



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

Distr.: General  
23 February 2021  
English  
Original: French  
English, French and Spanish only

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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 the Congo\*

#### Section I

##### A. General information

1. Please provide information on the national legal framework in relation to the Convention, including with respect to the following:

(a) National legislation regarding the protection of migrant workers and members of their families and migration policies related to the Convention;

(b) The presence of cross-border workers from the Democratic Republic of the Congo and the resolution of their status in accordance with the Convention;

(c) Measures taken by the State party to harmonize its legislation with the provisions of the Convention, particularly with respect to article 32, on applying for a residence card, of Act No. 23-96 of 6 June 1996 on the conditions of entry, stay and exit for foreigners;

(d) The existence, scope and status of implementation 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, please indicate whether the provisions of the Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment are effectively being applied so that migrant workers are able to benefit from all rights guaranteed therein, including within the State party. Please specify how these agreements protect migrant workers' rights in transit and destination countries, especially with respect to social security, detention, repatriation or expulsion, and family reunification procedures. Please provide information on any measures taken to strengthen the protection of Congolese migrant workers abroad, including by reviewing and initiating amendments to these bilateral and multilateral agreements, if necessary.

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, 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 human, technical and financial resources allocated for the implementation of these policies and strategies and the results obtained.

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\* Adopted by the Committee intersessionally on 18 November 2020.



3. Please provide information on the government ministry or institution responsible for intergovernmental coordination of 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 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, field of occupation and migration status, on labour migration movements to and from the State party, including returns and other labour migration-related occurrences, especially on circular migration, 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, data based on 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 and domestic service. In addition, please provide information on measures taken by the State party to establish a centralized, coherent and comparable system of data collection on those issues, including measures to assist the African Migration Observatory in the collection of migration-related data and to make this information public.
5. Please indicate the steps taken to strengthen the National Human Rights Commission and to ensure compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) following the swearing-in of its commissioners in 2004. Please also provide information on complaint mechanisms and other services, including helplines, offered by the Commission to the public, including migrants, and indicate whether it conducts visits to migrant holding centres. In addition, please provide information on the human, technical and financial resources made available to the Commission.
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 and social workers; labour inspectors; government officials, including embassy and consular personnel; law enforcement officials; border police and the judiciary; relevant local authorities; civil society; and the media. Please indicate whether the media promote the Convention and, if so, how they do so and what impact their 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 human rights in general and the rights of migrants and members of their families in particular, including programmes applying a gender, age and diversity approach, for government staff providing legal and consular assistance to nationals of the State party abroad who are dealing with migration-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 representatives of civil society organizations and other stakeholders are involved in the preparation of the replies to the present list of issues.
9. Please provide information on the existence of private employment agencies in the State party that recruit migrant workers to work abroad and on the laws, rules and regulations pertaining to private recruitment, in particular on:
  - (a) Measures taken to provide information and training to migrant workers on their rights and obligations and to protect them against abusive employment situations;
  - (b) The role and responsibilities of recruitment agencies and their joint responsibility with the employer abroad for claims and liabilities that may arise in connection with the implementation of the employment contract, with regard to, among other things, wages, disability compensation, repatriation and death, including the 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 death;

(d) Information relating to the issuance and renewal of licences of such employment agencies;

(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 supervise private employment agencies, whether formal or informal, and to avoid situations where such agencies act as intermediaries for abusive foreign recruiters.

## **B. Information relating to the articles of the Convention**

### **1. General principles**

10. Please indicate whether the provisions of the Convention have been directly applied by officials in the administration. Please provide information on and examples of judicial cases and judgments in which the Convention has been invoked directly before the courts. Please also provide information on:

(a) The judicial and administrative entities 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 entities in the past five years and their outcome, disaggregated by sex, age, nationality, field of occupation and migration status;

(c) Whether legal assistance was provided, both to immigrants in the Congo and to nationals of the Congo who are living as migrants abroad;

(d) Any redress, including compensation, provided to the victims of rights violations under the Convention;

(e) Measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

11. Please provide information on restrictions placed on the full exercise of the rights of migrant workers and members of their families in the face of the coronavirus disease (COVID-19) pandemic, including restrictive measures taken at borders in relation to their entry or exit from their countries of origin, transit or destination. Please also provide information on measures taken in relation to voluntary return to their countries of origin in the context of the pandemic. Please indicate the measures taken to ensure that the pandemic does not affect the processing of asylum applications or migration procedures, including in relation to the suspension of procedures. Please also indicate efforts made on behalf of migrant workers and members of their families to:

(a) Include them in national pandemic prevention and response plans, especially in relation to ensuring access to a vaccine;

(b) Ensure their access to health-care services;

(c) Uphold the necessary sanitary measures to prevent contagion and maintain the desired level of health protection at their workplaces;

(d) Prevent infections in detention centres and provide health-care services to those who have been infected;

(e) Ensure that families of migrant workers who have died of the disease are informed of their deaths and receive their remains;

(f) Protect their rights in other respects and mitigate the pandemic's adverse effects, in view of the joint guidance note of the Committee and the Special Rapporteur on

the human rights of migrants on the impacts of the COVID-19 pandemic on the human rights of migrants.<sup>1</sup>

## **2. Part II of the Convention**

### **Article 7**

12. Please indicate whether national legislation, in particular the Constitution, Act No. 23-96 and the Labour Code, ensures that all migrant workers and members of their families enjoy the rights established in the Convention, without distinction of any kind, and whether such legislation 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 status, 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. Please provide information on efforts made or planned to ensure that migrant workers in an irregular situation in the State party are able to benefit from the same protection of their rights as migrant workers in a regular situation.

## **3. Part III of the Convention**

### **Articles 8 to 15**

13. 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 the trade and craft sectors 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 national legislation into compliance with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and the ILO Abolition of Forced Labour Convention, 1957 (No. 105).

14. Given that information received by the Committee indicates high rates of child labour, children in street situations and the trafficking of children for the purpose of economic or sexual exploitation, including migrant children forced into begging or servitude, please provide information on measures taken by the State party to ensure that the rights of migrant children, including those who are unaccompanied, in an irregular situation or transiting through the State party, are respected and that such children are protected from all forms of exploitation. Please indicate the measures taken or envisaged by the State party to protect children from the worst forms of labour, including through the implementation of the ILO Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the strengthening of the labour inspection system.

15. Please provide information on the implementation of the 2014–2017 National Plan against Trafficking in Persons and the adoption of an anti-trafficking law, detailing the measures taken to train law enforcement officials, in particular judges, prosecutors and police officers, the number of prosecutions initiated and the sentences issued. Please also provide information on cases where there have been child victims of trafficking in persons and on the measures taken to address the phenomenon of children left behind by a parent or parents going abroad for work and to ensure that such children are appropriately provided and cared for. Please also report on the status and main features of the 2011 cooperation agreement with Benin to eliminate trafficking in children for economic or sexual exploitation.

16. Please describe in detail the measures taken to investigate complaints of mass expulsions of migrants from the Democratic Republic of the Congo, including allegations of arbitrary detention, rape and abuse of authority involving members of the police forces. Please also indicate the number of complaints received and investigated; the number of law

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<sup>1</sup> [www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf](http://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf).

enforcement officials that have been investigated, prosecuted and convicted in this regard; and the nature of the charges and sentences imposed.

### **Articles 16 to 22**

17. Please describe the due process safeguards, including access to a lawyer and an interpreter, in situations of investigations, arrests, detentions and expulsions of migrant workers and members of their families for immigration-related offences. Please describe 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 detained migrant workers or members of their families is given effect in law and in practice. Please include information on due process safeguards for unaccompanied children in migration-related administrative procedures, including the right to be heard and the right to an independent lawyer and an independent guardian.

18. Please indicate the legislative and other measures that have been taken by the State party to ensure the right to liberty of migrant workers and members of their families in the context of migration-related administrative procedures, including in respect of entry, residence and expulsion. Please provide information, including disaggregated statistical data, on whether migrant workers in an irregular situation and members of their families have been expelled or been subjected to expulsion procedures. Please indicate whether collective expulsion is prohibited in the domestic laws of the State party. Please indicate whether and how migrant workers can challenge expulsion orders and whether such remedies have suspensive effect.

### **Article 23**

19. Please provide detailed information on the policies and practices of the State party's embassies, consulates and labour attachés in assisting and protecting Congolese nationals working abroad, including those in an irregular situation, and particularly in cases of abuse, arrest, detention or 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 abuse, arrest, detention or expulsion.

### **Articles 25 to 30**

20. Please indicate what legal and labour protection and enforcement mechanisms are in place to ensure that migrants, especially those working in domestic work and the trade sector, and refugees are treated no less favourably than Congolese nationals in terms of access to work.

21. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work, for example, those relating to hours of work, overtime, weekly rest, holidays with pay, safety, health, termination of work contract and the 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 the same conditions enjoyed by Congolese nationals apply on an equal basis to migrant workers, both in regular and irregular situations. Please describe the safeguards put in place to ensure that migrant workers report accidents and safety hazards in the workplace to the authorities.

22. Please provide information on the measures taken by the State party to ensure, in law and in practice, that all migrant workers and members of their families, in particular children, have access to adequate medical care, including urgent medical care, regardless of their migration status, and on whether firewalls are in place to ensure that health facilities are not obliged to and do not report their immigration status to the authorities.

23. In view of information before the Committee about low levels of school attendance among children of migrant workers, in particular those in an irregular situation, as a result of child labour, sexual exploitation and trafficking, please provide information on the measures taken to ensure that children, including children of migrant workers, have full access to education and benefit from schooling regardless of their migration status.

24. Please provide information on the measures taken by the State party to ensure the right of the children of Congolese migrant workers abroad, including children of migrant workers who are undocumented and/or in an irregular situation, to be registered at birth and to have their nationality recognized in law and in practice. Please also provide information on the measures taken to ensure the birth registration of foreign migrant children in the State party, especially in the region of Bétou.

#### **Articles 31 to 33**

25. 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, as well as their personal effects and belongings, from the State of employment to the State of origin. Please provide information on measures taken to facilitate the transfer of private funds, especially by reducing the cost of transactions.

### **4. Part IV of the Convention**

#### **Article 37**

26. Please provide information on pre-departure programmes for Congolese nationals considering emigration, including information on their rights and obligations in the State of employment, and indicate the States for which such information is provided. Please indicate which government 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**

27. Please provide information on 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**

28. Please provide information on the steps taken by the State party to review its legislation and to facilitate by any other means the exercise of the following rights by Congolese migrant workers and members of their families residing abroad:

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

### **5. Part V of the Convention**

#### **Articles 58 to 63**

29. Please provide information on measures aimed at improving the situation of frontier workers and at including in national legislation a definition of frontier workers, as well as on specific provisions to protect their rights, in accordance with article 58 of the Convention.

### **6. Part VI of the Convention**

#### **Article 64**

30. Please describe the measures taken by the State party to address irregular migration of Congolese nationals, in particular unaccompanied children and women migrants, including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels and at addressing the root causes of irregular migration. 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 irregular migrants as a result of such measures. Please provide information on campaigns

aimed at countering misleading information relating to irregular migration and raising awareness among Congolese nationals, including children, of the dangers of irregular migration. Please also provide information on the measures taken to assist migrant workers and members of their families who are returning, by force or voluntarily, in resettling and reintegrating into the economic and social life of the State party. Please provide information on any institutions competent to provide information to migrant workers returning to the State party on their resettlement and on the measures taken to facilitate the repatriation of their personal property and possessions. Please also indicate the steps taken to ensure that the same measures apply to foreign migrant workers and members of their families in the State party. Please provide information on the rights of migrant workers who are nationals of States members of the Economic Community of Central African States and on the resolution of their status in accordance with the Convention and article 40 of the Treaty establishing the Economic Community of Central African States, on freedom of movement, residence and right of establishment within the Community.

#### **Article 67**

31. Please provide information on cooperation programmes in place between the State party and relevant States of employment for 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 an irregular situation in the State of employment. Concerning migrant workers in a regular situation, please provide information on cooperation programmes between the State party and relevant States of employment on promoting adequate economic conditions for resettlement and reintegration in the State party.

#### **Article 68**

32. Please provide information on the measures taken by the State party to prevent and combat trafficking in persons, especially women and children, and to ensure that traffickers are prosecuted, convicted and punished. Please indicate, *inter alia*, whether specific legislation or policies have been adopted to this effect and what measures have been taken in the context of international, regional and bilateral cooperation with countries of origin, transit and destination. Please also provide information on the human and financial resources allocated to these various initiatives.

33. Please provide information on the measures taken to assist and protect victims of trafficking, including to protect their identity and ensure their physical and psychological rehabilitation and their reintegration into society, and to guarantee their access to justice and legal remedies. Please also describe the steps taken to systematically compile data on trafficking in persons.

#### **Article 69**

34. Please provide information on the measures taken to ensure that migrant workers and members of their families in an irregular situation in the State party have the possibility of regularizing their situation in accordance with the provisions of article 69 of the Convention. Please also indicate whether identity cards are being issued to refugees and if those cards are fully recognized by the State party. Please describe the efforts made, including through bilateral and multilateral agreements, to promote the regularization of Congolese migrant workers living abroad.

## **Section II**

35. The Committee invites the State party to provide information, not to exceed three pages, regarding the protection of migrant workers and members of their families with respect to the following:

- (a) Bills or laws and their respective implementing 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;
- (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**

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

- (a) The volume and nature of migratory movements 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 Congolese migrant workers who 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 unaccompanied migrant children or migrant children separated from their parents in the State party;
- (e) The number of migrant workers and members of their families who have contracted SARS-CoV-2, the number who have received a COVID-19 vaccine, and the number who have died as a result of COVID-19, disaggregated by sex, age and nationality;
- (f) Remittances received from Congolese nationals working abroad;
- (g) 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;
- (h) Legal assistance services provided to migrant workers and members of their families in the State party and to Congolese nationals working abroad or in transit through third States.

37. Please provide any additional information on any important developments and measures in implementation of the Convention 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 or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

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