



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

Guidelines for submission of reports by United Nations specialized agencies and other bodies*

1. The Committee notes that, under article 74 (4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, specialized agencies of the United Nations have the opportunity to contribute to the work of the Committee. The Committee underlines that the contributions of specialized agencies, as well as those of United Nations funds, programmes and other entities, are essential for the full implementation of the Convention at the national level. The Committee also highlights the special role of the International Labour Organization, which may participate in meetings of the Committee in a consultative capacity, in accordance with article 74 (5).
2. The present guidelines refer to two aspects of the work of the United Nations specialized agencies and other bodies: the country-specific information that the agencies and bodies can provide to the Committee; and the work of those agencies and bodies in contributing to the implementation of the Convention.
3. Country-specific information and reports provided by the entities of the United Nations system to the Committee, as well as the dialogue between the Committee and representatives of those entities, contribute significantly to the Committee's work in monitoring the implementation of the Convention in States parties.
4. The Committee has decided to establish guidelines to clarify the content of the reports it encourages specialized agencies and other bodies of the United Nations system to submit to it, including their format and presentation, so as to enhance cooperation between the Committee and such entities. The Committee underlines the usefulness of country-specific information from the United Nations system for its constructive dialogue with reporting States.
5. The Committee requests United Nations specialized agencies and other bodies to continue to contribute to the efforts of Governments, national human rights institutions and civil society organizations at the national level towards implementation of the Convention, and encourages entities that so far have not, or have only sporadically, contributed to the Committee's work to increase their involvement.
6. In this context, it recommends that United Nations reports should contain the information below.

Content of information provided

7. The Committee underlines the importance of receiving:

* Adopted by the Committee at its twenty-eighth session (9–20 April 2018).



(a) Information, wherever possible and applicable, from the country-based offices of the entities concerned, and information that reflects the entity's own knowledge and expertise;

(b) Country-specific information, including disaggregated data, on the situation of migrant workers and members of their families, in both regular and irregular situations, with regard to the relevant articles of the Convention and their implementation in the State party, within the scope of work of the reporting entity, including information on groups in situations of vulnerability, e.g., women, children, persons with disabilities, racial and ethnic minorities and lesbian, gay, bisexual, transgender and intersex persons;

(c) Country-specific information, including disaggregated data, on the State party's implementation of the Convention and follow-up to the Committee's concluding observations in areas falling within the scope of work of the reporting entity;

(d) Information about the efforts made by the concerned United Nations agency or body to promote implementation of the provisions of the Convention and the Committee's concluding observations through its own policies and programmes.

8. The above information should indicate the manner in which the entity concerned uses the Convention and the Committee's concluding comments in its policies and programming activities.

9. As applicable, information should be provided about ongoing efforts to support States to make the binding declarations under articles 76 (State-to-State complaints) and 77 (individual complaints) of the Convention; or efforts to give publicity to the procedures available under articles 76 and 77.

Format of information and presentation to the Committee

10. The Committee finds it most beneficial to receive succinct, country-specific written reports (ideally 10 pages or fewer). The information therein should to the extent possible be made available to the Committee prior to the session at which the list of issues and questions or lists of issues prior to reporting for the States concerned will be established. The information should be updated, as appropriate, and presented to the Committee during the closed meetings that the Committee convenes at each session with representatives of the United Nations system. Further guidance on the format of the reports and the recommended language for concerns and recommendations can be found in the annexes to the present document. The Committee underlines that, during the oral presentation, only highlights of the written submission should be flagged. The focus of the oral presentation, for which only limited time is available, should be on the most critical issues that have an impact on the human rights of migrant workers and members of their families and implementation of the Convention in the State party.

11. The Committee recommends that the oral presentation be made by a designated representative of the United Nations specialized agency or body who is fully familiar with the situation and is equipped to respond to the questions and comments that may be raised by members of the Committee.

Other matters

12. The Committee further emphasizes that it would welcome, from time to time, to hold a dialogue and exchange of views with heads, or senior officials, of specialized agencies, funds, programmes and other entities that contribute to the implementation of the Convention.

Annex I

Guidance for United Nations agencies, national human rights institutions and civil society organizations when providing information on a State party

1. The information below should complement the report of the State party and should not repeat information already available therein unless it is for the purpose of highlighting discrepancies or clarifying information or data provided. Agencies, institutions and organizations are invited to submit information following the subheadings and order below.

A. Positive aspects

2. Provide information on developments in implementing prior recommendations and other initiatives, such as legislation, policy, strategies or plans of action, that show progress in protecting the human rights of migrant workers and members of their families.

B. Principal subjects of concern and recommendations

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

Legislation and application

3. Describe gaps in the State party's legislation, i.e., areas where its domestic legislation does not conform to its obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. For example, state whether:

(a) The State party has made sufficient efforts to ensure that the provisions of the Convention are reflected in all relevant national legislation;

(b) The guarantees regarding access to health, education, the labour market, social assistance, interpretation and similar services under domestic law appear to be discretionary rather than mandatory;

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

(d) The strict procedural rules and challenges encountered in the recognition of professional certificates cause migrant workers to find employment that is not commensurate to their professional or educational backgrounds, including unskilled labour.

Comprehensive policy and strategy

4. Provide information on measures taken by the State party to implement the Convention through a comprehensive gender-responsive and human rights-based migration policy and strategy in line with the Convention, including information on human, technical and financial resources for its implementation.

Coordination

5. Provide information on the ministry or government entity responsible for the overall coordination of migration relating to the implementation of the Convention, and if there are any challenges in relation to its functions, effectiveness, capacity, human, technical and financial resources as well as mandate.

Data collection

6. Describe any challenges surrounding the State party's data collection system on migration issues, such as statistics on migration flows, migrant workers abroad and their conditions of employment, the situation of returnees, migrants in transit, women and unaccompanied child migrants and foreign migrant workers in the State party.

Independent monitoring

7. Provide information on the national human rights institution (if one exists) and its mandate pertaining to the rights of migrant workers and members of their families, its financial and human resources to conduct its work, whether it is compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) or any challenges they may encounter in carrying out its function in relation to migrants.

Training on and dissemination of the Convention

8. Provide information on education and training initiatives on the Convention regarding the Convention and audiences, for example, law enforcement officials, labour inspectorates, border guards, consular officials, etc. Provide information also on initiatives to disseminate the Convention to migrant workers and members of their families and the public at large.

2. General principles (arts. 7 and 83)**Non-discrimination**

9. Describe discriminatory treatment of migrant workers based on their migration status and other grounds, such as language, sex, religion, physical appearance, etc., both in law or in practice. Examples could include discriminatory treatment by migration police and government officials dealing with labour affairs and discriminatory treatment to which migrant workers are subjected by employers relating to wages, time off and other working conditions. Please also describe discriminatory treatment with respect to access to services (health and education) to migrant workers and members of their families, including children.

Right to an effective remedy

10. Describe the situation of migrant workers and members of their families, including those in an irregular situation, with respect to having equal opportunities to nationals of the State party to file complaints and obtain effective redress in the courts or administrative tribunals in cases where their rights under the Convention are violated. Please also state whether migrant workers are aware of those rights and if the State party has taken any 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, including regular and irregular migrant workers (arts. 8–35)**Border management and migrants in transit**

11. State whether the State party respects, protects and fulfils the human rights obligations of migrant workers and members of their families at all border crossings, including the right to due process. Please comment on whether procedures followed are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions, as well as on the length of such procedures. Please describe situations of migrant workers and members of their families who have suffered human rights violations or abuses as a result of border governance measures, and their effective access to justice and remedies. Please provide information on readmission agreements with other States, and if the right to leave is hindered by any measures.

Labour exploitation and other forms of ill-treatment

12. Describe the situation of cases of labour exploitation — including forced labour and child labour — of migrant workers, including domestic migrant workers, and the sectors concerned. Describe also all forms of ill-treatment, including incidents of physical and sexual violence and intimidation, as well as negative attitudes towards migrant workers and members of their families in the State party, and cases of trafficking for the purposes of forced labour, sexual exploitation and organ harvesting.

Due process, detention, and equality before the courts (arts. 16–18)

13. Describe measures that the State party has taken to prevent arbitrary arrest of migrants and due process safeguards for migration-related administrative proceedings (e.g. access to information in a language that they understand, right to legal representation, judicial review, etc.), whether alternatives to detention exist, whether migrants detained for migration-related matters are held separately from those charged with a crime or convicted criminals, the length of administrative detention for migration-related matters, the conditions of detention, whether irregular entry is criminalized in the State party, and whether children of migrant workers or unaccompanied migrant children are detained.

14. Explain if detention centres are managed by the State or outsourced to private actors and if there is any monitoring undertaken by independent actors.

Expulsion (art. 22)

15. Describe issues related to the due process safeguards in expulsion proceedings, and the number of cases.

16. Explain if returns are carried out by State agents or outsourced to private actors and if there is any monitoring undertaken by independent actors.

Consular assistance (art. 23)

17. Describe the functioning and potential challenges regarding consular services for assisting and protecting the rights of migrant workers in transit and in the country of destination.

Remuneration and conditions of work (art. 25)

18. Provide information on domestic migrant workers, whether domestic work falls within the labour code, as well as issues related to the *kafala* system, wages and other conditions of work, such as working hours, time off, freedom of movement, right to retain possession of travel and identity documents. Provide information on labour inspections or the lack thereof and whether there is any requirement for inspectors to report the irregular status of migrants to the immigration authorities; on regulation of recruitment agencies and mechanisms to report abuses, pre-departure training programmes; and on bilateral and multilateral labour agreements and memorandums of understanding between the origin and destination countries, and other protective measures.

Freedom to join and take part in meetings of trade unions (art. 26)

19. Provide information on whether migrant workers can join trade unions in the State of destination.

Social security (art. 27)

20. Provide information on the right to social security and a retirement pension, including the legal requirements that migrant workers in an irregular situation would have to fulfil to have access to social security. Provide information also on bilateral and multilateral social security agreements concluded by the State party.

Medical care (art. 28)

21. Provide information on the right of migrant workers and members of their families to have access to medical care. State whether there is any discrimination towards migrant workers and members of their families by medical staff and if medical staff is required to report the irregular migration status of migrants to the immigration authorities.

Birth registration and nationality (art. 29)

22. Provide information on how the State party ensures that children of its nationals working abroad are registered at birth. Please also provide information on measures taken by the State party with respect to the registration of children of foreign migrant workers born in the State party. Provide information on any restrictions on women passing their nationality on to their children.

Education (art. 30)

23. Provide information on the right of children of migrant workers, including undocumented children, to have access to education. Explain if there is any discrimination against unaccompanied children and children of migrant workers, in law or in practice, with respect to their right to have access to education and whether staff in the educational system are required to report the irregular migration status of migrants to the immigration authorities.

Transfer of earnings and savings (art. 32)

24. Describe the measures taken by the State party to facilitate the transfer of remittances and to make savings more accessible for their nationals working abroad.

Right to be informed and dissemination (art. 33)

25. This article places an obligation on States of origin, transit and destination to inform migrant workers of their rights under the Convention, the conditions of admission and their rights and obligations in the State concerned, and to disseminate that information through employers, trade unions, etc., free of charge and as far as possible, in a language that migrant workers are able to understand.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**Pre-departure and right to be informed (art. 37), including the obligation on the part of States of origin and States of employment**

26. Provide information on measures to disseminate information on the rights of migrant workers and members of their families under the Convention, the conditions of their admission and employment, and their rights and obligations under the law and practice of the State of employment, as well as on pre-departure and awareness-raising programmes.

Right to form trade unions (art. 40)

27. Provide information on any restrictions to migrant workers and members of their families who are documented to form, join and hold leadership roles in trade unions.

Right to vote and to be elected in the State of origin (art. 41)

28. Provide information on measures taken by the State party to facilitate the right to vote of their nationals working abroad.

Family reunification (art. 44)

29. Describe any measures taken by the State party to facilitate the reunification of migrant workers with their spouses or partners, as well as with their minor dependent unmarried children, or the challenges encountered by migrant workers and members of their families when trying to reunite.

Exemption from import and export duties regarding personal and household effects (art. 46)

30. Provide information on laws or practices that conflict with article 46 of the Convention.

Right to transfer earnings and savings (art. 47)

31. Describe measures by the State party to facilitate the transfer of earnings and savings for their nationals working abroad, and to facilitate the transfer of remittances by foreign migrant workers in the State party.

Taxes (art. 48)

32. Provide information on double taxation issues and laws and practices that discriminate against documented migrant workers and members of their families with respect to taxes, deductions, exemptions and allowances applicable to nationals of the State party.

Work permits and residency (art. 49)

33. Provide information on whether the granting of a work permit is conditional on the existence of employment and whether loss of employment results in the loss of the work permit.

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

Frontier and seasonal workers

34. Provide any information regarding specific challenges faced by frontier workers, seasonal workers or project-tied workers in gaining access to their rights under the Convention.

6. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families, i.e., labour, social, economic, cultural and other needs, as well as the consequences of migration for affected communities (arts. 64–71)

Children in situations of international migration

35. Describe the situation of children of migrants in situ and those left behind in the country of origin, in particular with respect to the vulnerability of children left behind in the country of origin to violence, abuse, neglect and exploitation. Provide information on the resettlement and reintegration of migrant workers on their return, including their reunification with children left behind in the country of origin. Provide information also on unaccompanied children in transit and in the State of destination, as well as migrant children in street situations.

International cooperation with countries of transit and destination

36. Provide information on bilateral or multilateral agreements concluded with countries of employment relating to migrant workers and migration, and if such agreements protect the rights of migrant workers or infringe upon them.

Migration services and policies, including cooperation among States, the provision of appropriate information to stakeholders and the provision of consular services to meet social, cultural and other needs (art. 65)

37. Describe efforts or measures taken by the State party to address the issue of international migration, including a comprehensive national migration policy containing measures aimed at assisting migrant workers and their family members either present in or in transit through the State party, and those who are nationals of the State party or their

family members in other countries, as well as information regarding coordination on migration matters between the competent authorities at the national and local levels.

Recruitment agencies (art. 66)

38. Describe the situation of recruitment agencies, including recruitment fees charged, and if there are measures to regulate and monitor recruitment agencies to ensure that the rights of migrant workers are protected. State whether there is impunity of recruitment agencies that exploit migrant workers.

Return (for all migrant workers) and reintegration, including adequate economic conditions for resettlement and to facilitate durable social and cultural integration in the State of origin (for migrant workers in a regular situation) (art. 67)

39. Describe the situation regarding returns and whether they are carried out in accordance with international law, including the Convention, and with due process guarantees, in particular with respect to the principle of non-refoulement and protection against arbitrary and collective expulsion. Provide information on voluntary return processes, readmission agreements and reintegration measures, including gender-responsive support for the return and reintegration of migrant workers and members of their families in order to address the specific physical and mental health needs of those who have experienced violence, abuse or sexual exploitation, particularly women who have been trafficked.

Illegal or clandestine movements and employment of migrant workers in an irregular situation (art. 68)

Trafficking in persons (including sexual exploitation, forced labour and organ harvesting)

40. Describe the situation and challenges faced by victims of trafficking in the State party with respect to migrants; the measures taken to prevent and combat trafficking in all its forms, including legislation, policies and strategies; efforts regarding early identification of victims of trafficking; and assistance to victims, including access to shelters and legal, medical or psychosocial assistance.

Smuggling of migrants and irregular migration

41. For States that are States of origin, describe the situation of smuggling in the State party with respect to nationals seeking to move abroad, measures to prevent and combat the smuggling of migrants, measures to prosecute criminal groups responsible for the smuggling of migrants and members of their families, and other related offences, public information campaigns on the risks of irregular migration, particularly to women and children, efforts to address push factors (e.g., to promote decent work opportunities at home and address the root causes of irregular migration), and efforts to strengthen international, regional and bilateral cooperation.

42. For States that are States of transit and destination, describe the situation of smuggling in the State party with respect to migrant workers and members of their families, measures to detect, prevent and curtail irregular flows of migrant workers, efforts to investigate, prosecute and punish criminal groups responsible for the smuggling of migrants and members of their families, and other related offences, whether migrant workers in an irregular situation are criminalized, the situation with regard to the provision of assistance, due process guarantees and access to justice, in particular with respect to migrants in situations of vulnerability. Describe whether border governance measures are gender-responsive and address the specific needs and situation of women, and are child-friendly. Provide information on efforts to strengthen the capacity of border governance, including the identification, screening and referral systems, and to provide training to border authorities on international human rights law, including border-specific human rights and gender equality training. Provide information on efforts to strengthen international, regional and bilateral cooperation through agreements with countries of origin and transit to prevent the smuggling of migrants.

Measures to address migrant workers in an irregular situation (art. 69)

43. Describe measures to address irregular migration, including regularization procedures, and measures taken to address migrant women in an irregular migration status or who are stateless in countries of transit or destination, in particular in situations where children are accompanying or where women have been victims of crime, abuse or exploitation.

Annex II

Recommended language for concerns and recommendations

The sections below contain suggested language and a recommended structure that United Nations agencies, national human rights institutions or civil society organizations can use when submitting information to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families concerning a particular State party. It would be helpful to the Committee if such information, including concerns (lists of issues or lists of issues prior to reporting) and recommendations, could be provided to it in such a way that the Committee could then consider including that information in its lists of issues, lists of issues prior to reporting or concluding observations concerning the State party, as appropriate.

I. Concluding observations

The Committee may wish to commend the State party on the following:

- (a) Its progress in improving migration governance and the protection of vulnerable migrants;
- (b) Its continued commitment to maintaining asylum space, despite challenges posed by mixed migration.

The Committee may also wish to consider making the following recommendations to the State party:

- (a) Withdraw its remaining reservations to articles 13, 15, 17, 19, 22, 26 and 34 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ensure its national legal framework guarantees the rights enshrined in those articles for refugees and asylum seekers, in order to better fulfil its obligations under articles 15, 26, 39, 40 and 43 of the Convention;
- (b) Update and amend the national legal framework as it relates to the protection of asylum seekers and refugees, including [Act No. ... and decree No. ...], to address the substantive and procedural gaps in refugee status determination procedures, particularly with regard to the decentralization of processes and appeal measures, in order to better fulfil its obligations under articles 7, 16, 22, 39 of the Convention.

Background information

[...]

II. Lists of issues and lists of issues prior to reporting

Background information

[The State party] is characterized by a high level of mobility of persons and goods. It has a strategic position in [region], and its geographic position makes it a main corridor for migration to [...].

[The State party] is one of the biggest sources of migrant workers for the agriculture and mining sectors in [...]. Migration outflows of the economically active male population affect the mining, industrial and agricultural complexes of [...]. It is currently estimated that at least 50,000 [...] are involved annually in migratory labour flows to [...]. Labour migration, mainly to [...], has a historical character and is linked to the level of development of the two countries. Even since [...] was granted independence, migration to [...] has continued, given its important role, particularly in alleviating domestic unemployment. The exploitation of mineral wealth requires large supplies of labour, and there is great demand in agriculture to support the rapid expansion of the urban population.

In terms of the gender composition of the [...] population migrating to [...], the available information shows that women's participation in this migration has been almost insignificant and has declined over time.

In recent years, with the rapid economic growth and the discovery of mineral resources, [...] has experienced inflow immigration, in increasingly large numbers, of skilled foreign technicians. In the very near future, that phenomenon could influence the emigration of skilled [...] abroad in search of employment, thus affecting the structure and characteristics of the economically active population in [...]. To prevent the exodus of skilled [...] abroad, the labour law was revised in [...], and new immigration regulations introduced.

Institutional and legal framework

[...]

Ratification of international and regional human rights instruments

[...]

Immigration and labour laws

[...]

Protection of migrant workers and members of their families

[...]

Migrant worker figures

[...]

Right to liberty and security

[...]

Freedom of movement

[...]

Discrimination, equality of treatment and protection against torture and inhumane treatment

[...]

Issues relating to migration and trafficking in persons

[...]

The Committee may wish to ask the State party about:

- (a) Measures taken to guarantee the right of nationals to leave and return to their country of origin without any restrictions whatsoever;
- (b) Existing standards of protection for migrant workers and members of their families;
- (c) Existing rules and procedures concerning the legal migration of nationals to [...];
- (d) The right of migrant workers and members of their families to legal identity before the law in neighbouring countries;
- (e) Measures taken, including information systems, to combat the smuggling of migrants;

(f) Measures taken through bilateral cooperation or within the [regional organization] to document the situation and protect its citizens, in particular regarding the use of women and children in [...] and [...] in prostitution and child labour;

(g) The hundreds of migrants, mostly engaged in [...] in [...] province, expelled in [date], and the reports of arbitrary arrest and detention, extortion and ill-treatment;

(h) Actions taken to assist mineworkers and farmworkers to address social security issues, portability and remittances.
