



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 Madagascar*

Section I

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;

(c) Measures taken by the State party to harmonize its legislation, particularly the Labour Law and the Penal Code, with the provisions of the Convention;

(d) The existence and scope of bilateral and multilateral agreements concluded with other countries, including Mauritius, pertaining to the rights of migrant workers and members of their families under the Convention. Please specify how those agreements protect migrant workers' rights in transit and destination countries, especially with respect to detention, repatriation/expulsion and family reunification procedures. In particular, please indicate whether any progress has been made in concluding bilateral agreements with China, France, Kuwait, Lebanon and Saudi Arabia. Please also provide information on any measures taken to strengthen the protection of Malagasy migrant workers abroad, including by reviewing and amending those bilateral and multilateral agreements.

2. Please provide information on all policies and strategies relating to the rights of migrant workers and members of their families adopted by the State party and on projects with the International Organization for Migration and the International Labour Organization (ILO), 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 resources allocated for implementation and the results obtained.

3. Please provide information on the government ministry or institution 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

* Adopted by the Committee at its twenty-sixth session (3-13 April 2017).



activities and follow-up procedures. Please also provide information on the mandate of that ministry or institution and the resources allocated to it for promoting, protecting and fulfilling the rights of migrant workers and members of their families under the Convention.

4. Please provide qualitative information and statistical data, disaggregated by sex, age, nationality and migration status, on labour migration flows to and from the State party, including returns, on other labour migration-related issues, and on unaccompanied children and children left behind by migrant parents. Please also provide qualitative and statistical data, or if precise data are not available, studies or estimates on migrant workers in an irregular situation in the State party and abroad, in particular those working in less regulated sectors such as agriculture, the textile industry and domestic service. In addition, please provide information on measures taken by the State party to establish a coherent and comparable system of data collection on those issues, including measures aimed at making the information public.

5. Please indicate whether the National Human Rights Council has been established in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please also provide information on complaint mechanisms and other services, including helplines, offered by the Council, and on whether the Council conducts visits to detention centres for migrant workers. In addition, please provide information on the human, technical and financial resources made available to the Council and on 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 Council, including the right to file a complaint.

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, government officials, including embassy and consular personnel, law enforcement officials, border police and the judiciary, civil society and the media. Please indicate whether journalists and the media promote the Convention and, if so, how they do so and the impact that engagement has on the situation of migrant workers coming to and departing from the State party.

7. Please describe measures taken by the State party to promote training programmes on the human rights of migrant workers and members of 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 discrimination, workplace abuse and exploitation, arrest, pretrial detention, immigration-related detention, imprisonment, expulsion and repatriation.

8. Please provide information on the cooperation and interaction between the State party, civil society organizations and other social partners 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, as well as other stakeholders are involved in the preparation of the replies to the present list of questions.

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

(a) Measures taken to provide information and training to migrant workers on their rights and obligations, as well as to protect against abusive employment situations;

(b) The role and responsibilities of recruitment agencies and their joint responsibility with the overseas employer for claims and liabilities that may arise in connection with the implementation of the employment contract, including wages, disability compensation, repatriation and death, including repatriation of the bodies of deceased migrant workers;

(c) Whether recruitment agencies provide life, disability and/or workers' compensation insurance to migrant workers for work-related injuries and deaths;

(d) Information relating to the issuing and renewal of licences of such employment agencies in line with Decree No. 2005/396;

(e) Information on complaints lodged against recruitment agencies, on labour inspections conducted, and on penalties and sanctions imposed in cases of non-compliance with the law;

(f) Measures taken by the State party to strengthen mechanisms to regulate and control private employment agencies, including through the adoption of Decree No. 30/096/2011-MFPTLS, to avoid situations where such agencies act as intermediaries for abusive foreign recruiters;

(g) Implementing mechanisms to ensure that the Office of Private Placement meets its requirements under Decree No. 30/096/2011-MFPTLS to follow up on Malagasy nationals every three months.

B. Information relating to the articles of the Convention

1. General principles

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

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

(b) The number and type 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) Any 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

11. Please clarify whether national legislation, in particular the Constitution of Madagascar, the revised Labour Code and the Penal Code, 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 the Convention (arts. 1 (1) and 7), 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 all the measures taken by the State party to ensure non-discrimination, both in law and in practice.

3. Part III of the Convention

Articles 8-15

12. Please provide information on any cases identified in the State party of exploitation of migrant workers and members of their families, in both regular and irregular situations, in particular those working in agriculture and domestic work. Please also provide information on any cases identified in the State party of domestic servitude, forced labour and sexual exploitation involving migrant workers, in particular women and children, especially in the context of sex tourism, and on measures to prevent and combat these phenomena. In addition, please provide information on the measures taken to bring the

national legislation into compliance with the ILO Forced Labour Convention, 1930 (No. 29), and the ILO Abolition of Forced Labour Convention, 1957 (No. 105).

13. Please indicate whether protective measures are in place to protect Malagasy migrant workers in destination countries from alleged harsh, inhuman and degrading treatment, as well as abusive and exploitative practices. Please provide detailed information on the impact of Decree No. 2013/594, which suspends the deployment of migrant workers to high-risk countries, particularly in the light of reports suggesting that it has led to an increase in Malagasy migrant workers leaving the country irregularly. Please provide details on the Strengthened Migration Management in Madagascar programme, outlining the measures that are in place to implement it and whether its impact has been evaluated. Please provide an update on the blueprint identifying policy and programmatic priorities in relation to the labour migration process for the 2017-2020 period.

Articles 16-22

14. Please clarify whether immigration related offences are criminalized in the State party. Please describe the due process safeguards, including access to a lawyer and interpreter, that exist in situations of investigation, arrest, detention and expulsion of migrant workers and members of their families for immigration-related offences. Please also indicate measures taken to ensure that the obligation contained in article 16 (7) of the Convention on contact with consular or diplomatic authorities of the State of origin of the detained migrant workers or members of their families is given effect in law and in practice. Please also indicate whether proposed legislative reform to adopt alternatives to detention incorporates provisions for immigration-related matters, including alternatives to detention for unaccompanied children and families with children.

15. Please provide information on the situation in Madagascar of Turkish teachers, businesspersons and their family members whose passports were allegedly confiscated and who are under threat of being deported to Turkey, and on the due process guarantees afforded to such individuals to protect against mass and forced expulsion as well as against refoulement.

Articles 23

16. Please provide detailed information on whether the State party's embassies, consulates and labour attachés have adequate systems in place to assist and protect Malagasy migrant workers in destination countries, including those in an irregular situation and particularly in cases of abuse, arrest, detention and expulsion. Please also indicate the measures that are in place to facilitate outreach to vulnerable Malagasy migrant workers in destination countries, particularly where the State party does not have diplomatic or consular representation. Please specify 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, and if the information these authorities provide is in a language they understand. Please also indicate whether migrant workers who are deprived of their liberty are visited periodically and whether legal assistance is provided, including in cases of expulsion. Please provide the Committee with some practical examples.

Articles 25-30

17. Please indicate the legal and labour protection and enforcement mechanisms that are in place to ensure that migrant workers, including migrant women, enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and conditions of work, especially in the agricultural, fishing, domestic and textile industries. Please provide details on Decree No. 69-145, which covers all workers, male and female, national or foreign, and indicate the measures that are in place to implement the Decree, particularly in relation to social security for migrant workers. Please also include information on measures aimed at promoting the rights of nationals of the State party who are working abroad.

18. 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 the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and whether they apply on an equal basis to migrant workers, in both 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.

19. Please indicate whether the national programme for the rehabilitation of civil status includes provisions to protect the right of children of migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, to be registered at birth and to have their nationality of origin recognized in law and in practice. Please also provide information on the measures taken to ensure the birth registration of children of migrant workers in the State party.

Articles 31-33

20. Please provide information on measures taken to ensure that, upon termination of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings and, in accordance with the applicable legislation, their personal effects and belongings. Please provide information on measures taken to facilitate the transfer of private funds, especially by reducing the cost of transactions.

21. Please specify the type of information and assistance provided to migrant workers by the Service of Migration Management, including whether clear information is provided on immigration procedures, together with full information on the conditions applicable to their admission, stay and remunerated activities in which they may engage, as well as applicable legislation.

4. Part IV of the Convention

Article 37

22. Please provide information on pre-departure programmes for the State party's nationals considering emigration, including information on their rights and obligations in the State of employment. Please indicate which institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in that process.

Article 40

23. Please provide information on the measures taken to guarantee to migrant workers and members of their families the right to form, and be part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention and parts I and II of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Article 41

24. Please provide information on the measures taken by the State party to review its legislation and the effective implementation thereof to ensure for migrant workers and members of their families of the State party abroad:

- (a) The right to participate in public affairs in the State party;
- (b) The exercise of their voting rights in the State party;
- (c) The right to be elected to public office in the State party.

Article 42

25. Please provide information on any measures taken by the State party to establish procedures or institutions with freely chosen representatives to take into account the special needs, aspirations and obligations of migrant workers and members of their families in both States of origin and States of employment.

Articles 46-48

26. Please provide information on the legislation relating to import and export duties and taxes in respect of personal and household effects as well as the necessary work-related equipment of migrant workers. Please also provide information on the policies in place to facilitate remittances. In addition, please 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.

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

27. Please provide information on the measures taken, including consultations and cooperation with other States, to promote sound, equitable and humane conditions in connection with the international migration of migrant workers and members of their families, including through multilateral and bilateral agreements, and policies and programmes. Please include information on how such measures have been mainstreamed in overall migration policies and programmes and whether there has been a reduction in the number of violations of the rights of migrant workers and members of their families as a result of such measures.

28. Please provide information on the measures taken to address irregular migration of nationals of the State party, including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels, campaigns aimed at countering misleading information relating to emigration and raising awareness among nationals of the State party, including children, of the dangers of irregular migration, and measures to address its root causes.

29. Please provide information on measures taken to address the situation of children left behind by a parent or parents going abroad for work to ensure that they are appropriately provided and cared for.

Article 67

30. Please specify the measures that are in place to ensure the voluntary return of migrant workers and members of their families to the State party when they decide to return or when they are in the State of employment in an irregular situation, particularly in the light of information before the Committee suggesting that, owing to limited communication channels and/or repatriation agreements, Malagasy migrant workers have reportedly been stranded in administrative detention centres for periods of up to one year in some destination countries. Please also provide information on cooperation programmes between the State party and relevant States of employment on promoting adequate economic conditions for the resettlement and reintegration in the State party of migrant workers in a regular situation.

Article 68

31. 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, and the allocation of corresponding resources, including human and financial resources, to prevent and combat trafficking in persons, in particular women and children. Please inform the Committee about measures taken by the State party to implement Act No. 2007-038 and Act No. 2014-040 in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000, and to ensure the

prosecution, conviction and punishment of traffickers. Please also provide information on the mandate of the National Bureau for Combating Trafficking in Persons and on any measures that are in place to implement the National Plan of Action against Trafficking in Persons.

Section II

32. The Committee invites the State party to provide information (in no more than three pages) 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 and other relevant instruments, including the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the ILO Domestic Workers Convention, 2011 (No. 189);
- (e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Section III

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

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

- (a) The volume and nature of migratory flows to and from the State party since the Convention entered into force in the State party;
- (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 who 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) 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.

34. 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 are considered 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.

35. Please submit an updated core document in line with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.