



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

List of issues prior to submission of the initial report of Jamaica*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, at its fourteenth session (A/66/48, para. 26), established a procedure which consists of the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its report. The replies of the State party to this list of issues will constitute its report under article 73 (1) of the Convention. In accordance with General Assembly resolution 68/268, paragraph 16, the initial report should not exceed 31,800 words.

A list of issues may also be transmitted to a State party in cases where the Committee decides to examine the implementation of the Convention in the absence of a report, in accordance with rule 31 bis of the provisional rules of procedure (A/67/48, para. 26).

Part I

In this section, the State party is requested to submit its responses to the following questions.

A. General information

1. Please provide information on the domestic legal framework regarding the Convention, including:

(a) The rank of the Convention in domestic law and whether the Convention has direct effect or is part of the domestic law through implementing legislation;

(b) Information on the relevant national legislation of the State party regarding the protection of migrant workers and members of their families and on migration policies under the Convention;

* Adopted by the Committee at its twenty-third session (31 August-9 September 2015).



(c) Measures taken by the State party to harmonize its legislation with the provisions of the Convention;

(d) The existence and scope of bilateral and multilateral agreements with other countries pertaining to the rights of migrant workers and members of their families under the Convention, in particular with the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland and States of the Caribbean region. Please specify how these agreements protect migrant workers' rights and guarantees in transit and destination countries, in particular, with respect to detention, repatriation/expulsion and family reunification procedures. Please provide information on the measures taken to strengthen the protection of Jamaican migrant workers abroad, including by reviewing and amending these bilateral and multilateral agreements.

2. Please indicate the progress made in finalizing the International Migration and Development Policy. Please provide information on all policies and strategies relating to migrant workers and members of their families adopted by the State party, including information on specific time-bound and measurable goals and targets to effectively monitor progress in the implementation of the rights of migrant workers and members of their families in the State party. Please also provide information on the resources allocated for their implementation and the results obtained.

3. Please provide information on the government ministry and the agencies responsible for intergovernmental coordination on the implementation of the Convention in the State party, including information on the available staffing and resources as well as monitoring activities and follow-up procedures. Please also provide information on the mandate of these agencies or institutions as well as the resources allocated to them for promoting, protecting and fulfilling the rights of migrant workers and members of their families under the Convention. Please indicate the measures taken to ensure the effective coordination among the various government agencies with prime responsibility for migration and human rights matters.

4. Please provide information, including both qualitative information and statistical data disaggregated by sex, age, nationality and migration status, on labour migration flows in and from the State party, including returns, other labour migration-related issues and children left behind by migrant parents. Please also provide qualitative and statistical rights-based data or, if precise data are not available, then studies or estimates, on migrant workers in an irregular situation in the State party and abroad, including those who could have entered the State party irregularly and those who have stayed beyond the designated time. Please further provide information on the measures taken by the State party to establish a coherent and cross-comparable system of data collection on these issues, including measures aimed at making this information public. Please also indicate the measures taken to ensure consistency in the collection of migration data across all the relevant agencies.

5. Please provide information on whether the State party has established an independent mechanism, such as a national human rights institution, which has the explicit mandate of independently monitoring the human rights situation within the State party, including the rights of all migrant workers and members of their families under the Convention. Please also provide information on complaint mechanisms and other services, including helplines, offered by this institution, and whether this institution conducts visits at detention centres for migrants and shelters that house Jamaican migrants following repatriation from countries of employment. Please further provide information on the human, technical and financial resources made available to the institution, and on the awareness-raising activities by the State party among the general public, and migrant workers in both urban and rural areas in particular, on the services offered by the institution, including the right to file a complaint directly with the institution.

6. Please provide information on the steps taken by the State party to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, migrant workers and members of their families, employers, teachers, health workers, the media, civil society representatives and government officials, including law enforcement officials and the judiciary, within the State party. With respect to migrant workers who are nationals of the State party working abroad, please describe the measures taken by the State party to promote training programmes on the human rights of migrant workers and their families, including on gender sensitivity and the rights of the child, for government staff providing legal and consular assistance to nationals of the State party abroad dealing with migration and related issues, including workplace abuse and exploitation, discrimination faced by migrant workers, as well as regarding migrant workers or members of their families who have been arrested, held in prison or migration-related detention centres, placed in custody pending trial or detained in any other manner, subject to expulsion/repatriation.

7. Please provide information on the cooperation and interaction between the State party and civil society organizations working on the rights of migrant workers in relation to the implementation of the Convention. Please indicate whether and how the representatives of civil society organizations and other stakeholders are involved in the preparation of the replies to the present list of issues. Please comment on the reports received by the Committee that human rights defenders in the State party have been accused by the authorities of “illegal interference” and that freedom of expression and freedom of the press have been threatened.

8. Please provide information on the existence of private employment agencies in the State party that recruit migrant workers to work abroad, and the laws, rules and regulations pertaining to private recruitment, and in particular:

(a) The measures taken to provide information and training to migrant workers on their rights and obligations and to protect against abusive employment situations;

(b) Whether recruiters assume joint liability with the employer for claims and liabilities that may arise in connection with the implementation of the employment contract, including wages, disability compensation, repatriation and death;

(c) Information relating to the issuing and renewal of licenses of such employment agencies and conditions for renewal;

(d) Information on complaints against agencies and inspections and penalties and sanctions for non-compliance;

(e) The measures taken by the State party to strengthen migration regulation and control mechanisms to ensure that private recruitment agencies abstain from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters.

B. Information relating to the articles of the Convention

1. General principles

9. Please indicate whether the Convention has been applied directly by officials in the administration and/or invoked directly before the courts. If so, please provide examples. Please also provide information on:

(a) The judicial and/or administrative mechanisms competent to examine and decide on complaints by migrant workers and members of their families, including migrant workers in an irregular situation;

- (b) The number and types of complaints examined by such mechanisms in the past five years and their outcome, disaggregated by sex;
- (c) Whether legal assistance was provided;
- (d) Any redress, including compensation, provided to the victims of such violations;
- (e) The measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

2. Part II of the Convention

Article 7

10. Please clarify whether national legislation, in particular the Constitution of 1962, ensures that all migrant workers and members of their families have the rights provided for in the Convention without distinction of any kind and whether it covers all the prohibited grounds of discrimination enumerated in articles 1 (1) and 7 of the Convention, including sex, language, national, ethnic or social origin, nationality, age, economic position, property, marital status and birth or other status. Please also provide information on the measures taken by the State party to ensure non-discrimination, both in law and in practice. Taking into account section 4 of the Immigration Restrictions Act on prohibited immigrants, and section 6 of the Aliens Act on eligibility criteria, especially regarding factors preventing people from entering or staying in the country, including the situation of persons with disabilities and medical reasons, please indicate how the principle of non-discrimination is ensured in such contexts, in law and in practice.

3. Part III of the Convention

Articles 8 to 15

11. Please provide information on the measures taken to combat labour exploitation of migrant workers, both in regular and irregular situations, in particular those working in fishing vessels in Jamaican waters. Please also provide information on the measures taken to prevent and combat domestic servitude, forced labour and commercial sexual exploitation, particularly in the context of sex tourism, of migrant workers, in particular women and children. Please further provide information on the measures taken to bring the national legislation into compliance with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).

12. Please indicate the measures taken by the State party to combat racism and xenophobia, discriminatory conduct, ill-treatment and violence directed at migrant workers and members of their families.

Articles 16 to 22

13. Please provide information on the measures taken by the State party to ensure due process safeguards, including access to legal assistance and interpretation services, and adequate access to medical care, as necessary, in situations of investigations, arrests, detentions and expulsions of migrant workers and members of their families for criminal offences and administrative infractions, including immigration-related matters.

14. Please provide information on detention centres and the conditions and duration of detention of migrant workers, disaggregated by nationality, sex, age and other grounds. Please also provide information on whether detention under section 9 of the Aliens Act

takes place in a public establishment and whether such an establishment is distinct from the prison system. Please further provide information on whether the State party has in place alternatives to detention for immigration-related matters, especially with respect to unaccompanied children and families with children.

15. Please provide information on the measures taken to ensure that migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by a competent authority, following a procedure established by law and in conformity with the Convention, and that such a decision can be reviewed on appeal.

16. Please provide up-to-date information, including disaggregated statistical data, on undocumented and irregular migrant workers and members of their families who have been expelled or are subject to expulsion procedures. Please provide quantitative information on expulsion measures regarding Haitian migrants that may have entered or remain in the State party, especially after the earthquake that affected Haiti in 2010, and qualitative information regarding the procedure put in place in these cases, including legal remedies.

17. Please indicate whether the State party intends to amend the Deportation (Commonwealth Citizens) Act, the Aliens Act and the immigration restriction (Commonwealth Citizens) Act to decriminalize irregular migration, and envisages appropriate administrative penalties for migrants who have violated legislation on immigration.

18. Please also describe the cases when:

(a) The State party has expelled a migrant worker who is a Commonwealth citizen for the reason that he or she has conducted himself so as to be dangerous to good government or public morals, as provided for by the Deportation (Commonwealth Citizens) Act;

(b) Deportation, restriction or security orders have been applied to a migrant worker who is a Commonwealth citizens, who has been deemed an “undesirable person” or “destitute person”, as provided for by the Deportation (Commonwealth Citizens) Act;

(c) A deportation order has been subject to any condition which the Minister may think proper, according to article 15 (2) of the Aliens Act. Please indicate the practice in place when migrant workers are not able to pay for all the expenses of their travel when they are expelled and for their maintenance until their departure, as provided for by the Deportation (Commonwealth Citizens) Act and the Aliens Act. Please describe the expulsion procedure for migrant workers in an irregular situation who are not Commonwealth citizens and indicate whether collective expulsion is prohibited in these cases. Please indicate whether migrant workers who are not Commonwealth citizens can challenge expulsion orders and whether such remedies have suspensive effect.

Articles 23

19. Please provide detailed information on the roles of the State party’s embassies, consulates and labour attachés in assisting and protecting migrant workers who are nationals of the State party working abroad, including those in an irregular situation, and particularly in the case of abuse, arrest, detention and expulsion. Please indicate whether migrant workers and members of their families in the State party have effective access to the protection and assistance of the consular or diplomatic authorities of their State of origin, in particular in cases of arrest, detention or expulsion. Please also indicate whether migrant workers who are deprived of their liberty are visited periodically and whether legal assistance is provided, including in expulsion cases.

20. Please provide information on the measures that the State party has implemented to guarantee the right to family life, in particular the right of migrant children to family life and not to be separated from their parents, in cases where an expulsion order has been issued against the parents.

Articles 25 to 30

21. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work, for example, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract and minimum wage, are in full compliance with the ILO Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and whether they apply on an equal basis to migrant workers, both in regular and irregular situations. Please also provide information on the measures taken by the State party to ensure that migrant workers enjoy equality of treatment with nationals in respect of protection from dismissal, unemployment benefits, access to public work schemes for combating unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity.

22. Please provide information on the access provided to migrant workers and members of their families, both in a regular and irregular situation, on an equal basis with nationals regarding health care and other social services, as well as equal access to education for children of migrant workers in a regular and irregular situation. Please also provide information on access to health care, education and social services of nationals and migrant workers working in the informal sector, and members of their families. Please further provide information on migrant workers' entitlements to the Programme for Advancement through Health and Education.

23. The Committee is informed that article 4 (2) of the Nationality Act, which provides a general safeguard for children who would otherwise be stateless, including foundlings, is overly broad and discretionary. Please provide details on this legal provision and indicate the measures envisaged to incorporate in the Nationality Act sufficient safeguards to prevent statelessness.

4. Part IV of the Convention

Article 37

24. Please provide information on the measures taken to fully inform migrant workers and members of their families, prior to departure, of all conditions applicable to their admission and stay, and to the remunerated activities in which they may engage, and of applicable laws and legislation in the State of employment.

Article 40

25. Please provide information on the measures taken to guarantee to migrant workers and members of their families the right to form, and to form part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention.

Article 41

26. Please provide information on the legal framework related to the exercise of voting rights by migrant workers and members of their families of the State party residing abroad.

Article 44

27. Please provide information on the measures taken to ensure the protection of the unity of the families of migrant workers and to facilitate the reunification of migrant workers with their children, their spouses or persons who have a relationship with the migrant worker that, according to applicable law, produces effects equivalent to marriage.

Articles 46 to 48

28. Please provide information on the policies in place to facilitate remittances. Please also provide information on the applicable legal framework in place to ensure the right of migrant workers to transfer their earnings and savings from the State of employment to the State of origin.

Article 49

29. Please provide information on whether measures have been taken to ensure that migrant workers in the State party are allowed to retain their authorization of residence in the event of termination of their remunerated activity prior to the expiration of their work permit or similar authorization. Please indicate whether measures have been taken to ensure that the authorization of residence is not withdrawn at least for a period corresponding to that during which the migrant worker may be entitled to unemployment benefits.

Articles 51 and 52

30. Please indicate whether the State party's legislation is in accordance with the Convention, in particular articles 51 and 52 thereof, in order for foreign migrant workers to remain in the State party upon termination of their contracts, regardless of the reason for such termination, in order to seek alternative employment and participate in public work schemes and retraining.

5. Part V of the Convention**Article 59**

31. Please provide information on the measures taken by the State party to ensure that seasonal workers enjoy equal treatment to national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of employers' compliance with relevant international labour standards. Please also provide information on the measures aimed at ensuring the rights provided by the Convention to Jamaican seasonal and temporary migrant workers in the United States, especially farm and hotel workers, and in Canada in the context of the Temporary Foreign Worker Programme and Seasonal Agricultural Worker Programme.

6. Part VI of the Convention**Article 64**

32. Please provide information on the measures taken, including consultations and cooperation with other States, among others the States of the Caribbean Community, to promote sound, equitable and rights-based conditions in connection with the international migration of workers and members of their families.

33. Please provide information on the bilateral and multilateral agreements ratified by the State party and describe how these agreements guarantee sound, equitable and humane conditions for migrant workers and their families. Please also provide information on how these agreements address the social, economic, cultural and other needs of migrant workers

and members of their families, and the consequences of migration for the communities concerned.

34. Please indicate the measures taken to address the negative impact of migration on children left behind. Please provide information on the measures taken to prevent the irregular migration of nationals of the State party, including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels and addressing the root causes of irregular migration, such as violence, insecurity and poverty.

Article 67

35. Please provide information on the measures taken, and their impact, to assist in the resettlement and reintegration into the economic and social life of the State party of returning migrant workers who are deported from the State of employment for involvement in criminal activities. Please provide quantitative and qualitative information on the outcomes of the Rehabilitation and Reintegration of Offenders and Deported Persons Programme.

Article 68

36. Please provide information on the measures taken by the State party, including through international, regional and bilateral cooperation with countries of origin, transit and destination, to prevent and combat trafficking in persons, in particular women and children, including by systematically compiling disaggregated data and bringing perpetrators of trafficking in persons to justice. Please also provide updated information on the number of reported cases of trafficking in persons, investigations, prosecutions and the sentences imposed on perpetrators. Please indicate the measures taken to ensure the effective implementation of the Trafficking in Persons Act, and to ensure prosecution, conviction and punishment of traffickers.

37. Please provide qualitative and quantitative information on the scope and outcomes of the National Plan of Action for an Integrated Response to Children and Violence, released in 2014, especially with regards to the protection of the rights of children trafficked to and from other countries. Please indicate whether the State party has set up shelters for victims of trafficking and whether such shelters provide medical care and mental health counselling. Please provide information on other types of assistance provided to victims, including financial assistance, housing, training opportunities and legal services.

38. Please provide information on the measures taken by the State party to prevent and eliminate the smuggling of migrants, in particular women and children, by addressing the root causes of smuggling.

Part II

The Committee invites the State party to briefly (three pages maximum) provide information regarding the protection of migrant workers and members of their families with respect to:

- (a) Bills or laws, and their respective regulations;
- (b) Institutions (and their mandates) or institutional reforms;
- (c) Policies, programmes and action plans covering migration and their scope and financing;

(d) Recent ratifications of human rights instruments, including the ILO Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and Domestic Workers Convention, 2011 (No. 189);

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Part III

Data, official estimates, statistics and other information, if available

1. Please provide, if available, updated disaggregated statistical data and qualitative information for the past three years (unless indicated otherwise) on:

(a) The volume and nature of migratory flows in and from the State party for the period starting with the entry into force of the Convention in the State party to the present;

(b) Migrant workers in detention in the State party and migrant workers who are nationals of the State party and are detained abroad in States of employment, and whether such detention is immigration-related;

(c) Migrant workers and members of their families that have been expelled from the State party;

(d) The number of non-accompanied migrant children or migrant children separated from their parents in the State party;

(e) Remittances received from nationals of the State party working abroad;

(f) Reported cases of trafficking in and smuggling of migrants, investigations, prosecutions and sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking);

(g) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

2. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that it considers a priority, including whether the State party envisages making the declaration under article 76 of the Convention recognizing the competence of the Committee to receive and consider State-to-State communications, and/or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

3. Please submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/GEN/2/Rev.6, chap. I). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.

4. The Committee may take up all aspects of the rights of migrant workers and members of their families in the Convention during the dialogue with the State party.