



# 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 second periodic report of Burkina Faso\*

#### Section I

##### A. General information

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

(a) Measures taken by the State party to harmonize its legislation with the provisions of the Convention, in particular Order 84-49 (1984), as recommended by the Committee in its previous concluding observations (para. 25);<sup>1</sup>

(b) 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, and an update on their implementation status (para. 35). In particular please provide information on whether the provisions in the Protocol on the Free Movement of Persons, Right to Residence and Establishment are effectively implemented and allow migrant workers from the Economic Community of West African States (ECOWAS) to benefit from all rights guaranteed therein, including within the State party. Please specify how bilateral agreements and those concluded with the European Union 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 migrant workers abroad who are nationals of Burkina Faso, including by reviewing and initiating amendments to these bilateral and multilateral agreements, if necessary.

2. Please indicate whether the State party has adopted (a) the national strategy on migration for the period 2014–2025 and the related plan of action (para. 13), and (b) the national strategy to ensure the durable reintegration into the economic, social and cultural life of the State party of migrant workers who have been forcibly or voluntarily repatriated (para. 37 (d)). Please also indicate whether each strategy is operational and share both texts with the Committee. Please provide additional 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

\* Adopted by the Committee at its thirty-first session (2–11 September 2019).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the Committee's previous concluding observations, issued as document CMW/C/BFA/CO/1.



members of their families in the State party. Please also provide information on the human, technical and financial resources allocated for such implementation and the results obtained.

3. Please provide updated information on the institutions involved in the management of migration, including the ministries and institutions responsible for intergovernmental coordination of the implementation of the Convention in the State party such as the Higher Council for Burkina Faso Nationals Living Abroad. Please include information on the mandates and the available human, technical and financial resources of such ministries and institutions, as well as on the results obtained, including through monitoring activities and follow-up procedures (paras. 13 and 37 (a)–(c)).

4. Please provide qualitative information and statistical data for the past five years, disaggregated by sex, age, nationality, field of occupation and migration status, on labour migration movements to and from Burkina Faso, including returns and other labour migration-related issues, 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 aimed at making the information public (para. 15).

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 2018. Please also provide information on complaint mechanisms and other services, including helplines, offered by the Commission, and on whether it conducts visits to detention centres and shelters for migrants who are nationals of Burkina Faso following repatriation from countries of employment or transit. In addition, please provide information on the human, technical and financial resources made available to the Commission and on awareness-raising activities by the State party among the general public, and migrant workers in particular, on the services offered by the Commission, 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 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.

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 those 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 (para. 17).

8. 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 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 others, 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**

9. Please indicate whether the Convention has 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/or 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, age, nationality, field of occupation and migration status;

(c) Whether legal assistance was provided, both to migrants in Burkina Faso and to migrants abroad who are nationals of Burkina Faso;

(d) Any redress, including compensation, provided to 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 (para. 19).

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

#### **Article 7**

10. Please clarify whether national legislation – in particular, the Constitution of Burkina Faso and the Labour 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 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 position; property; marital status; and birth or other status. Please also provide information on all tangible and effective steps taken by the State party to ensure non-discrimination, protection of labour rights and gender equality in all matters relating to migration policy, both in law and in practice, and within the framework of the ECOWAS Common Approach on Migration. Please provide detailed 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. Please also indicate the measures taken or envisaged to promote the empowerment of women migrant workers, irrespective of their migration status, in particular those in domestic employment.

### 3. Part III of the Convention

#### Articles 8 to 15

11. Please provide information on any cases identified in the State party of exploitation of migrant workers and members of their families, both in regular and irregular situations, in particular those working in agriculture, mining, domestic work and the trade and craft sectors, especially in urban areas. Please also provide information on any cases identified in the State party of domestic servitude, forced labour and sexual exploitation involving migrant workers, especially in the context of travel and tourism, and on measures to prevent and combat these phenomena (para. 21). In addition, please 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 ILO Abolition of Forced Labour Convention, 1957 (No. 105).

12. Noting 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 exploitation, including migrant children forced into begging or servitude or exploited in cotton farms where they are exposed to harmful pesticides, please provide information on measures taken by the State party to ensure that the rights of migrant children, including those who are unaccompanied and/or in an irregular situation or are transiting through the State party, are respected and that they are protected from all forms of exploitation (para. 23). Please indicate the measures taken or envisaged by the State party to protect children, including migrant children, against the worst forms of labour, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and to strengthen the labour inspection system (para. 21). Please also provide information on the status and main features of the tripartite cooperation agreement with Benin and Togo to eliminate trafficking in children for economic or sexual exploitation. Please indicate measures taken to address the phenomenon of children left behind by a parent or parents going abroad for work and to ensure that they are appropriately provided and cared for.

13. Please provide detailed information on the measures taken to investigate complaints of harassment, corruption and abuse of authority by law enforcement officials, including allegations of extortion and arbitrary detention, with regard to migrant workers and members of their families. Please also indicate the number of complaints received and investigated in the past three years; the number of law enforcement officials that have been investigated, prosecuted and convicted in this regard; and the nature of the charges and sentences imposed (paras. 21 and 25).

#### Articles 16 to 22

14. 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 (para. 25 (b)). 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 the detained migrant workers or members of their families is given effect in law and in practice. Please include information on specific due process safeguards for unaccompanied children in migration-related administration procedures, including the right to be heard and the right to an independent lawyer and an independent guardian.

15. Please indicate the measures taken or envisaged to bring its laws on detention and arrests, including articles 10, 11 and 12 of Order 84-89, into conformity with the Convention and other international standards (para. 25 (a)). Please also provide information on efforts made or envisaged to ensure that the detention of migrants for violations of immigration law is used only as a measure of last resort, and to improve detention conditions in facilities for foreign nationals as recommended by the Committee (para. 25 (c)), if immigration-related detention is still practised by the State party. Please also indicate whether independent observers, including the National Human Rights Commission and civil society organizations, regularly monitor and may make unannounced visits to places of detention where migrant workers may be held.

16. In view of the tightening of counter-terrorism measures at the international borders of the State party, please provide information on the impact of border governance measures taken, in particular with respect to procedures applicable to migrant workers and asylum seekers arriving at those borders, including with respect to reception facilities. Please also provide information on how the State party processes protection claims to ensure that it acts in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsion.

17. 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 subject to expulsion procedures since the adoption of the previous concluding observations (para. 27). 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 (para. 27).

### **Article 23**

18. Please provide detailed information on the policies and practices 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 cases 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 abuse, arrest, detention or expulsion.

### **Articles 25 to 30**

19. Please indicate what legal and labour protection and enforcement mechanisms are in place, including within the framework of the ECOWAS Common Approach on Migration, to ensure that migrant workers, including migrant women, especially in the agricultural, mining, domestic work, and trade and craft sectors, enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and conditions of work (para. 19). Please also include information on measures aimed at promoting the rights of migrant workers abroad who are nationals of Burkina Faso.

20. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work (for example, hours of work, overtime, 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 the same conditions enjoyed by nationals apply on an equal basis to migrant workers, both in regular and irregular situations. Please describe the conditions under which migrant workers, including migrant workers in an irregular situation and members of their families, can access health care and what type of care is available to them, in particular with respect to urgent medical care.

21. 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, trafficking, early marriage, fear of being reported to the authorities and terrorist attacks causing the closing of schools in certain areas of Burkina Faso, 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. Please also provide information on firewalls to ensure that schools are not obliged to report the immigration status of children to the authorities.

22. Please provide information on the measures taken by the State party to ensure the right of the children of 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 (para. 29).

**Articles 31 to 33**

23. 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 (para. 31).

**4. Part IV of the Convention****Article 37**

24. Please provide information on pre-departure programmes for nationals of the State party who are considering emigration, including information on their rights and obligations in the State of employment. Please elaborate on the results of the activities of the Higher Council for Burkina Faso Nationals Living Abroad and on any coordinated policies, programmes or legislation developed to ensure transparency and accountability in this process (para. 37).

**Article 40**

25. 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**

26. Please provide information on the status of the implementation of Act No. 003-2010/AN of 25 January 2010 in view of the elections that took place in 2015 as well as any other 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 the right to exercise their voting rights and participate in public affairs, including the right to be elected to public office in the State party (para. 33). Please also include information on the impact, if any, of dual nationality on the right to vote and to be elected to public office in the State party.

**Article 54**

27. Please provide information on measures taken by the State party to ensure that migrant workers enjoy treatment equal to that enjoyed by nationals of Burkina Faso in respect of 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. Please also indicate whether the State party has taken specific protective measures against unfair dismissal.

**5. Part V of the Convention****Articles 58 to 63**

28. Please provide information on the measures taken by the State party to ensure that frontier, seasonal and itinerant workers enjoy treatment equal to that enjoyed by workers who are nationals of Burkina Faso, in particular with respect to remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of employer compliance with relevant international labour standards.

## 6. Part VI of the Convention

### Article 64

29. Please describe the measures taken by the State party to address irregular migration of nationals of the State party, 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 and illegal employment. 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 nationals of the State party, including children, of the dangers of irregular migration. Please also provide information on the measures taken to assist migrant workers who are being forcibly or voluntarily repatriated and members of their families in resettlement and durable reintegration into the economic and social life of the State party (para. 37).

30. Please provide information on cooperation efforts with countries of transit and destination, in particular ECOWAS member countries, with a view to ensuring the safety of the State party's migrant workers and members of their families abroad, including migrant children, whether accompanied or not, in transit through third States and upon arrival in the countries of destination. Please elaborate on the results of the activities of the Higher Council for Burkina Faso Nationals Living Abroad in this regard (para. 37).

### Article 67

31. Please provide information on cooperation programmes in place between the State party and relevant States of employment, in particular ECOWAS member countries, 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, in particular ECOWAS member countries, on promoting adequate economic conditions for resettlement and reintegration in the State party. Please elaborate on the role of the Higher Council for Burkina Faso Nationals Living Abroad in both regards (para. 37).

### Article 68

32. Please describe the steps taken by the State party to develop and implement a new national action plan to combat trafficking in persons (para. 39). In addition, please provide information on measures taken, including through international, regional and bilateral cooperation with countries of origin, transit and destination, and corresponding human, technical and financial resources, allocated by the State party to prevent and combat trafficking in persons and the smuggling of migrants, in particular women and children. Please indicate the efforts made to adopt laws and policies to ensure the implementation of legislation to combat trafficking in persons and the smuggling of migrants, especially the implementation of Law No. 029-2008 of 15 May 2008 on the fight against trafficking in persons and similar practices. In particular, please elaborate on:

(a) Measures taken by the State party to prevent and eliminate trafficking in persons and the smuggling of migrants, in particular women and children, by addressing the root causes thereof, and through the provision of information on assistance and due process safeguards to migrant victims of trafficking and smuggling networks;

(b) Prevention campaigns, particularly in the border areas where most trafficking victims are found, including by the National Watchdog and Monitoring Committee, and the human, technical and financial resources available for their implementation;

(c) Programmes to strengthen legal proceedings through the strict application of the legal framework to prevent trafficking in persons, and programmes to effectively protect trafficking victims, as well as ensure their access to justice and legal remedies;

(d) Procedures and protocols to allow border guards, labour inspectors, immigration officers and other persons responsible for the prevention and detection of such activities to rapidly identify victims of smuggling and trafficking in persons, and to provide those who need protection with access to the asylum procedure if necessary, as well as to appropriate psychological, medical and legal support towards their reintegration (para. 39).

33. Please provide information on measures taken, including through international, regional and bilateral cooperation with countries of origin, transit and destination, and corresponding human, technical and financial resources allocated by the State party to prevent and suppress the smuggling of migrants by organized criminal groups as well as to adopt specific legislation and policies on this matter, in accordance with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Please also indicate the status of the cooperation agreement with Côte d'Ivoire on combating cross-border smuggling and trafficking in persons (para. 39 (e)).

### **Article 69**

34. Please provide information on any measures taken to ensure that migrant workers and members of their family in an irregular situation in the State party have the possibility to regularize 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 (para. 41). Please describe the actions taken by the State party, including through bilateral and multilateral agreements, to improve the protection and assistance afforded to its nationals abroad, including efforts to promote the regularization of their situation.

### **Section II**

35. The Committee invites the State party to provide information (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 Domestic Workers Convention, 2011 (No. 189) (para. 11);
- (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 disaggregated statistical data and qualitative information for the past three years (unless indicated otherwise) on:

- (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 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 unaccompanied 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.

37. 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 or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications (para. 9).

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