United Nations CMW/C/TUR/CO/1

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
31 May 2016

Original: English

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Turkey*

1. The Committee considered the initial report of Turkey (CMW/C/TUR/1) at its 314th and 315th meetings (see CMW/C/SR.314 and 315), held on 14 and 15 April 2016. At its 325th meeting, held on 22 April 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was prepared in response to the list of issues prior to reporting (CMW/C/TUR/QPR/1). The Committee also welcomes the additional information that was provided during the dialogue by the large, multisectoral delegation, which was headed by the Permanent Representative of Turkey to the United Nations Office and other international organizations in Geneva, Mehmet Ferden Çarıkçı, and composed of representatives of the Ministry of Labour and Social Security, the Ministry of Justice, the Ministry of National Education, the Directorate-General for Migration Management, the Ombudsperson Institution and the Permanent Mission of Turkey to the United Nations Office and other international organizations in Geneva.

3. The Committee appreciates the constructive dialogue held with the delegation. The Committee, however, regrets that the initial report was submitted on 8 April 2016 only, which did not allow sufficient time for translation into the working languages of the Committee, nor for due consideration by the Committee.

4. The Committee is aware that Turkey, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals abroad. However, the Committee also notes that the State party, as a transit and destination country, faces several challenges in terms of the protection of migrant workers' rights.

5. The Committee notes that some countries in which Turkish migrant workers are employed as well as the countries to which many migrants in transit in the State party are going are not parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

* Adopted by the Committee at its twenty-fourth session (11-22 April 2016).

B. Positive aspects

6. The Committee welcomes the State party's efforts to promote and protect the rights of Turkish migrant workers abroad, in particular with respect to the right to social security and the right to vote.

7. The Committee notes with appreciation the ratification of or accession to the following instruments:

(a) The Convention on the Rights of Persons with Disabilities, in September 2009, and the Optional Protocol thereto, in March 2015;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in September 2011;

(c) The Optional Protocol to the International Covenant on Civil and Political Rights, in November 2006;

(d) The Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in March 2006;

(e) The Convention relating to the Status of Stateless Persons, in March 2015;

(f) The Council of Europe Convention on Action against Trafficking in Human Beings, in January 2016;

(g) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in October 2007;

(h) The European Social Charter, in June 2007.

8. The Committee welcomes the adoption of the following legislative measures:

(a) The regulation providing that Syrians readmitted to the State party following the agreement reached between the European Union and Turkey on 18 March 2016 can be granted temporary protection again upon request, on 7 April 2016;

(b) The regulation on the implementation of the Act on Foreigners and International Protection, on 17 March 2016;

(c) The regulation on combating trafficking in human beings and protection of victims of trafficking, on 17 March 2016;

(d) The regulation on work permits for foreigners who have been granted temporary protection (No. 8375), on 15 January 2016;

(e) The regulation on temporary protection (No. 6883), on 22 October 2014;

(f) The Ministry of Education circular on education services for foreign nationals (No. 2014/21), on 23 September 2014;

(g) The Act on Foreigners and International Protection (No. 6458), on 11 April 2013;

(h) Act (No. 6304) amending the Act on Elections and Electoral Registers and certain Acts, on 9 May 2012;

(i) The circular on foreign national students (No. 2010/48), on 16 August 2010;

(j) The Act on Social Security and Universal Health Insurance (No. 5510), on 31 May 2006.

9. The Committee also welcomes the following institutional and policy measures:

(a) The adoption of the tenth National Development Plan (2014-2018) with a dedicated chapter on migration;

(b) The adoption of the Strategy Document and National Action Plan on Irregular Migration, in 2014;

(c) The establishment of the Directorate-General for Migration Management under the Ministry of the Interior, in 2013;

(d) The establishment of the Office for Turks abroad and related communities, on 6 April 2010.

C. Factors impeding the implementation of the Convention

10. The Committee recognizes that the State party is currently hosting more than 2.7 million Syrian nationals under temporary protection and that it has been providing emergency response assistance to them since 2011, which has put a huge strain on the resources and infrastructure of the State party. It commends the State party for the tremendous support it has provided to Syrian nationals in the world's largest humanitarian crisis since the Second World War, triggered by the conflict in the Syrian Arab Republic.

D. Principal subjects of concern and recommendations

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

Legislation and application

11. The Committee welcomes the steps taken by the State party to adopt legislation to protect the rights of migrant workers, including the 2013 Act on Foreigners and International Protection (No. 6458). However, the Committee is concerned that:

(a) The State party has not made sufficient effort to ensure that the provisions of the Convention are reflected in all relevant national legislation;

(b) The guarantees of access to health, education, the labour market, social assistance, interpretation and similar services under the Act on Foreigners and International Protection appear to be discretionary rather than mandatory, given the wording of article 260161 (1);

(c) The lengthy procedures for work permit applications for migrant workers, including those under temporary protection, encourage employers to hire undocumented migrant workers;

(d) Strict procedural rules and challenges encountered in the recognition of professional certificates cause migrant workers to be employed in jobs that are not compatible with their professional and educational backgrounds, including as unskilled labourers.

12. **The Committee recommends that the State party take the steps necessary to ensure that its national laws and policies are in line with the provisions of the Convention and consider simplifying procedures for work permit applications and for the recognition of foreign professional certificates.**

13. The Committee is concerned about the lack of information on the application of the Convention by domestic courts.

14. **The Committee invites the State party to provide in its second periodic report information on the application of the Convention by domestic courts.**

Declarations and reservations

15. The Committee is concerned that the State party has made declarations and reservations under articles 15, 40, 45 and 46 of the Convention that may impede the full enjoyment of the rights of migrant workers under the Convention.

16. **The Committee recommends that the State party take the steps necessary to withdraw the declarations and reservations made with respect to articles 15, 40, 45 and 46 of the Convention.**

Articles 76-77

17. The Committee notes that the State party has not made the declarations recognizing the competence of the Committee to receive and consider communications from State parties and individuals concerning violations of the rights set out in the Convention, provided for in articles 76 and 77 of the Convention.

18. **The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention**.

Ratification of relevant instruments

19. The Committee commends the State party for ratifying most core international human rights treaties as well as a number of International Labour Organization instruments. The Committee, however, notes that it has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, or the following International Labour Organization instruments: the Migration for Employment Convention (Revised), 1949 (No. 97), the Minimum Wage Fixing Convention, 1970 (No. 131), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181), and the Domestic Workers Convention, 2011 (No. 189).

20. **The Committee recommends that the State party consider ratifying or acceding to the above-mentioned instruments as soon as possible**.

21. Noting that the State party is party to the 1951 Convention relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees, the Committee is concerned that it maintains a reservation limiting the application of the Convention to States members of the Council of Europe.

22. **The Committee recommends that the State party consider withdrawing the reservation relating to the geographical limitation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

Comprehensive policy and strategy

23. While noting the development in 2015 of the National Action Plan on Migration and Asylum and the Strategy and National Action Plan on Irregular Migration, the Committee regrets that the State party has not provided sufficient information on the specific measures it has taken to implement the Convention.

24. **The Committee recommends that the State party adopt, implement and adequately resource a comprehensive migration policy, in line with the Convention**

and in a gender-sensitive manner. The Committee urges the State party to include in its second periodic report updated information, supported by statistics, on the concrete measures taken to implement the rights of migrant workers set out in the Convention, both in law and in practice.

Coordination

25. While welcoming the establishment in 2013 of the Directorate-General for Migration Management under the Ministry of the Interior, as well as other coordination mechanisms such as the Migration Advisory Board and the Migration Policies Board, the Committee is concerned that the coordination among the institutions and services that deal with the various measures to implement the rights under the Convention is insufficient.

26. **The Committee recommends that the State party strengthen its efforts to improve coordination among ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention, including by ensuring appropriate human and financial resources, as well as capacity for the Directorate-General for Migration Management and other key institutions engaged in handling migration issues.**

Data collection

27. While appreciating the State party's efforts to provide data on migration flows and on other migration-related issues, the Committee is concerned that labour migration statistics in the State party are produced in a fragmented way.

28. **The Committee recommends that the State party establish a system for compiling qualitative and quantitative migration-related statistics and information covering all aspects of the Convention, including on migrant workers in an irregular situation, and that it collect detailed data on the status of migrant workers in the State party. The Committee encourages the State party to compile information and statistics disaggregated by sex, age, nationality, reason for entry into and departure from the country and type of work performed, in order to have an effective impact on relevant policies and the implementation of the Convention in line with target 17.18 of the Sustainable Development Goals.**[1] **The Committee also recommends that the State party ensure the cooperation of its consular and diplomatic representations abroad in order to compile data on migration, including the situation of irregular migrant workers and victims of trafficking. In cases in which it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee would welcome information based on studies or estimates.**

Independent monitoring

29. The Committee welcomes the information in the State party's report that the Ombudsperson Institution has the power to investigate all complaints made by migrant workers, including those in an irregular situation. The Committee is, however, concerned that:

(a) The Ombudsperson Institution does not have the right to conduct inquiries on its own initiative;

[1] The 2030 Agenda for Sustainable Development was adopted by the General Assembly in its resolution 70/1 on 25 September 2015. It comprises 17 Sustainable Development Goals, which are further broken down into targets.

(b) The Act on the Human Rights and Equality Institution of Turkey, which entered into force on 20 April 2016, and under which the Turkish National Human Rights Institution will become the Human Rights and Equality Institution, weakens the monitoring mandate as, for cases of discrimination, the institution will be mandated to investigate human rights violations upon application only;

(c) The Act on the Human Rights and Equality Institution of Turkey does not fully comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Moreover, the functional and financial independence of the national institution could be detrimental to its work as the national preventive mechanism established under the Optional Protocol to the Convention against Torture.

30. **The Committee recommends that the State party seek technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) with a view to ensuring that:**

(a) **The national institution is both functionally and financially independent of the Government, in compliance with the Paris Principles, including with regard to the breadth of the mandate and the ability to raise constitutionality issues and monitor the effectiveness of the judiciary, and has the authority to investigate all issues relating to human rights, including the rights of migrant workers and members of their families, regardless of their status;**

(b) **The national preventive mechanism is fully independent and mandated to conduct unannounced visits to all places where migrant workers and members of their families may be deprived of their liberty, including airport transit zones;**

(c) **The Ombudsperson Institution has jurisdiction to intervene on all administrative decisions relating to migration, including arrest, detention, decisions on migration status and expulsion;**

(d) **There is consolidation and coordination between the Ombudsperson Institution and the new Human Rights and Equality Institution;**

(e) **Elections for the new Human Rights and Equality Institution are conducted in a fully transparent manner, with job openings being widely advertised and candidates not being nominated by the executive branch of the Government.**

Training on and dissemination of information about the Convention

31. While noting that civil servants, the security forces and the judiciary have been trained on human rights, the Committee is concerned at the absence of materials and training programmes specifically on the Convention and the rights enshrined in it, and the dissemination of such information among all stakeholders, including national, regional and local government bodies, domestic courts, civil servants providing free legal aid in immigration procedures, civil society organizations, and migrant workers and members of their families.

32. **The Committee recommends that the State party develop education and training programmes on the Convention and that such programmes be made available to all officials and persons working in migration-related areas. The Committee also recommends that the State party ensure that migrant workers have access to information about their rights under the Convention, and that it work with civil society organizations and the media to disseminate information about the Convention and promote its implementation**.

Participation of civil society

33. While welcoming the fact that the coordination bodies established under the Act on Foreigners and International Protection include representatives of academia, the public sector and non-governmental organizations, the Committee regrets that, as the State party asserted in its written replies to the list of issues, it was not possible to cooperate with civil society during the preparation of the State party's report. The Committee is concerned that some civil society organizations advocating for human rights in the State party:

(a) Have reportedly been subjected to intimidation by State officials;

(b) Are reportedly afraid to support undocumented migrant workers as they are concerned that they might be charged with smuggling migrants;

(c) Have limited access to detention centres.

34. **The Committee reminds the State party that human rights defenders deserve special protection as their work is critical for promoting human rights for all, including migrant workers. The Committee therefore strongly recommends that the State party take immediate action to allow journalists, human rights defenders and all non-governmental organizations to exercise their right to freedom of expression and opinion without threats and harassment. The Committee urges the State party to ensure that reported instances of intimidation and harassment of members of non-governmental organizations, human rights defenders and civil society activists are promptly and independently investigated, and those responsible for such abuses are held accountable. The Committee recommends that the State party:**

(a) **Encourage civil society organizations to support migrant workers and members of their families and ensure that no civil society organizations are penalized for supporting or working with undocumented migrant workers;**

(b) **Systematically involve civil society and non-governmental organizations in the implementation of the Convention, including the implementation of migration policies and of the agreement reached between the European Union and Turkey on 18 March 2016;**

(c) **Provide civil society organizations with unhindered access to detention centres to enable them to support detained migrant workers and members of their families effectively.**

Corruption

35. The Committee regrets the lack of information about measures taken to prevent corruption among officials who have responsibilities relating to the Convention, including border officials and members of the police.

36. **The Committee invites the State party to provide in its second periodic report information on measures taken to prevent corruption among officials who have responsibilities relating to the Convention, including statistical information on investigations and sanctions. The Committee recommends that the State party conduct awareness-raising campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to report it.**

2. General principles (arts. 7 and 83)

Non-discrimination

37. While noting that the State party is currently drafting a harmonization (integration) strategy and national action plan, the Committee is concerned that:

(a) The national legislation does not cover all the prohibited grounds of discrimination included in articles 1 (1) and 7 of the Convention;

(b) Article 5 (1) of the Labour Code prohibits discrimination in the employment relationship, but does not prohibit discrimination at the recruitment stage;

(c) There is a lack of information on practical examples that would make it possible to assess the implementation of the right to non-discrimination pursuant to the Convention with respect to both documented and undocumented migrant workers.

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

(a) **Take all measures necessary, including legislative amendments, to ensure that all documented and undocumented migrant workers and members of their families within the territory of the State party or subject to its jurisdiction enjoy without discrimination the rights recognized in the Convention, in accordance with article 7 thereof, including by amending the Labour Code;**

(b) **Provide in its second periodic report information on concrete measures taken and current practice in that regard, together with relevant examples;**

(c) **Ensure that the official discourse about irregular migrants refers to their human rights and the international obligations of the State party to respect, protect and fulfil their rights under the Convention and other international human rights instruments.**

Right to an effective remedy

39. The Committee is concerned that:

(a) While there are provisions in the State party's legal system to address the labour rights of migrant workers, the enforcement of those rights is in practice reportedly dependent on the migrant worker's ability to pay for a lawyer;

(b) The very few cases in which migrant workers have been able to obtain some sort of compensation have been concerned with severe work-related injury or death;

(c) The majority of the limited number of complaints the Ombudsperson Institution has received to date from migrant workers or members of their families have been declared inadmissible;

(d) Undocumented migrant workers in Turkey are reportedly rarely able to seek redress for violations of their rights under the Convention without being punished on the grounds of their irregular migration status;

(e) The fear of retaliation, the threat of deportation, and the monetary fine for carrying out unregistered work under article 21 of the Act on work permits for foreigners (No. 4817) deter undocumented migrant workers from filing complaints;

(f) There is a lack of information and adequate legal counselling mechanisms for migrant workers on their rights and the remedies available in the State party's justice system.

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

(a) **Ensure that, in law and in practice, all migrant workers and members of their families, including those in an irregular situation, have the same opportunities as nationals of the State party to file complaints and obtain effective redress in the courts if their rights under the Convention are violated, including by removing obstacles to access to justice such as monetary fines for carrying out unregistered work and an increased risk of deportation if a complaint is filed;**

(b) **Take measures to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in case of a violation of their rights under the Convention.**

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

Border management and migrants in transit

41. The Committee commends the State party for its policy of welcoming and registering Syrian nationals fleeing their country during the Syrian crisis. The Committee is, however, concerned at:

(a) Reports that since 2016 the State party has introduced visa requirements for Syrians arriving by air and has continued building a concrete wall to seal its land border with the Syrian Arab Republic to keep out anyone not in need of emergency medical care;

(b) Allegations that the State party's border guards have at times been using live ammunition to prevent Syrian nationals, including children, who are fleeing Islamic State in Iraq and the Levant advances, from crossing the State party's border, and the lack of information on investigations into those allegations;

(c) The continued, and increasing number of, deaths of migrants in the State party's coastal waters since 2012, despite their decrease in March 2016 owing to the State party's search and rescue efforts through the SAFEMED project and Operation Aegean Hope;

(d) The limited information about specific mechanisms and procedures to facilitate the identification of persons in need of protection under international human rights, humanitarian and refugee law among migrants arriving in the State party and about specific measures taken to ensure that the State party's migration procedures safeguard the rights of vulnerable groups and individuals, such as children and persons fleeing violence and conflict in their own countries;

(e) The lack of arrangements for reception and for processing asylum claims, as well as the lack of assurances against refoulement, in place in the State party before migrants started being returned from Greece under the agreement reached between the European Union and Turkey on 18 March 2016.

42. **With reference to the report of OHCHR on the situation of migrants in transit (A/HRC/31/35) and the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, the Committee recommends that the State party**:

(a) **Continue to honour its obligation under customary international law, international human rights law and article 6 (1) of the Act on Foreigners and International Protection to respect the principle of non-refoulement, and to that end, refrain from turning away any migrants at borders or forcibly returning them when that would expose them to the threat of persecution, torture or other cruel, inhuman or degrading treatment;**

(b) **Promptly investigate all instances of abuse and death at the State party's borders and take measures to prevent such human rights violations in the future, including by ensuring that all migrants in transit have access to justice and to effective remedies in cases of violence and abuse, whether inflicted by officials or by private individuals, groups or institutions;**

(c) **Develop and put in place mechanisms to assess the individual situation of migrants in transit in order to determine without discrimination their protection**

needs, in full compliance with international human rights, humanitarian and refugee law;

(d) **Guarantee the human rights of all migrant children in transit and ensure that they are treated as children first and foremost and, in that regard, provide guidance to all relevant authorities on the operationalization of the principle of the best interests of the child for migrant children in transit;**

(e) **Ensure that migrants in transit who are victims of violence, physical or mental abuse or exploitation are referred to the appropriate services, including medical and psychosocial services; and provide migrants, in particular girls and women who have been raped or subjected to other forms of sexual violence during their transit, with the protection and treatment appropriate to their circumstances and situations, including sexual and reproductive health services encompassing access to rights-based, comprehensive and integrated sexual and reproductive health information and services;**

(f) **Establish, operate and reinforce adequate and effective rescue services at all of its international borders and further strengthen its maritime search and rescue services and assistance to the families of deceased and missing migrants, including identification and repatriation of bodies;**

(g) **Negotiate the postponement of returns from Greece until appropriate arrangements are put in place for reception and for processing international protection claims;**

(h) **Ensure that no measures aimed at addressing irregular migration or smuggling of migrants adversely affect the human rights of migrant workers and members of their families, and that all migrant workers and members of their families are provided with the assistance they need and are afforded due process guarantees.**

Labour exploitation and other forms of ill-treatment

43. The Committee notes the State party's efforts to eliminate child labour. The Committee is, however, concerned that many migrant children, be they unaccompanied or with their families, are involved in informal labour, mostly in the agricultural sector where they work long hours under harsh conditions without legal protection, given that article 4 of the Labour Code does not apply to agricultural enterprises employing 50 or fewer workers. The Committee is also concerned that the minimum age for employment, set at 15 years, is lower than the age at which children normally complete compulsory education.

44. **The Committee recommends that, in line with target 16.2 of the Sustainable Development Goals, the State party:**

(a) **Extend legal protection to all migrant child workers, including those who work in agricultural enterprises employing 50 or fewer workers or in small shops employing up to three persons;**

(b) **Bring its legislation on the minimum age of employment into conformity with the age at which children normally complete compulsory education and with the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182);**

(c) **Incorporate specific interventions regarding migrant children into the 2016-2023 Time-bound Policy and Programme Framework on the Elimination of the Worst Forms of Child Labour, or develop a specific strategy on the elimination of the worst forms of child labour for migrant children;**

(d) **Increase labour inspections and prosecute, punish and sanction persons or groups exploiting child migrant workers or subjecting them to forced labour and abuse, especially in the informal economy;**

(e) **Provide adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to migrant children who have been victims of labour exploitation.**

45. The Committee is concerned about:

(a) The lack of data on sexual and gender-based violence, including early and forced marriages, among migrants in the State party;

(b) The lack of awareness among migrant workers and members of their families about the national referral mechanism for victims of sexual and gender-based violence, and among local authorities and practitioners at the provincial level on the applicability to migrant women of the State party's national legal framework on violence against women;

(c) The neglect by local authorities of the protection needs of migrant women who are survivors of or at risk of violence;

(d) The limited national capacity for the identification of migrants who are survivors of sexual and gender-based violence and specialized services for them;

(e) Limited programmes for the prevention of sexual and gender-based violence among the migrant community.

46. **The Committee recommends that the State party take measures to:**

(a) **Collect data on sexual and gender-based violence, including early and forced marriages, among migrants in the State party;**

(b) **Raise awareness among migrant workers and members of their families about the national referral mechanism for victims of sexual and gender-based violence, and among local authorities and practitioners at the provincial level on the applicability to migrant women of the State party's national legal framework on violence against women;**

(c) **Address the protection needs of migrant women who are survivors of or at risk of violence;**

(d) **Build capacity for the identification of migrants who are survivors of sexual and gender-based violence and set up specialized services for them;**

(e) **Include a focus on migrant workers and their families in mechanisms and programmes for the prevention of sexual and gender-based violence.**

Due process, detention and equality before the Courts

47. The Committee notes the State party's information that unaccompanied children are accommodated in institutions where they receive child protection services. The Committee is, however, concerned about:

(a) The widespread, increasing and automatic detention of a large number of migrant workers and asylum seekers in an irregular situation, including families and children, many of whom are apprehended while trying to reach Greece;

(b) Article 57 (2) of the Act on Foreigners and International Protection, which provides that administrative detention can be ordered for the purpose of removal for those who breach the rules of entry into and exit from the State party; have false or fabricated

documents; or have not left the State party by the expiry date of the period granted to them to leave, without an acceptable excuse;

(c) Children and families with children not always being separated from adults in detention facilities, as family rooms are, as yet, often not available;

(d) Unaccompanied children in detention often reportedly not receiving treatment appropriate to their age and legal status and having no access to child protection services;

(e) The current and planned increase in the number of detention centres and the lack of information about the use in practice of alternatives to administrative detention, as provided for in article 68 (3) of the Act on Foreigners and International Protection.

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

(a) **Ensure that administrative detention is used as a measure of last resort only and that non-custodial alternatives are promoted, in line with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;**

(b) **Expeditiously and completely cease the detention of children on the basis of their or their parents' immigration status, and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, consistent with their best interests, and with children's rights to liberty and family life;**

(c) **Ensure that a humanitarian as opposed to a security approach to migration continues to guide all the State party's policies and practices, including by prioritizing alternatives to, rather than increase in, detention.**

49. The Committee is concerned about:

(a) Reports of migrants being held in incommunicado detention, having their mobile telephones confiscated and lawyers' and family members' visits forbidden, in violation of article 68 (8) of the Act on Foreigners and International Protection, being subjected to humiliation, violence, torture and solitary confinement in detention and not being informed about the reasons for their detention, the duration of their stay and their rights;

(b) Migrants being detained in facilities that are not recognized as detention centres;

(c) The lack of access to outdoor areas, including for children, inadequate food, insufficient access to medical care, overcrowding, understaffing and unclean conditions in some removal centres;

(d) The insufficient training and awareness of staff in the removal centres on international human rights standards and principles regarding the rights and treatment of persons deprived of liberty, with respect to detention conditions as well as safeguards.

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

(a) **Investigate effectively all cases of violence and other human rights abuses of detained migrants and provide on a regular basis mandatory human rights training for all law enforcement officials, with a view to preventing such violations;**

(b) **Ensure that all migrants and members of their families who are arrested are informed about the reasons for their arrest at the time of arrest and are promptly informed about their rights and the charges against them, in a language they understand;**

(c) **Ensure that migrants are detained only in facilities officially designated for that purpose;**

(d) **Ensure that all detention facilities provide adequate basic services, including food, health care, hygienic conditions and access to outdoor areas.**

51. The Committee notes that the State party's legislation, including article 57 (7) of the Act on Foreigners and International Protection, provides for free legal aid and the right to appeal detention orders before a court of law. The Committee is, however, concerned about the lack of information regarding the implementation of those provisions in practice and about specific measures to ensure that in criminal and administrative proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party and that they have access to information in a language they understand.

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

(a) **Take the steps necessary to ensure that in administrative and judicial proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party before the courts and tribunals;**

(b) **Include in its follow-up and second periodic reports detailed disaggregated information on the number of migrant workers detained for immigration offences and the place, average duration and conditions of their detention, as well as information on the implementation of the rights of migrant workers in respect of due process and equality before the courts;**

(c) **Ensure that the minimum guarantees enshrined in the Convention are assured with regard to administrative and judicial procedures against migrant workers and members of their families.**

Expulsion

53. The Committee is concerned that:

(a) Since mid-January 2016, the State party's authorities have reportedly expelled several thousand Syrian nationals, most of whom are undocumented, including families and unaccompanied children;

(b) Afghan and Iraqi undocumented migrants have reportedly also been deported;

(c) Varying degrees of coercion may have been used by the State party's authorities to pressure undocumented migrants, including children, into a "voluntary" return;

(d) There is a lack of information and data on expulsions from the State party;

(e) Collective expulsions might increase as a result of the agreement between the European Union and the State party signed on 18 March 2016, which started to be implemented on 4 April 2016.

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

(a) **Investigate the alleged cases of collective expulsion of Syrian, Afghan and Iraqi migrants, prosecute those responsible and take effective measures to provide redress to the victims and to avoid such expulsions in the future;**

(b) **Take the steps necessary to ensure that administrative and judicial proceedings for deportation and/or expulsion are fully regulated by law and are in accordance with the Convention;**

(c) **Ensure that migrant workers who are subject to an administrative deportation or expulsion order are aware of and exercise their right to appeal against the order;**

(d) **Develop mechanisms to prevent the expulsion of migrants in transit until the assessment of each individual situation has been completed in order to, inter alia, uphold the principles of non-refoulement and the prohibition of collective expulsion;**

(e) **Provide in its follow-up and second periodic report information, including disaggregated statistics, on the numbers of expulsions, the grounds for the expulsions and the procedures used;**

(f) **Ensure that all necessary procedural safeguards are strictly followed in all individual expulsion proceedings in order to prevent arbitrary expulsion, including in the context of the agreement between the European Union and the State party that was signed on 18 March 2016.**

Consular assistance

55. The Committee welcomes the State party's information that most of the general consulates operating in areas with a large population of Turkish migrant workers provide direct legal aid to them, including during detention or expulsion procedures. The Committee is, however, concerned at the lack of statistics on and examples of legal assistance provided.

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

(a) **Ensure that all migrant workers and members of their families have recourse to consular support for the protection of the rights set out in the Convention;**

(b) **Ensure that the personnel in its embassies and consulates abroad have appropriate knowledge about the laws and procedures of the countries of employment of Turkish migrant workers;**

(c) **Provide in its second periodic report statistics on and examples of legal assistance provided to Turkish migrant workers abroad and members of their families.**

Remuneration, conditions of work and freedom of movement

57. While welcoming the recent regulation enabling Syrians under temporary protection to join the labour market, the Committee is concerned that the restrictions the Act on Foreigners and International Protection imposes on migrant workers and members of their families with regard to residence in specific provinces significantly and unduly limit not only the freedom of movement of migrant workers but also their employment opportunities. The Committee is also concerned about workplace exploitation of migrant workers, namely that:

(a) The wages received by migrant workers in an irregular situation are low, vary widely, depend largely on the perceived hierarchy among different nationalities of migrant workers, and are paid irregularly or not at all;

(b) Undocumented migrant workers are expected to work longer hours than other workers or longer than the legal limit, and are subject to arbitrary dismissal;

(c) Migrant workers are frequently employed by agricultural establishments, 98 per cent of which fall outside the scope of the labour inspections and sanctions provisions of the Labour Code (Act No. 4857);

(d) The majority of undocumented migrant workers in the agricultural sector receive less than the minimum wage, do not get overtime pay and receive their wages through middlemen who arbitrarily deduct charges.

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

(a) **Guarantee in law and in practice the right of all migrant workers and members of their families to liberty of movement in the territory of the State party and freedom to choose their place of residence;**

(b) **Guarantee in law and in practice the labour rights of all migrant workers within its territory, including through regular and unannounced labour inspections in sectors in which migrant workers are concentrated, particularly the agricultural production, construction and textile industries, the domestic sector, street vending, and in sex work, with no exceptions, in line with target 8.8 of the Sustainable Development Goals;**

(c) **Ensure that labour inspections focus on the conditions of work of migrant workers, and that migrant workers themselves are consulted during such inspections, in a confidential manner;**

(d) **Guarantee that labour inspectorates work independently from other departments, in particular immigration authorities, so as to encourage migrant workers to report cases of abuse and exploitation to the labour authorities without fear of the immigration authorities becoming involved;**

(e) **Provide specific information in its second periodic report on the labour exploitation of migrant workers, including those in an irregular situation, particularly those in the agricultural production, construction and textile industries, the domestic sector, street vending, and in sex work.**

59. The Committee is concerned that migrant domestic workers in the State party are subject to abuse and exploitation, ranging from overtime work without proper compensation, confiscation of their passports by their employers and threats of deportation to verbal and sexual abuse, including rape.

60. **In the light of its general comment No. 1 (2011) on migrant domestic workers, the Committee recommends that the State party:**

(a) **Ensure that domestic work is regulated by national legislation and that migrant domestic workers enjoy the same level of protection as national workers with respect to minimum wage, hours of work, days of rest, freedom of association and other conditions of work;**

(b) **Protect the rights of migrant domestic workers to freedom of movement, residence and to retain possession of their travel and identity documents;**

(c) **Ensure that migrant domestic workers have explicit, written terms of employment, in a language that they understand, outlining their specific duties, hours, remuneration, days of rest and other conditions of work in contracts that are free, fair and to which they fully consent;**

(d) **Ensure access to justice to migrant domestic workers and strengthen labour inspection services to monitor conditions of domestic work effectively and to receive, investigate and address complaints of alleged violations in that regard.**

Trade unions

61. The Committee is concerned at the information provided by the State party stating that undocumented migrant workers do not have the right to join trade unions.

62. **The Committee recommends that the State party take all measures necessary, including legislative amendments, to guarantee all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to join freely trade unions, in accordance with article 26 of the Convention.**

Medical care

63. The Committee welcomes the information in the State party's report that undocumented migrants have the right to access medical care in case of emergencies free of charge if they do not have sufficient financial resources. The Committee is, however, concerned that:

(a) In practice, undocumented migrant workers have faced challenges in accessing emergency medical care;

(b) Health-care providers delivering services to undocumented migrant workers may be liable to legal sanctions;

(c) Most health-care professionals in the State party speak Turkish only and there is a lack of interpreters at State and private health facilities.

64. **The Committee recommends that the State party ensure in law and in practice that all migrant workers have access to medical care, including by removing sanctions for health-care providers who deliver services to undocumented migrant workers and by ensuring that interpretation services are available in case of need.**

Birth registration and nationality

65. While welcoming the State party's information that statelessness is not an issue in the State party and that it is committed to universal birth registration, the Committee is nonetheless concerned that there is no comprehensive strategic approach or planning to register the births of migrant children in the State party and no specific measures have been taken to ensure the rights of migrant children to nationality and citizenship.

66. **The Committee recommends that the State party ensure that all children of migrant workers are registered at birth and issued with personal identity documents, in line with target 16.9 of the Sustainable Development Goals, and that it raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation. The Committee encourages the State party to accede to the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality.**

Education

67. The Committee notes that under article 89 of the Act on Foreigners and International Protection, international protection applicants and their family members have access to elementary and secondary education services in the State party. The Committee welcomes the fact that Syrian children who are accommodated in the government-run camps have full access to basic education in Arabic, following the Syrian curriculum, and that Turkish language classes are provided for foreigners in three provinces. The Committee is, however, concerned that:

(a) The State party's Constitution provides that primary education is compulsory for Turkish citizens only;

(b) Children of undocumented migrant workers are prevented from enrolling in school owing to their lack of foreigner identification numbers;

(c) The enrolment rates among Syrian children in the State party drop sharply after the age of 8;

(d) There is a lack of information among migrant workers about the fact that their children have the right to attend local public schools;

(e) There is no formalized or systematic support for non-Turkish speakers in the State party's public school system;

(f) Some migrant workers report not being able to register their children in school despite fulfilling all the prerequisites;

(g) Children of migrant workers encounter difficulties in accessing the State party's education system as they face barriers in accessing general support that exists for disadvantaged or minority students;

(h) The State party has not made sufficient efforts to implement intercultural education in schools.

68. **The Committee recommends that, in accordance with article 30 of the Convention, the State party adopt concrete and effective measures to ensure access to education for children of migrant workers, irrespective of the migration status of their parents, including by making the education of all children in the State party's territory compulsory, creating awareness of that obligation and right among the parents, addressing linguistic barriers, reducing the drop-out rate and promoting intercultural education.**

Right to be informed and dissemination of information

69. The Committee notes the State party's information that brochures and booklets have been published in order to provide information to migrants, the Act on Foreigners and International Protection has been translated into ten languages and information on the website of the Directorate-General for Migration Management is available in four languages and translations into further languages are being piloted. The Committee is, however, concerned about the lack of measures taken by the State party to actively disseminate information to both outgoing Turkish migrant workers and migrant workers taking up employment in the State party about conditions of admission and employment of migrant workers and their rights and obligations.

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

(a) **Take measures to actively disseminate information to both outgoing Turkish migrant workers and migrant workers taking up employment in the State party about conditions of admission and employment of migrant workers and their rights and obligations;**

(b) **Develop targeted pre-departure and awareness-raising programmes, including in consultation with relevant non-governmental organizations, migrant workers and their families, and recognized and reliable recruitment agencies.**

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

Right to form trade unions

71. The Committee welcomes the fact that the 2012 Trade Unions and Collective Labour Agreements Act provides that foreign migrant workers may form associations and trade unions. The Committee is, however, concerned that the State party maintains a reservation to article 40 of the Convention.

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

(a) **Withdraw its reservation to article 40 of the Convention, as the delegation indicated it would during the dialogue with the Committee, given that the Trade Unions Act, which restricted the right to form trade unions in the State party to citizens only, has been repealed;**

(b) **Take the measures necessary to guarantee that migrant workers and members of their families enjoy in practice the right to form and be a member of the executive bodies of associations and unions for the promotion and protection of their economic, social, cultural and other interests, in accordance with article 40 of the Convention and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the International Labour Organization.**

Right to transfer earnings and savings

73. The Committee regrets that the practice at the Central Bank of the State party of paying a higher interest rate to Turkish migrant workers was abandoned in 2014 and that investment partnerships of Turkish migrant workers have not been supported since the end of the 1970s.

74. **The Committee recommends that the State party take measures to reduce the cost of sending and receiving funds in line with target 10.c of the Sustainable Development Goals and to facilitate the productive use of remittances.**

Work permits

75. The Committee is concerned at reports that migrant workers who hold fixed-term work permits for specific professions and employers under article 5 of Act No. 4817 are reluctant to report abuse and unlawful workplace conditions for fear of losing their jobs since their immigration status is tied to their employer.

76. **The Committee recommends that the State party review the fixed-term work permit system in order to prevent abusive working conditions and exploitation.**

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

Seasonal workers

77. The Committee is concerned that undocumented seasonal agricultural workers from countries such as the Syrian Arab Republic, Georgia and Azerbaijan have difficulties accessing health services owing to their irregular status.

78. **The Committee invites the State party to provide information in its second periodic report on the measures taken to ensure that seasonal workers enjoy the rights to which they are entitled as a result of their presence and work in the territory of the State party, in accordance with article 57 of the Convention.**

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

Recruitment agencies

79. While welcoming the adoption of the 2013 Private Employment Agency Regulations, the Committee is concerned about the lack of information about sanctions imposed on private employment agencies that hire migrant workers without a work permit in order to avoid paying social security contributions.

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

(a) **Strengthen its regulatory regime for private recruitment agencies, including a licensing system, recruitment monitoring, inspections and sanctions to prevent private recruitment agencies from hiring migrant workers without a work permit, avoiding payment of social security contributions and other unethical practices;**

(b) **Ensure that private recruitment agencies provide comprehensive information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;**

(c) **Consider adopting a "no placement fee" policy for persons intending to work abroad.**

Return and reintegration

81. The Committee welcomes the various measures the State party has adopted to facilitate the orderly return of Turkish migrant workers and members of their families and their reintegration in the economic and social life of the country. The Committee notes that the State party has concluded readmission agreements with the European Union as well as 12 countries. It is concerned, however, about the lack of information on whether these agreements include procedural guarantees for the migrants they cover.

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

(a) **Ensure that current and future readmission agreements between the State party and host countries guarantee the durable economic, social and cultural reintegration of migrants who return to the State party, contain procedural guarantees for them and protect them from ill-treatment if they are expelled;**

(b) **Gather disaggregated statistical data on migrants readmitted under readmission agreements, including their nationality.**

Illegal or clandestine movements and employment of migrant workers in an irregular situation

83. The Committee welcomes the recent regulations adopted by the State party to combat human trafficking and the establishment of a department for the protection of victims of human trafficking under the Directorate-General for Migration Management. The Committee also welcomes the fact that the Act on Foreigners and International Protection provides for the establishment of centres and shelters for victims of human trafficking and guarantees that they cannot be subject to expulsion. The Committee is, however, concerned that:

(a) The State party has not yet adopted a comprehensive anti-trafficking law;

(b) There is limited capacity and inter-institutional coordination of anti-trafficking efforts, particularly in the field;

(c) The efforts to identify and protect victims of trafficking are insufficient;

(d) The only shelters for victims of trafficking in the State party are run by non-governmental organizations and currently depend on funding from international organizations;

(e) Victims of trafficking may not be protected from being prosecuted, detained or punished for illegally entering or residing in the State party, or for the activities in which they are involved as a direct consequence of their situation as trafficked persons;

(f) There is a lack of data on the scale of trafficking in the State party, in particular on the number of cases involving women and children.

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

(a) **Adopt a comprehensive anti-trafficking law;**

(b) **Continue its efforts to prevent, suppress and punish trafficking in persons, including at the regional level and in cooperation with neighbouring countries, and through enhanced inter-agency cooperation on human trafficking, in line with target 5.2 of the Sustainable Development Goals;**

(c) **Increase its efforts to identify and provide protection and assistance to all victims of human trafficking, in particular by providing shelters, medical care and psychosocial and other support to assist in their reintegration into society;**

(d) **Take measures to protect victims of trafficking from prosecution, detention or punishment for activities in which they were involved as a direct consequence of their situation as trafficked persons;**

(e) **Evaluate the scale of trafficking in persons and compile systematic disaggregated data to better combat trafficking in persons, especially women and children, and bring perpetrators to justice;**

(f) **Strengthen training for law enforcement officials, judges, prosecutors, labour inspectors, teachers, health-care workers and the staff of its embassies and consulates and disseminate more widely information on trafficking in persons and on assistance to victims.**

Measures to address migrant workers in an irregular situation

85. The Committee is concerned that the prevalence in the State party of a large informal sector, mostly in low-productivity firms, is favourable to the unregistered employment of migrant workers at several levels and that there is a lack of regularization opportunities for migrant workers in an irregular situation in the State party.

86. **The Committee recommends that the State party take appropriate measures to consider the establishment of procedures for regularizing the situation of migrant workers in an irregular situation, applying the principle of non-discrimination, so as to ensure that such a situation does not persist; and ensure that migrant workers in an irregular situation are informed about such procedures.**

7. Follow-up and dissemination

Follow-up

87. **The Committee requests the State party to include in its next periodic report detailed information on measures taken to follow up on the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations are**

implemented, including by transmitting them for consideration and action to members of the Government, the legislature and the judiciary, as well as to local authorities.

88. **The Committee requests the State party to involve civil society organizations in the implementation of the recommendations contained in the present concluding observations**.

Follow-up report

89. **The Committee requests that the State party provide, within two years, that is, by 1 May 2018, written information on the implementation of the recommendations contained in paragraphs 18, 48, 52 and 54 above.**

Dissemination

90. **The Committee also requests the State party to disseminate widely the present concluding observations, including to government agencies, the legislature, the judiciary, relevant local authorities, non-governmental organizations, other members of civil society and the general public, so as to increase awareness of them.**

8. Technical assistance

91. **The Committee recommends that the State party further avail itself of international assistance, including technical assistance, to develop a comprehensive programme aimed at implementing all the recommendations above and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system, including with OHCHR on technical assistance and capacity-building with respect to reporting.**

9. Next periodic report

92. **The Committee requests the State party to submit its second periodic report by 1 May 2021 and to include in it information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention.**

93. **The Committee draws the State party's attention to its guidelines for the preparation of periodic reports (CMW/C/2008/1) and reminds it that such reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.**

94. **The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all stakeholders, including civil society, migrant workers and human rights organizations.**

95. **The Committee also invites the State party to submit a common core document, not exceeding 42,400 words, prepared in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).**