



XIV SOUTH AMERICAN CONFERENCE ON MIGRATION

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STATUS OF THE PROTECTION OF THE RIGHTS OF MIGRANT PERSONS IN SOUTH AMERICAN STATES FROM THE PERSPECTIVE OF UNITED NATION COMMITTEES

REFERENCE DOCUMENT



OIM Organización Internacional para las Migraciones
Secretaría Técnica
Conferencia Sudamericana sobre Migraciones

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1. Introduction

The present document¹ was requested to the Technical Secretariat of the South American Conference (SCM) by SCM member countries in 2014, at the yearly meeting held in Cartagena de Indias, Colombia. The Declaration of Cartagena, in the IV thematic axis under the title 'International Projection of the South American region', included the following reference to the present work: 'The SCM reiterated and called for the ratification and full compliance with the Convention on the Protection of the rights of all Migrant Workers and the Members of their Families, as the main legally binding mechanism addressing the issue of migration, and entrusted the Technical Secretariat with the task of producing a report on the fulfilment thereof with the support of the Troyka.'

The objective of the report is to know the South American States' compliance with the standards of the *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families*, as well as the salient human right treaties on the basis of the observations of a number of bodies of the United Nations system.

In order to have the necessary sources, the collaboration of the United Nations High Commissioner on Human Rights (UNHCHR) was requested for the preparation of the present document. Based on this information, the consultant expert on human rights and migration, Alejandro Morlachetti, systematized the information and carried out the relevant analysis.

In the first place, the document contains a brief description of the features of the United Nations conventional mechanisms to supervise the compliance with Human Rights treaties, in particular the Committee on the Protection of the Rights of all Migrant Workers and the Members of their Families.

Secondly, there is a description of the status of the signature, approval, ratification or adhesion of countries in the region to the *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families* and the South American States' recognition of the competences of the *Committee on the Protection of the Rights of all Migrant Workers and the Members of their Families* (Article 77) to receive and examine the communications from individuals subject to its jurisdiction who claim that a State Party has violated any of the rights set forth in the Convention.

Based on the analysis of the final observations, then the document highlights the principal aspects of **concern** and progress noted by the Committee of Migrant Workers to determine the extents of the South American States' fulfilment of the Convention. In particular, it identifies the recommendations on the protection and promotion of the rights of migrant persons.

¹ The document was prepared by Dr. Alejandro Morlachetti, IOM consultant and expert in international law and human rights.

Finally, it identifies the observations and recommendations of other United Nations Committees on the rights of migrant persons, since beyond the specialization of the *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families* and the supervisory Committee, given the interdependence of rights it is important to take also into consideration the declarations on the protection of the rights of migrant persons made, among others, by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights or the Committee on the Elimination of the Discrimination against Women, just to name a few.

In summary, the present document provides a description of the overall situation in the South American region from the working perspective of United Nations treaty bodies, in terms of the obligation to progressively adopt measures for the protection and promotion of the rights of migrant persons, with a focus on the obligations established by the *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families*.

2. United Nations Conventional Mechanisms

Since the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10th December 1948, which has been defined as the cornerstone of the promotion and protection of human rights, a process started for the adoption of international treaties, some referring to a set of rights of all persons and others focusing on specific collective subjects (as the International Convention on the Protection of the Rights of all Migrant Workers and their Families) or a right or concrete issue (as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

The entry into force of the International Pact on Civil and Political Rights and the International Pact on Economic, Social and Cultural Rights set a milestone in the development of the international system of promotion and protection of human rights, laying the juridical and ethical foundations of these instruments.

Moreover, there is a series of other instruments which constitute the list of fundamental United Nations human right treaties:

- The Convention on the Elimination of all Forms of Racial Discrimination;
- The Convention on the Elimination of all Forms of Discrimination against Women;
- The Convention on the Rights of the Child;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families;
- The Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of all Persons against Enforced Disappearance.

Each of the United Nations treaties on human rights has a supervisory body made up by independent experts who monitor the application of the instrument. The supervisory bodies are created in accordance with the dispositions of the treaty they must oversee.

This system is a key mechanism by which the States have the obligation to engage in a strict but constructive dialogue on the status of the application of the human rights in their countries.²

² For more information, please see Informative Leaflet 30/Rev.1 The System of United Nations Treaties. Office of the United Nations High Commissioner for Human Rights. United Nations. New York and Geneva, 2012.

Treaty Supervisory Bodies

The Committee on the Elimination of Racial Discrimination, the first of the bodies created and established under the treaties, has been supervising the application of the International Convention on the Elimination of all Forms of Racial Discrimination since 1969. It comprises 18 members.

The Committee on Economic, Social and Cultural Rights was created in 1985 to carry out the Economic and Social Council functions in regard with the International Pact on Economic, Social and Cultural Rights. It is made up by 18 members.

The Committee on Human Rights was created in 1976 to examine the application of the International Pact on Civil and Political Rights. It is composed of 18 members.

The Committee on the Elimination of the Discrimination against Women has examined the enforcement of the Convention against the Elimination of all Forms of Discrimination against Women by Member States since 1981. It consists of 23 members.

The Committee against the Torture, created in 1987, examines the application of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is composed of 10 members.

The Committee on the Rights of Child has examined since 1991 the enforcement of the Convention on the Rights of the Child, as well as the facultative Protocols on children's participation in armed conflicts, sale of children, child prostitution and child pornography in its member States. It comprises 18 members.

The Committee on the Protection of the Rights of all Migrant Workers and their Families, which held the first period of sessions in March 2004, examines the application of the International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families. It has 14 members.

The Committee on the Rights of Persons with Disabilities, constituted in November 2008, carried out its first session in February 2009. It is composed of 18 members.

The Committee against Forced Disappearance was established in June 2011 as a result of the entry into force of the International Convention on the Protection of all Persons against Enforced Disappearance on 23rd December 2010. It comprises 10 members.

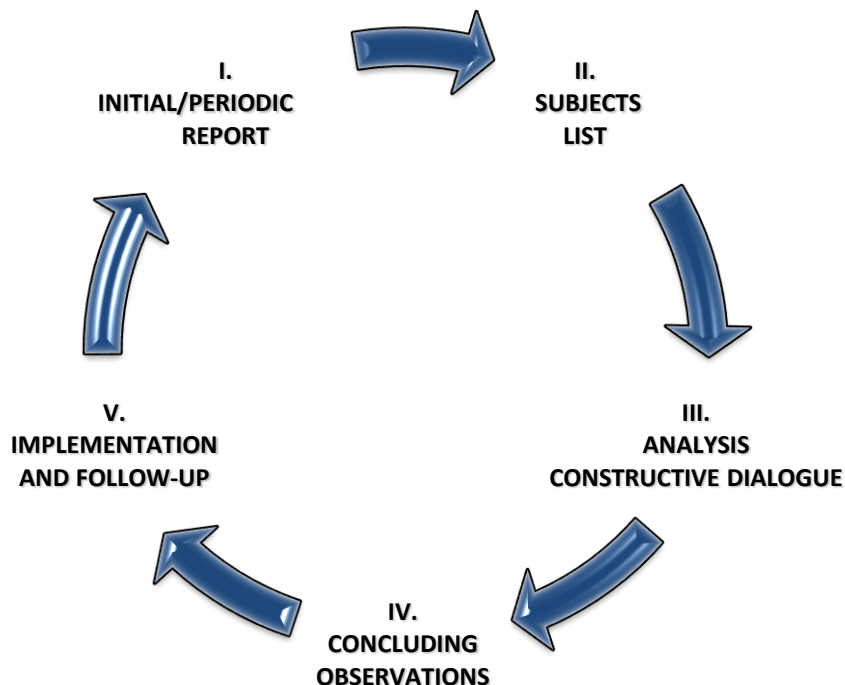
The essential mandate of all the Committees is to examine the reports periodically submitted by the Member States in conformity with the dispositions of the treaties. Beside applying the fundamental dispositions, each Member State must submit to the body created under the respective treaty periodic reports on the ways that the rights are enforced.

In compliance with the above, all member States are obliged to submit a complete initial report and then inform on a periodic basis, generally every four or five years, on measures taken to apply the treaty dispositions.

The reports must explain the juridical, administrative and judicial measures put in place by the State to enforce the treaty and outline all factors or difficulties encountered in the implementation of rights. In order to ensure that the reports include sufficient information to enable their work, each Committee produces guidelines on the forms and contents of the States' reports.

The contents of the reports reflect the measures adopted by the State to enforce the rights recognized in the treaty and the progress made as regards the effective enjoyment of such rights. Once the report is received, the experts of each Committee usually put questions and make observations to the States representatives, who must appear at a Committee hearing. With a view to helping the Committees, the non-governmental organizations usually provide alternative documents on the status of the relevant right in the State whose report is under analysis.

After the hearing, the Committee issues its own report for the State in question (concluding observations) with the conclusions and recommendations it deems appropriate. The basic purpose of this cooperation procedure of the United Nation Committees with the States is to help each country to fulfil the obligations derived from the United Nations treaties more effectively.



Source: Informative Leaflet 30/Rev.1 – United Nations High Commissioner for Human Rights.

Concluding Observations of the Committees

Usual Structure

I. Introduction; II. Positive aspects; III. Factors and difficulties in the application of the Pact; IV. Main reasons for concern; V. Suggestions and recommendations.

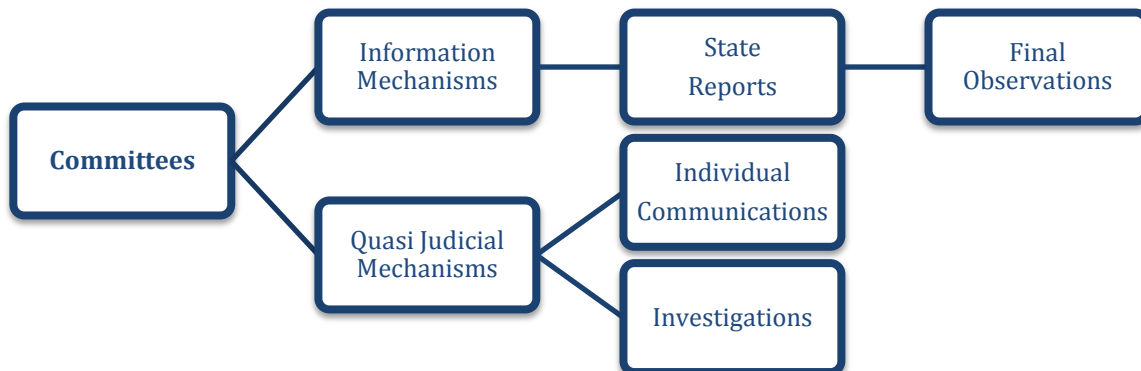
Sources used by the Committee

State's reports, alternative reports, information from specialized organizations and other United Nations mechanisms, besides the results of the analysis (interactive dialogue).

- They are approved in a private session and made public on the last day of each period of sessions.
- They serve as a diagnosis of the situation and a qualified guide for the adoption of public policies, normative changes, institutional strengthening or the judicial sphere.

Apart from the reporting procedure, some treaty bodies can carry out complementary supervisory functions by means of other three mechanisms: the investigation procedure, the examination of inter-State complaints and the examination of individual complaints. At present, under specific conditions the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child may receive individual complaints alleging that the rights consecrated in the treaties have been violated.

Finally, the Committees also publish their interpretation of the contents of the human right dispositions as general observations on thematic issues or working methods.



3. Committee on the Protection of the Rights of all Migrant Workers and the Members of their Families

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families came into force on 1st July 2003.

The objective of the Convention is to establish minimum norms to be applied by the States regarding migrant workers and the members of their families, independently of their migrant status. The justification of this recognition of the rights of undocumented migrant workers is reaffirmed in the preamble, where the States point out, among others, that irregular migrants are usually exploited and suffer serious human rights violations, and that it is necessary to promote the adoption of adequate measures to avoid and eliminate clandestine movements and the smuggling of migrant workers, guaranteeing at the same time the protection of their human rights.³

Under article 72, the Convention foresees the establishment of a Committee to oversee the application of the Convention: the Committee on the Protection of the Rights of all Migrant Workers and the Members of their Families, composed of 14 independent experts selected by the State Parties. The Committee members do not act as representatives of their countries of nationality but in an independent manner.

Present Composition of the Committee

- José S. BRILLANTES (Philippines)
- Francisco CARRIÓN MENA (Ecuador)
- Salome CASTELLANOS DELGADO (Honduras)
- Pablo CERIANI CERNADAS (Argentina)
- Fatoumata Abdourhamane DICKO (Mali)
- Ahmed Hassan EL-BORAI (Egypt)
- Abdelhamid EL JAMRI (Morocco)
- Shahidul Haque (Bangladesh)
- Prasad KARIYAWASAM (Sri Lanka)
- Khedidja LADJEL (Algeria)
- Marco NUÑEZ-MELGAR MAGUIÑA (Peru)
- Germain Zong-Naba PIME (Burkina Faso)
- Azad TAGHIZADA (Azerbaijan)
- Mr. Ahmadou TALL (Senegal)

The Committee members are elected by the State Parties by secret ballot. In the election process, special consideration is given to an equitable geographical distribution and the

³ Informative Leaflet 24 (Rev.1) The International Convention on Migrant Workers and its Committee. Office of the High Commissioner for Human Rights. New York and Geneva.

representation of the major juridical systems, and includes both the States of origin and the States employing migrant workers. The Committee members, who act in their personal capacity, have a four-year mandate.

In accordance with the Convention, the Committee has competence to:

- Interpret the rights recognized by the International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families, since it produces general observations with a view to guiding the State Parties in the fulfilment of obligations set up by the Convention.
- Examine the reports submitted by the States on the measures adopted to enforce the rights recognized in the Convention, based on the terms of article 73 of this instrument.
- Receive and examine the inter-State communications. The Committee examines the complaint lodged by one State Party against another State Party on the non-fulfilment of the obligations set forth in the Convention, pursuant to article 76 (which has not entered in force yet).
- Receive and know the complaints or denounces of individuals about alleged violations of the rights recognized in the Convention. To this end, the States that ratified it should also submit a declaration of acceptance of competence, as established by article 77 (which has not entered in force as yet).

Under article 73 of the Convention, the State Parties accept the obligation to submit reports on steps taken to apply the Convention within 1-year time frame as of the entry into force of the Convention in the State Party in question, and then every five years.

The reports should outline the problems affecting the application of the Convention. After examining them, the Committee sends to the State Party the observations it deems appropriate and recommendations to be implemented.

As regards article 77, at any moment a State Party may declare that it recognizes the competence of the Committee to receive and examine the communications brought by individuals or by third parties on behalf of individuals under their jurisdiction about alleged violations by that State Party of the individual rights recognized by the Convention. The Committee will not admit any communication whatsoever concerning a State Party that has not made such declaration. When the Committee confirms that the same complaint has not or is not being examined under other investigation procedure or international solution, and that all the remedies of domestic jurisdiction have been exhausted, it can ask for written explanations and express its opinions after analysing all the available information. This individual communication procedure will become operative when ten State Parties have made the necessary declarations under this article.

At present, only three countries have made a declaration accepting this article: Guatemala, Mexico and Uruguay.

4. Recommendations of the Committee on the Protection of the Rights of all Migrant Workers regarding the Rights of Migrant Persons

Some of the salient recommendations adopted by the Committee on the Protection of the Rights of all Migrant Workers and the Members of their Families are highlighted below, in particular those focusing on the protection of the rights of migrant persons and access to services in their countries of destination, as well as the protection of nationals by the consular services of the countries of origin.

The following selection of recommendations just seeks to visualize some aspects that the Committee has pointed out as relevant for the progressive fulfilment of the international Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families.⁴

As a complement, the following information includes some recommendations on the rights of migrant persons made by the United Nations Committee after reviewing the reports submitted by the States and the adoption of the concluding observations.

I. Argentina

Committee on the Protection of the rights of all migrant workers and the members of their families⁵

10. The Committee encourages the State Party to intensify the efforts to obtain the National Congress approval to formulate the declarations foreseen by articles 76 and 77 of the Convention.

12. The Committee invites the State party to consider the possibility of ratifying ILO Agreements N° 97 and N° 143.

14. The Committee requests the State party to include in its next periodic report information on the numbers migrant workers and members of their families, including those in irregular situation in the State Party, with breakdowns by the areas and employment conditions of migrant workers and their enjoyment of the rights established by the Convention and the Migration Law.

16. The Committee recommends the State Party to: a) Continue and intensify the efforts to provide systematic training on the contents and direct applicability of the Convention directed to judges and other public officials in charge of migrant workers matters at federal, provincial and municipal levels; b) Ensure that the migrant workers and the members of their families have effective access to the information on the rights recognized by the Convention and the Migration Law;

18. The Committee recommends the State party to: a) Adopt strong measures to eliminate the discriminatory stereotypes against the migrant workers and the members of their families in

⁴ It is necessary to clarify that the purpose of the present selection is to highlight some of the most usual recommendations made by the Committee, but does not mean a value judgement on the situation in each country. It is just a selection of some recommendations and does not include the aspects that the Committee has assessed as positive. On the other hand, as from the date the Committee made the concluding observation, the country may have fulfilled or started steps to fulfil some of the above recommendations.

⁵ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Argentina, CMW/C/ARG/CO/1, 2nd November 2011.

political statements and communication media, strictly applying the dispositions of the penal law and sensitizing police officers, politicians, journalists and the public in general on the discriminatory character of such acts; b) Publicly condemn the discriminatory acts against migrant workers and the members of their families; remind the media their responsibility to decidedly denounce these acts and promote the approval of voluntary codes of conduct by the media and other parties concerned;

24. The Committee recommends the State party to: b) Guarantee that the National Direction of Migration elaborate an uniform database of all migrants entering the State Party through authorized border checkpoints, provide them with entry certificates and inform them on the need to keep such certificates to request the legal residence; c) Intensify the bilateral negotiations to find a solution and avoid the persistence of the irregular situation of Senegalese nationals who have immigrated illegally to the State party.

28. The Committee recommends the State party to continue and improve the training programmes for the school and public health staff on the rights of migrant workers and the members of their families including those in irregular situation in the education and health areas, pursuant to the Convention and the Migration Law, on possible ways to establish the identity of migrants by means of other documents beside the DNI (national identity document), and procedures to regularize their status.

30. The Committee recommends the State party to: a) Review the residence time frame required in the case of non-contributory social assistance, with a view to guaranteeing compatibility with articles 5 and 6 of the Migration law and the National Constitution; b) Analyse the possibility to extend the universal child allowance to the children of migrant workers with irregular status, in accordance with Law N° 26061 (2005) on the integral protection of the rights of girls, boys and adolescents, comprising all children in the territory of the State Party; c) Consider the possibility to extend the non-contributory social assistance to migrant workers and the members of their families with irregular status in cases of social extreme vulnerability.

32. The Committee recommends the State Party to: a) Continue providing training to judges, prosecutors, police officers and border guards on migration and trafficking, detection, protection and assistance to victims, methods of investigation taking into account the victims and the strict application of the Law on the Combat against Trafficking (N° 26364); b) Reinforce the coordination between the federal, provincial and municipal authorities in the enforcement of measures against the trafficking in persons; c) Bring to justice the public agents accomplices in the commission of trafficking crimes and give training in the combat against corruption to police officers, especially at provincial level; d) Assign sufficient resources to the Office for the Rescue and Accompaniment of Persons Victims of Trafficking and the National Secretariat for the Child, Adolescence and Family, extend services and receiving centres to provinces and provide support to non-governmental organizations offering rehabilitation and assistance to victims; e) Provide the victims of trafficking, including those from countries not belonging to MERCOSUR, with the opportunity to regularize their status.

Argentina has also received recommendations from the Committee on Economic, Social and Cultural Rights⁶ on the requirements hampering the receipt of the Universal Child Allowance by migrant workers and their children, pointing out that a considerable percentage of the former lack access to the social security system, especially to pension schemes. In this sense, the Committee encourages the State Party to consider the possibility of modifying the residence requirements for migrant workers, in accordance with the National Constitution and the Migration Law, so that they can have access to the system of non-contributory social services.

The Committee on the Rights of the Child has recommended to consider migrant children as beneficiaries of the Universal Child Allowance and encourages the State to increase the efforts on the combat against stigmatization and discrimination suffered by the children of migrant origin.⁷

II. Bolivia

Committee on the Protection of the rights of all migrant workers and the members of their families⁸

13.The Committee recommends the State Party to ensure that the Migration Law will be fully harmonized with the dispositions of the Convention to extend the protection of the rights to all migrant workers and the members of their families in the State Party and to adopt the above law without further delay.

15.The Committee reiterates its recommendation and encourages the State party to formulate the declarations foreseen under articles 76 and 77 of the Convention.

21.The Committee reiterates its previous recommendations to the State party (CMW/C/BOL/CO/1, para. 20) on: a) Intensification of the efforts on the training of all officials working in the migration area, in particular the police officers and border, local and consular officials who are in charge of migrant workers matters; b) Implementation of the necessary measures to ensure that migrant workers receive information and orientation on their rights consecrated in the Convention; c) Continuation of the work with civil society organizations with a view to disseminate information and promote the Convention.

23. The Committee reiterates its previous recommendation to the State Party to ensure that all migrant workers and members of their families in its territory or subject to its jurisdiction enjoy the rights consecrated in the Convention without any type of discrimination whatsoever, according to article 7. Moreover, it encourages the State Party to take immediate and effective measures, particularly the training of the pertinent public officials, public education and sensitization campaigns on the combat against prejudice and social stigmatization.

27. The Committee urges the State Party to assign the

⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations, Argentina, E/C.12/ARG/CO/3, 14th December 2011.

⁷ Committee of the Rights of the Child, Concluding Observations, Argentina (2010), CRC/C/ARG/CO/3-4, 21st June 2010.

⁸ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Bolivia (2013), CMW/C/BOL/CO/2. 15th May 2013.

Ombudsman Office the human and financial resources needed to develop all activities connected with the rights of the migrant workers and the members of the families as foreseen in its mandate.

31. The Committee recommends the State party to adopt the necessary measures to guarantee that consular services respond in a more effective manner to the needs of protection and promotion of the rights of the Bolivian migrant workers and the members of their families and especially, provide the necessary assistance to those who are detained or are subject to an expulsion order.

37. Given the presidential elections in 2014, the Committee encourages the efforts of the State Party to guarantee the voting right to Bolivian migrant workers residing abroad.

39. The Committee encourages the State Party to provide in its next periodic report specific information on the practical steps implemented to facilitate the family reunification.

Bolivia has received recommendations from the Committee on the Elimination of Racial Discrimination noting the concern about the particular vulnerability of asylum seekers, unaccompanied foreign children and women victims of trafficking.⁹

III. Chile

Committee on the Protection of the rights of all migrant workers and members of their families¹⁰

9. The Committee encourages the State Party to ensure that the migration bill will be adopted in the near future and that it will be fully in conformity with the international norms on the protection of migrant workers and the members of their families, especially with the dispositions of the Convention.

13. The Committee encourages the State Party to formulate the declaration foreseen under articles 76 and 77 of the Convention.

17. The Committee recommends the State Party to establish a national information system on migration. It also recommends that this centralized database take into account all aspects of the Convention and include detailed information on migrant workers present in the State party, those in transit as well as Chilean migrant workers abroad, and encourages the State Party to compile information and statistics breakdowns by gender, age and work developed.

19. The Committee recommends the State Party to put in place positive measures and reinforce the already adopted steps to combat discriminatory attitudes and social stigmatization, particularly through campaigns tending to improve awareness, directed to the public in general as well as teachers, immigration officials and media professionals.

21. The Committee encourages the State Party to eliminate the

⁹ Committee on the Elimination of racial discrimination, Bolivia (2011), CERD/C/BOL/CO/17-20, 10th March 2011

¹⁰ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Chile (2011), CMW/C/CHL/CO/1. 19th October 2011

practice of replacing the identity documents of migrant workers by a Foreign Offender Card in the case of violation of migration laws.

25. The Committee urges the State party to examine its legal dispositions to ensure that all migrant workers, including those sanctioned by the administrative authority for the infringement of Decree-Law No. 1.904 will be free to leave the country, unless the restriction is necessary to protect the national security, the public order, the public health or moral or other people's rights and freedoms, according to article 8 of the Convention.

31. The Committee recommends the State Party to ensure the effective enforcement of the Resolution N° 3229 of 11th June 2008 on the access of migrant workers to health assistance, especially by disseminating the dispositions among the health staff and establishing a mechanism to monitor the application of the above resolution.

33. The Committee encourages the State Party to grant the nationality to the children born in Chile from parents with irregular status when these may not transmit their own nationality. It also encourages the State party to adhere to the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

35. The Committee recommends the State party to encourage the effective application of the Resolution N° 07/1008 (1531) of 2005 on the entry and permanence of immigrant children in irregular situation at schools, in particular making it public in all educational institutions and establishing a mechanism to monitor application.

39. The Committee recommends the State Party to incorporate into the Migration Law the legal dispositions regulating family reunification, pursuant to article 44 of the Convention.

The Committee on the Rights of the Child has made recommendations to Chile with regard to the situation of the children of aliens without legal residence in Chile who are exposed to statelessness.¹¹

The Committee on the Elimination of Racial Discrimination recommends the State to take necessary and effective measures, including at legislative level, to guarantee rights equality as recognized by the Convention to migrant persons. Furthermore, it recommends that the State should implement the necessary and effective education and sensitization measures to combat any tendency to stereotype or stigmatize migrants. The Committee encourages the State Party to ensure that the current draft migration reform Bill will guarantee that migrant workers in irregular situation opt for the Chilean nationality for their children if they lack nationality and encourages prompt adoption. On the other hand, the Committee alerts the State Party on the need to fully implement Law N° 20507 typifying the illegal migrant smuggling and trafficking in persons.¹²

¹¹ Committee on the Rights of the Child, Concluding Observations, Chile (2007), CRC/C/CHL/CO/3, 23rd April 2007

¹² Committee on the elimination of racial discrimination, Concluding Observations, Chile (2013), CERD/C/CHL/CO/19-21 23rd September 2013.

The Human Rights Committee has recommended Chile to ramp up the approval of the migration bill, ensuring that it will fully guarantee the rights protected by the Pact, especially that persons subject to deportation enjoy the effective exercise of the rights to be heard, have legal representation and adequate time frames to lodge appeals against expulsion decisions. The Committee encourages the State party to eliminate the practice of confiscating identity documents to migrant workers and adequate its legislation to article 12 of the Pact, taking into consideration the General Recommendation No. 27 (1999) on free movement.¹³

IV. Colombia

Committee on the Protection of the rights of all migrant workers and the members of their families¹⁴

9. The Committee recommends the State Party to take the measures needed to elaborate a comprehensive regulatory framework on migration pursuant to the international norms on the protection of migrant workers and the members of their families and, in particular, according to the Convention.

13. The Committee encourages the State Party to make the declarations foreseen in articles 76 and 77 of the Convention.

15. The Committee recommends the State Party to take the necessary steps to ratify ILO Agreements N° 97 and 143, as well as the Protocol on illegal migrant smuggling by land, sea and air.

19. The Committee recommends the State Party to develop educational and training programmes on the contents of the Convention on a permanent basis. It also recommends that all officials working in migration related matters, including at local level, receive such training. The Committee encourages the State Party to guarantee all migrant workers the free access to information on their rights in conformity with the Convention, and collaborate with civil society organizations in the dissemination of information and the promotion of this instrument.

25. The Committee recommends the State Party to take the necessary steps so that the migrants subject to an administrative deportation or expulsion process can know their right to lodge appeals and have the opportunity to exercise it. The Committee also recommends the State Party to implement the necessary measures so that in all cases the concerned persons have the right to expose their reasons to oppose to deportation and expulsion, in accordance with article 22 of the Convention.

41. The Committee encourages the State Party to redouble the efforts to design, implement and diffuse integral processes of migration regularization, giving easy access to migrant workers and the members of their families in irregular situation, and fulfil the principle of non-discrimination.

¹³ Human Rights Committee, Concluding Observations, Chile. 7 to 25th July 2014 (Unedited version).

¹⁴ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Colombia (2013), CMW/C/COL/CO/2. 27th May 2013

V. Ecuador

Committee on the Protection of the rights of all migrant workers and the members of their families¹⁵

14. The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 13) and encourages the State Party to accelerate the efforts to ratify ILO Agreement N.º 143.

16. The Committee encourages the State to review the secondary laws not compatible with the Constitution and international human rights standards in order to guarantee the full compliance with the latter. It also recommends prompt approval of the Law on Human Mobility ensuring that the rights and principles recognized in the Constitution and the Convention, including the principle of non-discrimination, are enforced in practice.

20. The Committee reiterates the recommendation to strengthen and extend education and training programmes on the contents of the Convention, with a view to giving them a permanent character. The Committee encourages the State Party to continue the efforts to facilitate migrant workers the access to information on their rights according to the Convention, and collaborate with the civil society organizations in the dissemination of information and promotion of the Convention.

24. The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 20) and encourages the State Party to: (a) Intensify the efforts to ensure that all migrant workers and the members of their families in its territory or subject to its jurisdiction enjoy the rights consecrated in the Convention without any type of discrimination whatsoever, in accordance with article 7; (b) Take immediate and effective measures, in particular sensitization campaigns on the combat of prejudice and social stigmatization, directed to public authorities working in the principal spheres of immigration, including at local level, and to the public in general; c) Punish discriminatory practices in the communication media and public and private institutions.

26. The Committee reiterates that the State Party should take steps needed to guarantee the principle of non-discrimination in practice and urges it not to apply discriminatory policies to a specific group of migrants. Moreover, it invites the State Party to review and eliminate the requirement of the presentation of the judicial records of Colombian immigrants entering the State Party.

28. The Committee encourages the State Party to keep up the necessary efforts to protect the female domestic workers, including their access to a regular migration status, a systematic involvement of labour authorities in the supervision of their working conditions, as well as the promotion of access to mechanisms to lodge complaints against employers. The Committee urges the State Party to continue the efforts to promote the improvement of the situation of the migrant woman in vulnerable situation and empowerment, inter alia, with an

¹⁵ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Ecuador (2010), CMW/C/ECU/CO/2. 15th December 2010

evaluation of the situation and adopting actual measures to address the issue of feminization of migration in its labour migration policies.

30. The Committee reiterates to the State Party a previous recommendation to ensure that migration procedures, including deportation and expulsion (CMW/C/ECU/CO/1, para. 26), will be in line with article 22 of the Convention, that they are exceptional procedures with an administrative character and are not treated within the penal justice system. The Committee urges the State party to make the necessary investigations on irregularities committed at recent operatives and duly punish the law enforcement officials who do not respect migration procedures.

32. The Committee recommends that the State Party should adopt measures to improve the conditions of temporary detention centres, which should not be the same as penitentiary centres, making the due separation between men and women. It also recommends to ensure the offer of basic social services, including food, hygienic and health conditions and encourages the State Party to monitor the streamlining of exit procedures.

36. The Committee recommends that the State Party should ensure that procedures contrary to human rights are not carried out against the children of Ecuadoran nationals residing abroad, breaching article 8 of the Constitution and guarantee recording in the birth registry. It also recommends a constant and adequate training for migration officials from the National Police in order to enforce the rights of migrant workers and the members of their families regarding international migration issues.

48. The Committee recommends the State party to carry out studies on the situation of girls, boys and adolescents, children of emigrants who stay in the State party, with a view to generating policies for the attention, protection and family reunification. It also encourages the State party to direct efforts towards the creation of policies which respond to difficulties encountered by the migrants' children, including migrant workers with irregular status, given their situation, and guarantee full enjoyment of their rights.

The Committee on the Elimination of Racial Discrimination has requested Ecuador to take the necessary and effective education and sensitization measures to combat any tendency to stereotype and stigmatize migrant workers, especially by public officials, educators, communication media and the society in general. It also urges the State Party to continue eliminating the obstacles that hamper in practice the enjoyment of the rights set forth in the Convention.¹⁶

¹⁶ Committee on the Elimination of Racial Discrimination, Concluding Observations, Ecuador. CERD/C/ECU/CO/20-22. 24th October 2012.

VI. Paraguay

Committee on the Protection of the rights of all migrant workers and the members of their families¹⁷

13. The Committee invites the State Party to consider the possibility to make the declarations foreseen in articles 76 and 77 of the Convention.

15. The Committee invites the State Party to consider the possibility to adhere to ILO Agreements N.º 97, 143 and 181, and keep up efforts to ratify the Agreement N.º 189.

23. The Committee recommends the State Party to: a) Intensify the efforts on the training of all officials who work in the migration field, especially the police and border officials, as well as local officials tasked with migrant workers matters; b) Take the necessary measures to ensure that migrant workers have access to the information on their rights consecrated by the Convention; c) Continue working with civil society organizations on the dissemination of information and the promotion of the Convention.

25. The Committee recommends the State Party to: a) Redouble efforts to inform migrant workers on the administrative and judicial reparations they have a right to and ensure that their complaints are addressed in an effective manner; b) Ensure that in legislation and practice the migrant workers and the members of their families, including those in irregular situation, enjoy the same rights as the nationals of the State party to lodge complaints and receive effective reparations at courts, among others the labour courts.

29. The Committee urges the State party to take into account the need to protect migrant children who have been separated from their families and design an effective strategy to face the issue of unaccompanied or separated minors entering the country, ensuring the provision of the necessary assistance according to the international standards on child protection.

33. The Committee recommends the State Party to take the necessary steps to guarantee to migrant workers and members of their families the access to basic health services in its territory including, as applicable, the services included in the social security scheme.

34. The Committee expresses its concern about the lack of information on the access of the migrant workers' children to education, in particular the children of Brazilian communities in the State Party.

35. The Committee recommends the State Party to take the measures needed to ensure that all the children of migrant workers have access to primary and secondary education, in conditions of treatment equal to the nationals of the State Party. The Committee requests the State party to include in its second periodic report information on such measures and schooling rates of migrant girls and boys, including those in irregular situation.

41. The Committee encourages the State Party to intensify efforts so that its consular services respond more effectively to the need for protection of Paraguayan migrant workers and the

¹⁷ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Paraguay, CMW/C/PRY/CO/1, 16th May 2012

members of their families and especially, issue without delay the travel documents for all Paraguayan migrant workers and members of their families, including those who must or wish to return to Paraguay.

43. The Committee recommends the State Party to continue facilitating the voluntary return of Paraguayan migrant workers and the members of their families, as expressed in the Proposal on the 2010-2020 Public Policy for Social Development complementing the 2008-2013 Economic and Social Strategic Plan.

45. The Committee underlines the need to continue collaborating with neighbouring countries to adequately face the issue of trafficking. The Committee encourages the State Party to: a) Intensify efforts in the form of measures against trafficking, with a view to addressing in an exhaustive and complete manner, the complexities of trafficking and exploitation of prostitution; d) Adopt the necessary measures to investigate the extension and causes of the trafficking in women and children in order to elaborate and implement a national policy on prevention and combat against the trafficking in persons.

The Committee on the Rights of the Child has recommended Paraguay that, in adopting the concluding observations, it should take preventive measures to support and strengthen families and assess the effect of all forms of migration on the disintegration of the nuclear family.¹⁸

VII. Uruguay

Committee on the Protection of the rights of all migrant workers and the members of their families¹⁹

16. The Committee recommends the State Party to: a) Continue to develop training and sensitization actions on the Convention and its contents, directed to all officials from bodies responsible for the enforcement of the rights; b) Intensify information campaigns and programmes directed to migrant workers and the members of their families on the rights recognized by the Convention; c) Continue to collaborate with the civil society organizations directly working on the dissemination of the Convention and the attention to migrant workers, to improve coordination and complementariness of services and efforts.

20. The Committee encourages the State party to: a) Promulgate specific laws forbidding discrimination and create and reinforce mechanisms to denounce cases to public institutions; b) Increase the efforts to ensure that all migrant workers and the members of their families in its territory or subject to its jurisdiction enjoy the rights foreseen in the Convention without any distinction

¹⁸ Committee on the Rights of the Child, Concluding Observations, Paraguay (2010), CRC/C/PRY/CO/3, 10th February 2010.

¹⁹ Committee on the Protection of the rights of all migrant workers and the members of their families, Concluding Observations, Uruguay (2014), CMW/C/URY/CO/1. 2nd May 2014.

whatsoever, in accordance with article 7; c) Keep up efforts, in collaboration with the media, international bodies and civil society organizations, to sensitize the public in regard with the combat against the discrimination of migrants and their social stigmatization.

24. The Committee recommends the State Party to : a) Continue the practices of labour inspection in the domestic labour sector to ensure that migrant workers enjoy the same working conditions as nationals; b) Intensify the sensitization campaigns directed to employers and general public on the rights of migrant workers and continue the training of officials, in particular those responsible for labour inspections; c) Ensure that all migrant workers who suffer the violation of their rights have effective access to mechanisms to lodge complaints against their employers, including the domestic labour sector, and that every abuse is investigated and sanctioned as required. The Committee encourages the State Party to take into account its General Observation N° 1 (2010) on migrant domestic workers.

28. The Committee encourages the State Party to ramp up the adoption of the bill on consular organization and its application. It also encourages the State Party's efforts to adequate the consular services to the needs for protection and promotion of the human rights of Uruguayan migrant workers abroad, as the measures to expedite the obtainment of the identity document for nationals, and encourages its efforts to facilitate these procedures in Argentina and the region.

30. The Committee recommends the State Party to adopt the necessary steps, including those in the legislative field, to guarantee the exercise of the voting right to Uruguayan migrant workers abroad and boost citizens' involvement and linking with nationals abroad.

32. The Committee recommends the State Party to consider the necessary measures, including the modification of present requirements for continued residence, to guarantee in its territory the access to services included in the welfare system to all migrant workers and members of their families, in the same conditions granted to nationals.

44. The Committee recommends the State Party to promote the inclusion of migrant workers and the members of their families in the development of programmes to assist returning migrants in a lasting reinsertion in the economic, social and cultural network of the State Party. It encourages the State Party to intensify the dissemination of available services for the return of migrant workers.

The Committee on the Rights of the Child has recommended that Uruguay should guarantee prompt procedures for the registration and issuance of identity documents for the refugee children, children seeking asylum and migrant children, as well as the access to health services and education as long as they stay in its territory.²⁰

²⁰ Committee on the Rights of the Child, Concluding Observations, Uruguay (2007), CRC/C/URY/CO/2, 5th July 2007

VIII. Brazil, Peru and Venezuela

Brazil²¹ and Venezuela²² have not ratified the International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families and consequently, do not submit reports to the Committee surveying the application of the Convention.

In the case of Peru, though in 2005 it ratified the Convention which entered into force the following year, only in December 2013 the Peruvian State submitted to the consideration of the Committee on the Protection of all Migrant Workers and the Members of their Families the initial report comprising the period as from the enforcement of the Convention until December 2012. This report will be evaluated in the 22nd period of sessions of the Committee, to take place between 13th and 24th April 2015.

IX. Some clarifications on this chapter

It is necessary to clarify that the selection of recommendations and the higher number of observations made by the Committee to some States should not always be interpreted as the fact that a State has a higher or lower level of compliance than the others.

The differences in the number of recommendations may result from a combination of the following reasons:

1. **Ratification of the treaties.** The States which have not ratified some of the treaties are not subject to the review of the respective Committees.
2. **Delay in the submission of Reports to the United Nations Committees.** This is the case of countries that have ratified the treaty but have not submitted or delayed the submission of the initial report to the Committee, and therefore the latter has not produced the concluding observations and recommendations.
3. **Date of the recommendations.** Despite the existence of some recommendations, the Committees' concluding observations may date back almost one decade. In some cases, the States have submitted the initial reports to the Committees, but not the periodic reports (every five years). These recommendations have not been taken into account because they are considered not to reflect the present situation in the State Party.

²¹ The Committee on Economic, Social and Cultural Rights has recommended Brazil to ratify the International Convention on the protection of the rights of all migrant workers and the members of their families. DESC Committee, Concluding Observations, Brazil (2009), E/C.12/BRA/CO/2, 12th June 2009.

²² The Committee on the Elimination of Racial Discrimination has recommended that the State Party should take the necessary measures to protect migrants and their rights. The Committee invites the State Party to include in the next periodic report information on the progress made regarding the status of migrant workers in the State Party. Committee on the Elimination of Racial Discrimination, Concluding Observations, Bolivarian Republic of Venezuela. CERD/C/VEN/CO/19-21. 23rd September 2013.

5. Some reflections on the recommendations made by the United Nations conventional mechanisms to the South American States

The purpose of this section is to provide a brief overview of the recommendations which have been reiterated to more than one State, in order to give an idea on the aspects of the protection of rights which need more attention in the South American region.

Considering the recommendations that the Committees have made to the States in the region and have been included in the above chapter, the following topics have been the focus of recommendations to the majority of South American States, in particular from the Committee for the Protection of the Rights of all Migrant Workers and the Members of their Families.

In the first place, it has reiterated the recommendation to intensify efforts to make the declarations foreseen in the articles 76²³ and 77 of the Convention. This means to let the Committee know the complaints lodged by one State Party against another about the non-compliance with the obligations imposed by the Convention and receive and know the denounces or complaints of individuals alleging the violation of rights recognized by the Convention.

In several cases, the Committee has also pointed out the importance of ratifying the ILO Agreements N^o 97 (*Agreement on migrant workers*) and N^o 143 (*Agreement on migrations in abusive conditions and the promotion of equal opportunities and treatment of migrant workers*).

One recommendation that has been reiterated to different States by the Committee on Migrant Workers is the need to implement a comprehensive and systematic policy on the training in migration and trafficking directed to public officers, including judges, prosecutors, police officers, migration agents and other State agents responsible for migrant workers related matters. Moreover, the Committee repeatedly requests the States to guarantee that migrant workers have access to the information on their rights in accordance with the Convention, and collaborate with civil society organizations in the dissemination of information and the promotion of this instrument.

The majority of the States in the region have received recommendations on the prevention and combat against discrimination and the adoption of measures to condemn social stigmatization and discriminatory political and media statements.

Other common aspect in some of the Committees' observations is the need for an information system on migration providing a detailed database with breakdowns by gender, age, number, situation and access to basic services.

²³ Article 76. 1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and examined only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

It is also noteworthy the important number of recommendations regarding the access to social, economic and cultural rights for migrants and more especially, the members of their families, in the same conditions as nationals.

In this sense, the Committees express their concern about the fact that, even in those States whose legislation recognizes free access to health and education for migrants, there are obstacles in the cases of health services and/or enrolment in schools due to the lack of an identity document.

As regards the issue of social protection, the States are requested to facilitate the access of families and particularly, concerning children, the access to social and money transfer related services, modifying the residence requirements for migrant workers and the members of their families so that they can have access to a non-contributory social service system.

There are recommendations concerning the guarantee of documents for the children of migrants in irregular situation to avoid the stateless status.

The issue of trafficking, especially in women and girls, has also been the focus of several recommendations from several United Nations Committees.

From the standpoint of the States whose nationals largely migrate to other countries in the region, the Committee on Migrant Workers has expressed its concern about the delays in the obtainment of the documents which would help them to fully enjoy their rights, and urged the State Parties to intensify the efforts so that their consular services can respond more effectively to the need for protection of the migrant workers and the members of their families.

Finally, it is also possible to identify recommendations on the adoption of measures to guarantee the exercise of the voting right for migrant workers abroad and promote the citizenship participation of nationals abroad.

