



**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-fourth session

Summary record (partial)* of the 310th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 12 April 2016, at 3 p.m.

Temporary Chair: Mr. El Jamri
later: Mr. Kariyawasam
later: Ms. Dicko (Vice-Chair)

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.25 p.m.

Election of officers, according to rules 12 and 13 of the provisional rules of procedure

1. **The Chair** invited the Committee members to nominate candidates for the office of Chair.
2. **Ms. Castellanos Delgado** nominated Mr. Ceriani Cernadas and **Ms. Ladjel** nominated Mr. Brillantes for the office of Chair.
3. **The Chair** invited the Committee to elect the Chair by secret ballot.
4. *A vote was taken by secret ballot.*

Number of ballot papers:	11
Number of valid ballots:	11
Number of members voting:	11
Required majority:	6

Number of votes obtained:

Mr. Brillantes	6
Mr. Ceriani Cernadas	5
5. *Having obtained the required majority and the largest number of votes, Mr. Brillantes was elected Chair of the Committee.*
6. **The Chair** invited the Committee members to nominate candidates for the office of Vice-Chair.
7. **Ms. Ladjel** nominated Mr. Ceriani Cernadas, **Mr. Tall** nominated Ms. Dicko and **the Chair** nominated Ms. Dzumhur for the office of Vice-Chair.
8. *Mr. Ceriani Cernadas, Ms. Dicko and Ms. Dzumhur were elected Vice-Chairs by acclamation.*
9. **The Chair** said that he wished to nominate himself for the office of Rapporteur.
10. *Mr. El Jamri was elected Rapporteur by acclamation.*
11. *Mr. Kariyawasam took the Chair.*

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

Initial report of Lesotho (CMW/C/LSO/1; CMW/C/LSO/QPR/1)

12. *At the invitation of the Chairperson, the delegation of Lesotho took places at the Committee table.*
13. **Mr. Rakuoane** (Lesotho), introducing his country's initial report (CMW/C/LSO/1), said that Lesotho was a dualist State, which meant that international treaties were given effect through the enactment of an act of Parliament. His Government considered State party reporting to be a worthwhile process and welcomed the opportunity to take stock of the country's achievements, shortcomings and challenges.
14. The Constitution guaranteed the principles of equality, non-discrimination and freedom from inhuman and degrading treatment for all persons, including migrant workers. Acts of Parliament, subsidiary legislation and policies were reviewed regularly to ensure that they remained progressive and relevant to the needs of migrants and society in general. The Children's Protection and Welfare Act of 2011, for example, secured the rights of children of migrant workers on an equal footing with other children.

15. Labour Code Order No. 24 of 1992 was currently being reviewed with a view to strengthening the regulation of labour recruitment agencies, which would help guard against trafficking in persons. While socioeconomic rights were not justiciable in Lesotho, the Government had taken measures to safeguard those rights. Primary education was free and compulsory for all children and health services were provided in clinics at a minimal cost.

16. In November 2013, his Government had signed a memorandum of understanding with South Africa on labour cooperation, which addressed issues relating to semi-skilled workers who migrated from Lesotho to South Africa. Migrants could contribute enormously to the development of their countries of origin and the countries in which they worked, but they were at risk of human rights violations if their situation was not adequately addressed.

17. The Anti-Trafficking in Persons Act of 2011 had been enacted in response to an increase in cases of human trafficking and a multisectoral anti-trafficking team had been established to monitor its implementation. Various ministries, civil society organizations and community networks, including the Women and Law in Southern Africa Research and Educational Trust, which received funding from the European Union, worked to raise awareness of gender-based violence and trafficking.

18. In March 2011, the Ministry of Social Development had trained 21 officials on the definition of trafficking and on victim identification. In 2015, the Ministry of Home Affairs had established a team of law enforcement officials working on anti-trafficking issues, which had thus far rescued 20 trafficking victims.

19. In line with the Committee's focus on protection for migrant domestic workers and the decriminalization of irregular migration, his Government continued to engage in dialogue with the Government of South Africa on putting an end to arrests and human rights violations committed against migrants from Lesotho. One result had been the introduction of the Lesotho special permit, which regularized the situation of unskilled migrants from Lesotho working in South Africa, and 11 visa facilitation centres had been opened in South Africa to process permit applications. South Africa had begun accepting applications for the permit on 1 March 2016 and, as at 29 March 2016, a total of 5,361 applications had been received, of which 3,236 had met the established requirements.

20. International economic imbalances, poverty and environmental degradation were the main factors affecting migration from Lesotho to other countries. Lesotho had been hard hit by the global financial crisis and the situation had been made worse by the layoffs of migrants working in South African mines.

21. Thus, in an effort to create jobs and eliminate poverty, the Ministry of Small Business Development, Cooperatives and Marketing had been established and a policy on micro, small and medium-sized enterprises adopted. The equivalent of about US\$ 3 million had been set aside to fund small-scale agricultural production. Owing to ever-changing weather conditions and climate change, however, subsidies had made little impact on overall production. In 2015, the Prime Minister had declared a state of emergency for reasons of food insecurity.

22. The effective management of international migration required cooperation among all stakeholders at the global, regional and national levels. His Government therefore wished to reiterate its commitment to working cooperatively with the Committee to promote and protect the rights of migrant workers and members of their families.

23. **The Chair** said that he welcomed the high level of expertise and gender balance within the delegation, which augured well for a constructive dialogue.

24. **Mr. Brillantes** (Country Rapporteur) said that he welcomed the enactment of the Anti-Trafficking in Persons Act but was concerned by reports that no charges had ever been filed in national courts on the basis of the Act. He therefore wondered whether the Government was experiencing any problems in implementing the Act.

25. He asked whether it was true that no funding had been provided to the Child and Gender Protection Unit within the Police Service. He also asked how many border crossings between Lesotho and South Africa were in operation, how many people passed through them and how the Government managed its immigration relations with South Africa. Noting that the prevalence of HIV/AIDS in Lesotho was among the highest in the world, he asked what effect that had on the country's migration policies.

26. He wondered whether any particular measures were being taken to address the dangerous working conditions faced by migrants from Lesotho working in South African mines. Citing reports of xenophobia against Chinese migrants in Lesotho, or "Sinophobia", he asked how the Government was handling that situation. He would be interested to know whether Lesotho had adopted a national strategy to deal with the treatment of migrants from Lesotho, particularly in South Africa, and whether it intended to increase the vigilance at border crossings with that country.

27. He wished to know whether migrant workers were entitled to free legal aid. The delegation should comment on reports that a significant portion of remittances sent to Lesotho were from migrants who had surreptitiously entered mines that were supposed to be closed and had extricated natural resources from such mines. He asked whether it was true that children born outside the country to parents from Lesotho found it difficult to obtain citizenship and were first required to reside in the country for a number of years.

28. He wished to know whether the Government had adopted a policy to address issues faced by the lesbian, gay, bisexual and transgender (LGBT) community in Lesotho and whether civil society organizations been consulted in the preparation of the State party's report. The Committee would appreciate further statistical data on the situation in the State party and, if necessary, could refer the delegation to bodies that could provide the necessary technical assistance.

29. He would welcome information about how consular assistance was provided to State party nationals abroad. He wished to know about any efforts to disseminate the Convention in Lesotho, about the status of the State party's national human rights institution and about the Government's policy on occupational safety. He wondered whether there was a specific programme in place on family reunification. Lastly, he would welcome further information about the implementation in practice of the Anti-Trafficking in Persons Act.

30. **Mr. El-Borai** said that he wished to know what obstacles were hindering the incorporation of the Convention into domestic law. In his view, the laws described in the State party's report were insufficient to ensure the effective implementation of the Convention. Indeed, certain outdated provisions in the domestic legal order contradicted the Convention. For example, national laws failed to provide for the right of migrants to join trade unions or receive social security benefits.

31. **Mr. Ünver** said that he wished to know what specific measures the Government was taking to combat xenophobia in the country and to protect migrant workers recruited by employment agencies.

32. **Ms. Dzumbur** said that she welcomed the honest and cooperative tone of the State party's report. Noting that the State party had not yet ratified a number of the international instruments that enabled citizens to submit complaints to United Nations bodies, she asked how it ensured that the judiciary could directly apply international standards and that no legal gaps were created when transferring those standards into domestic law.

33. According to the State party's report, migration policies that should have come into effect in 2013 or 2014 appeared to be still in draft form. She would be grateful for updated information on the current status of those policies and wondered what was delaying their adoption. She commended the Government's efforts to establish a national human rights institution but asked how it would ensure that the institution complied with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), particularly with regard to its financial and organizational independence.

34. She wished to know what was being done to bring outdated legislation such as the Police Act into line with international standards. She would welcome statistical data on the effectiveness of the Police Complaints Authority in addressing complaints of police abuse.

35. She welcomed the Declaration of Intent entered into with the Government of South Africa on issuing Lesotho special permits but wondered whether the delegation believed it would be effective in preventing human rights violations against migrants from Lesotho in South Africa. Lastly, she wished to know how much of a gender balance there was among the staff of State institutions, and particularly among law enforcement personnel.

36. **Ms. Ladjel** said that there appeared to be gaps in the State party's legislation with regard to preventing statelessness among children of migrants and she wondered what measures were planned to remedy that shortcoming. She wished to know how the Children's Protection and Welfare Act was implemented in practice to protect children from economic exploitation and whether there was any national action plan or strategy to assist children in vulnerable situations. She encouraged the State party to mobilize civil society organizations and to work in cooperation with them, so that they could serve as a liaison between the Government and the general public.

37. **The Chair** said that he wished to know whether arrangements were in place to enable migrants from Lesotho, particularly those living in South Africa, to exercise their right to vote and to be elected to office. He also wished to know whether children of migrants in Lesotho had equal access to education and, conversely, whether any mechanisms were in place to safeguard the right to education for the children of migrants from Lesotho working in South Africa.

38. Since there were a large number of Lesotho migrant workers in South Africa, he would be interested to know how many consulates the State party had in that country, where they were located and whether training was provided to consulate staff on dealing with issues affecting migrant workers. Moreover, he wondered whether a bilateral arrangement with South Africa was in place or envisaged to ensure that Lesotho migrant workers could fully exercise their right to consular assistance.

39. Lastly, he asked what action the Government had taken to ensure that migrant workers in Lesotho were treated on an equal footing with Lesotho nationals in respect of remuneration.

The meeting was suspended at 4.30 p.m. and resumed at 5.10 p.m.

40. *Ms. Dicko, Vice-Chair, took the Chair.*

41. **Mr. Rakuoane** (Lesotho), replying to questions posed by members of the Committee, said that it was hoped that, with 17 cases currently before the courts or under investigation, there would be more convictions in cases of trafficking in persons, following the establishment of a task force in 2015. Two previous convictions that had been obtained had been dismissed on appeal.

42. There were 12 border crossings between Lesotho and South Africa, of which two were currently open 24 hours a day to facilitate uninterrupted cross-border movement. A

third would soon be operating on a similar basis. Migration to, from and within Lesotho was a factor in the high prevalence of HIV/AIDS in the country. Treatment for persons with HIV/AIDS was, however, improving, thanks, in part, to a moratorium on the arrest and detention of migrant workers from Lesotho in South Africa, which facilitated their access to treatment until the entry into force of the Lesotho special permit. In that context, efforts were being undertaken in cooperation with South Africa to obtain compensation for former mine workers and provide them with health care. Several cases had also been brought against mining companies by human rights organizations on behalf of former mine workers.

43. There had been no reported cases of xenophobia since 1991, when Chinese-owned businesses had been targeted and burned down in arson attacks in Maseru. While free legal aid was not provided to migrant workers, consular services were available, in particular in South Africa, where, in addition to the embassy in Pretoria, there were four consulates, located predominantly in mining areas. As for reports that migrant workers from Lesotho were working in abandoned mines in South Africa, the Government was working with the South African authorities on facilitating the legalization of those operations in an attempt to improve the situation of the workers. As matters stood, violence between rival mining syndicates and gangs exacerbated the already dangerous working conditions in those mines.

44. The Lesotho Citizenship Order of 1971 was, admittedly, outdated and required review. The Government was also examining the issue of dual nationality, which was not currently permitted in Lesotho. Similarly, it was hoped that the special permit would go some way to preventing statelessness among children born to migrant workers in South Africa. Further cooperation between the two countries was necessary, however, since the issue was particularly complex owing to the large number of women from Lesotho who were married to South Africans. Many of those women were in an irregular situation, since, in general, their partners did not earn the minimum required by the South African authorities to grant such women residence.

45. The Human Rights Commission Bill had been passed by the National Assembly and was now before the Senate. It was, therefore, envisaged that a fully fledged human rights commission would be established by the end of the year. As for private recruitment agencies, a deferred payment agreement was in place, particularly for mine workers, whereby a third of a worker's wages was transferred in the form of remittances to Lesotho. Similar agreements had not, however, been arranged for workers in other industries. Lastly, in the light of the great number of Lesotho nationals in South Africa, various awareness-raising activities had been conducted to encourage migrant workers from Lesotho to register to vote, although no legislation had yet been enacted on that issue.

46. **Mr. Tall** said that it was disturbing that, if detained for administrative infractions, migrant workers in an irregular situation in Lesotho were held in the same conditions as criminals convicted under ordinary law. He wished to know what steps were being taken to ensure that migrants awaiting expulsion were held in conditions that complied with the provisions of the Convention. In that connection, he would welcome further information on the procedure for appealing against an expulsion order, in particular one issued by the Ministry of Home Affairs, and whether such appeal had suspensive effect until such time as a decision was made by the courts. Statistics on the number of expulsions of migrant workers and members of their families would also be appreciated.

47. He noted with concern that, among others, migrant workers working as domestic workers and shepherds were paid in kind, in accordance with custom, and were thus not covered by certain legislation. Since they were not receiving financial remuneration for their work, he asked what measures were in place to ensure that they were not exploited and how the right of migrant workers to enjoy the same entitlement to remuneration as Lesotho nationals was safeguarded. He also asked whether migrant workers were entitled to unemployment benefit; whether a court-appointed lawyer was provided to persons without

the means to pay for legal representation; and whether there had been any cases in which the courts had invoked the provisions of the Convention.

48. **Mr. Brillantes** said that he wished to know what specific measures had been taken to incorporate the Convention into domestic law and provide for its implementation. In that connection, he asked whether the Convention had been widely disseminated and, if so, how; whether it had been translated into Sesotho; and whether the State party had provided more training on the Convention for judges, immigration officers and other law enforcement personnel. He would also be interested to know whether the National Migration and Development Policy of 2013 had now been put into effect and what progress had been made with the review of the 1992 Labour Code. Information on the measures taken by the State party to ensure non-discrimination, both in law and in practice, and on the number of cases and proceedings brought to court by migrant workers and members of their families seeking legal redress should also be provided.

49. He asked whether the State party intended to make the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive individual communications. He also asked whether there were plans to ratify the International Labour Organization (ILO) Minimum Wage Fixing Convention, 1970 (No. 131), Private Employment Agencies Convention, 1997 (No. 181), Domestic Workers Convention, 2011 (No. 189), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Migration for Employment Convention (Revised), 1949 (No. 97).

50. He noted with concern that migrant workers in an irregular situation were vulnerable to exploitation, in particular in the construction and textile industries, and wondered how frequently labour inspections were conducted in those industries. Regarding occupational health and safety, he asked what measures had been taken to prevent the non-reporting of work-related injuries, especially in the agricultural sector, and what was being done to ensure that private recruitment agencies were held liable to report work-related injuries suffered by migrant workers and to repatriate the remains of those who had died while overseas.

51. The report was silent on the issue of whether incidents of racism, ill-treatment or violence had been recorded against migrant workers and members of their families, particularly those of Asian origin. Information on measures to combat forced prostitution should be provided. Referring to the Aliens Control Act 1966, he noted that only a government minister had the power to authorize family reunification and he would be interested to hear whether a process was in place or envisaged to enable more extensive use of family reunification programmes.

52. Lastly, it would be interesting to know what costs were involved in transferring money to the State party.

53. **The Chair**, noting that social security was a national obligation, said that she wished to know whether there was a bilateral agreement on social security with South Africa to ensure that Lesotho nationals could receive their pensions. She would also be interested to learn about the process and authorizations required for establishing a private recruitment agency and whether the provisions of ILO Convention No. 181 had been taken into account in that regard.

The meeting rose at 5.55 p.m.