made in the State party. It would also welcome clarification regarding whether Timorese nationals working abroad had the right to vote, as it seemed there was currently no programme in place to allow them to do so. Why did the loss of employment mean that a worker would automatically lose his or her work permit?

13. Reverting to the issue of the late submission of the initial report, he said the Committee had received information to the effect that it had not been possible to locate its initial communication sent to the Permanent Mission of Timor-Leste for eight months, despite repeated notifications by the Human Rights Adviser in Timor-Leste to the Ministry of Foreign Affairs of its dispatch and the fact that the list of issues prior to reporting had already been publicly available in the State party at that time. Thus, the drafting process during the months preceding the dialogue had been rushed; however, although the outcome could have been better, the State party was to be commended on its efforts to complete the report within a relatively short period of time in spite of the challenging circumstances.

14. The Committee wished to know whether the political and historical context of Timor-Leste made it difficult to control migration. Were there targets set with a view

to raising awareness of the Convention, and if so, had they been met? Was there a special body to handle the issue of migration?

15. The State party's practice of guaranteeing rights not only to citizens, but also to foreigners and stateless persons was commendable. Also commendable was the provision of health services to anyone in Timor-Leste who needed them free of charge, if that was indeed the case. However, the Committee would welcome more information concerning skilled jobs apparently reserved for Timorese citizens. What types of jobs were available to foreigners? Furthermore, given the country's history with neighbouring Indonesia, what was the situation of frontier workers and were there cross-border or border management agreements between the two countries?

16. Since 2007, human rights had been handled by a directorate of the Ministry of Justice, and, as a relatively young nation, Timor-Leste had many other urgent issues to address. Was there a reluctance to enter into more human rights treaties because of the associated reporting requirements?

17. **Mr. Kariyawasam** (Country Rapporteur), recognizing the difficulties that Timor-Leste faced as a newly independent nation in particular in terms of legislation, said that the Committee wished to have more information on the status of the State party's legal provisions and how they were being brought into line with the Convention. Were there any cases in which the Convention had been directly applied by national courts or administrative authorities? The Committee had been informed that article 11 of the Immigration and Asylum Act had been judged unconstitutional in relation to migrant workers' right to freedom of speech and association; what was the current status of that article?

18. It would be useful to know what measures were taken in Timor-Leste to ensure coordination among the relevant ministries and agencies, which was essential for protecting the rights of migrant workers under the Convention. According to the State party's report, persons who received health care in Timor-Leste did not need to pay, but the Ministry of Health allocated US\$ 2,000 for the medical treatment of foreigners. Further explanation of that policy would be welcome as it seemed unlikely that such an amount would be sufficient.

19. Noting the importance of data for monitoring the observance of rights, he asked what measures were in place or anticipated for the collection of data on all aspects of the Convention, including migrant workers in an irregular situation and Timorese nationals working abroad. On the question of forced labour, he enquired whether the Government was aware of the reported exploitation of migrant children in foreign fishing boats operating in Timorese waters. What action had been taken to put an end to that abominable practice? He also enquired whether there were any inspectors or financial resources dedicated to trafficking in women. Had there been any related criminal convictions of traffickers or smugglers? He would welcome more information on the current status of the draft national action plan to combat human trafficking, and on action taken against police officers who had been linked to trafficking in persons.

20. He would appreciate more information on how the system of embassies and consulates provided assistance to Timorese working abroad. In view of the fact that middlemen often charged exorbitant fees, had any special measures been taken by the Government to facilitate the transfer of remittances, or, once such remittances reached Timor-Leste, to ensure their disbursement to the next of kin?

21. He asked whether measures were taken to guarantee the right to education for children of migrant workers in a regular and irregular situation and to ensure that education was provided in their own language; whether detention centres for migrants were separate from facilities for criminal offenders; and whether migrant workers were informed of their right to join a trade union and were active in those associations.

In the light of the large migratory flows into the country, he asked which authority was responsible for recruiting migrant workers and how that recruitment was regulated.

22. **Mr. Ceriani Cernadas** asked whether there were specific programmes to protect the rights of child migrants, procedures for children at border crossings and security checkpoints, and measures to facilitate the integration of child migrants in the State party and other destination countries. He enquired whether the prohibition of discrimination enshrined in the Constitution included discrimination on grounds of nationality; whether the rights under the Convention were taken into account in the bilateral agreements with destination countries; and what specific programmes and mechanisms had been established in order to guarantee the full enjoyment of the rights of Timorese migrants in their destination countries.

23. He expressed concern that, under the Immigration and Asylum Act, migrants of irregular status could be expelled from Timor-Leste during the judicial review of their expulsion decision. That ran counter to article 22, paragraph 4, of the Convention; he would welcome the delegation's comments in that regard. In addition, in the light of reports of collective expulsion, he asked what measures had been established to prevent the practice. Noting that Timorese legislation provided for both custodial sentences and alternatives to detention for migrants, he wished to know what criteria were applied to determine the type of sentence to be imposed, and whether detention was used only as a last resort. He requested statistics on detention and expulsion disaggregated by nationality and age group.

24. He wondered why migrants were required to report a change in their civil status to the Department of Migration, and what procedures migrants had to follow to register that information. He asked whether the State party had concluded an agreement with Australia with regard to offshore processing of asylum requests, as was the case between Australia and certain other island States as part of the Australian authorities' migration control policy. He would welcome the delegation's comments on reports of violence and discrimination against migrants by the local population. How was legislation to combat discrimination applied in practice, and had any judicial decisions been issued or programmes designed to combat xenophobia? Lastly, he requested information on the functions of the migration police service. Why was migration control assigned to law enforcement officials rather than a civil authority?

25. **Mr. El-Borai** asked whether the Convention was directly applicable in the Timorese courts or had to be translated into domestic law before it could be applied. He also asked what requirements the new Labour Code set forth for the issuance of work permits to migrant workers; whether the Code established a minimum wage for all workers and covered the right of association. Furthermore, he enquired what steps had been taken to combat trafficking in persons and what the results had been.

26. **Ms. Dicko** said that she would welcome further details on the bilateral agreements signed between the State party and certain destination countries for migrant workers of Timor-Leste, such as Australia and the Republic of Korea. Did those agreements address the provisions of the Convention and guarantee social security for Timorese migrant workers? She requested more information on the transfer of knowledge and technology between the countries of origin and destination; the training provided to labour inspectors and judges on the provisions of the Convention; and the mechanisms allowing civil society and migrant organizations to participate in the preparation of the report and the promotion of the Convention.

27. **Mr. Pime** said that he would welcome details of programmes and mechanisms to disseminate and raise awareness of the Convention among migrant workers and their families, as well as among public officials in the area of migration in the State party and in destination countries for Timorese migrant workers. He would appreciate the

delegation's comments on alleged expulsions of Timorese migrant workers from the Republic of Korea on grounds of ill health, despite the bilateral agreements concluded between the countries. Were those agreements based on the provisions of the Convention?

28. **Ms. Ladjel** asked whether a specific migration policy had been drawn up and, if so, how it was implemented and coordinated. She wondered what accounted for the very high number of workers who left the State party and the even higher number of foreign workers in the country. Given that some Timorese nationals worked in countries that were not party to the Convention, she asked how their rights under the Convention were guaranteed. She would welcome further information on the involvement of civil society in migration issues. Was civil society involved in support programmes for migrants from vulnerable groups or in an irregular situation?

29. **Ms. Castellanos Delgado** said that she was concerned about the high numbers of migrants who died in the attempt to leave Timor-Leste. She asked what measures were adopted to identify and repatriate the bodies; whether a specific budget was allocated for that purpose; whether agreements had been signed with destination countries to manage the repatriation of bodies; and whether any mass graves had been found in that connection. She also wished to know what procedures were in place at border crossings, especially to deal with any possible incidents of violence.

30. **The Chairperson**, speaking as a member of the Committee, asked whether a policy on remittance facilities had been formulated for both migrant workers in Timor-Leste and Timorese migrants abroad. He requested further information regarding the return of a large number of citizens to the country. Was there a policy to incentivize their return and did they return having gained new skills in their destination countries?

The meeting was suspended at 4.45 p.m. and resumed at 5.20 p.m.

31. **Mr. da Silva** (Timor-Leste) said that, owing to a shortage of human resources, police officers also served as immigration officials, which was why they dealt with trafficking. As immigration officials, they reported to the police but were not acting in their capacity as police officers. With regard to health coverage, he confirmed that migrant workers enjoyed the same access to medical care as others. The US\$ 2,000 allocation referred to in paragraph 36 of the report was to fund specialists working in certain of the country's hospitals. Concerning citizenship, he said that a number of Timorese citizens also held Portuguese citizenship and passports and often worked in Northern Ireland and other areas of the European Union on that basis.

32. The issue of an agreement for migrant workers to cross the border with Indonesia had been raised, but discussions had yet to take place between the two Governments. People living in the border area who held the correct identification were authorized to cross the border for family, cultural and traditional reasons; they could also buy goods, but the market was regulated and the total value of goods purchased must not exceed US\$ 300. People living elsewhere must obtain a visa to travel to Indonesia.

33. **Mr. Pereira de Matos** (Timor-Leste) said that the country's labour inspection system comprised regular and follow-up inspections and inspections conducted jointly with the migration services. Under article 77 of the Labour Code, migrant workers had the same rights and obligations as Timorese workers; they were therefore covered equally by labour inspection.

34. In view of the lack of local industry and corresponding shortage of employment, the Government had adopted a policy of sending Timorese workers abroad, but only to countries where workers' rights were properly protected and exclusively through government-arranged schemes. Agreements had been signed with Australia and the Republic of Korea stipulating that the entire sending and receiving process must be

administered directly between the Governments concerned, with no involvement of private agencies, with the aim of avoiding any exploitation of workers. The Government had so far declined to enter into any such agreements with countries in the Middle East or elsewhere in Asia.

35. Labour attachés were appointed to provide assistance in countries where Timorese migrant workers were employed. They worked closely with the country's embassies and carried out regular visits to workplaces to check for problems. In the unfortunate event of a Timorese migrant worker dying, the labour attaché was responsible for overseeing the repatriation of remains. In such a case, all costs were borne by the Government and the process was explained clearly to the family of the deceased.

36. Timorese workers going abroad were given pre-departure training, including information about their country of destination and its legislation. On arrival, further training was provided to ensure that workers were as well informed as possible. Workers bound for the Republic of Korea must have a basic knowledge of the Korean language before applying for work; Korean language tuition was provided by the Government. Those who achieved the requisite standard could apply for selection by an employer. No English language tuition was provided by the Government for workers wishing to seek employment in Australia. Australian employers conducted interviews in Dili; those selected were given medical examinations, applied for visas and signed their contracts before departure. Pre-departure training used materials provided by the Australian Department of Employment.

37. Before departure, Timorese migrant workers were provided with assistance in opening two bank accounts: one for themselves and one for their family. Neither account was accessible to the Government. Every effort was made to ensure that migrant workers used the money they earned abroad to improve their socioeconomic position and prospects and to benefit their family. Meetings were held for workers and their families to explain the entire process, and workers were taught about various means of keeping in touch with their families, such as social media.

38. On their return, migrants were assisted in finding work or starting their own business. Training in running small and micro-businesses was provided through government training centres. Some training was also available to migrant workers still abroad, particularly in the Republic of Korea, where companies provided needs-based training towards the end of a migrant worker's stay. One of the aims of sending workers abroad was to enable them to acquire skills, experience and a work ethic that they could apply on their return. Many Timorese migrant workers abroad were employed in horticulture, fisheries, tourism and hospitality, which were significant sectors of the country's domestic economy, enabling them to find work more easily at home.

39. **Mr. da Silva** (Timor-Leste) said that the Ministry of Social Solidarity was responsible for assisting Timorese citizens abroad in the event of natural disasters and other harmful events. Money was set aside for the purpose, including for repatriation of remains and to provide return tickets for one or two family members to accompany the deceased. In reply to questions concerning racial violence and discrimination, he explained that community disputes most often stemmed from labour matters, rather than reflecting racism as such.

40. **Mr. Pereira de Matos** (Timor-Leste) added that local communities expected new businesses run by outside companies to recruit local workers; if workers were brought in from elsewhere, it could create tensions. However, such disputes were not racist in themselves.

41. **Mr. da Silva** (Timor-Leste), referring to education, said that there was no discrimination against the children of migrant workers. All parents were free to send their children to the school of their choice. Public schools were free and accessible to all; international schools also existed, usually offering education in English. Language was often a deciding factor in choice of school. Lastly, with regard to certain jobs being reserved for Timorese citizens, he confirmed that the Government had pursued such a policy, as was not uncommon, in order to prevent workers being brought in from elsewhere to do jobs that could be done by Timorese workers. The country had skills shortages in some areas, but aimed to provide employment for its own citizens wherever possible.

The meeting rose at 5.55 p.m.