



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 Timor-Leste*

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 in 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 the present list of issues will constitute its report under article 73, paragraph 1, of the Convention. In accordance with General Assembly resolution 68/268, paragraph 16, the 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 becomes part of domestic law through implementing legislation;

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

* Adopted by the Committee at its twentieth session (31 March–11 April 2014).



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

(d) Information on bilateral and multilateral agreements with other countries in the area of migration, in particular with Australia, Indonesia, Malaysia, Portugal and the Republic of Korea.

2. Please provide information on all policies and strategies adopted by the State party relating to migrant workers and members of their families. Please include information on specific, time-bound, 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 and information on the resources allocated for their implementation and the results obtained.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination and monitoring of 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.

4. Please provide information, including qualitative and statistical data disaggregated by sex, age, nationality and migration status, on labour migration flows, including returns, and on other labour migration-related issues. Please also provide statistical data, or if precise data are not available then studies or estimates, on migrant workers in an irregular situation.

5. Please indicate whether there is an independent mechanism, such as a national human rights institution or an Ombudsperson, with the mandate to independently monitor the implementation of human rights within the State party, including the rights of migrant workers and members of their families under the Convention. Please also provide information on complaint mechanisms, helplines and other services offered by the institution. In addition, please provide information on the human, technical and financial resources available to the institution and the activities conducted by the State party to raise awareness among the public in general and migrant workers in particular of the services the institution offers, including the right to file a complaint directly with it.

6. Please provide detailed 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 and government officials, including law enforcement officials and the judiciary. With respect to migrant workers who are nationals of the State party working abroad, please also describe measures taken by the State party to promote training programmes, including on gender sensitivity, for government staff dealing with migration issues. In particular, please provide information on training for those providing legal and consular assistance to nationals of the State party abroad who are seeking justice against abuse in the workplace, and regarding migrant workers or members of their families who have been arrested, held in prison, placed in custody pending trial or detained in any other manner.

7. Please provide information on the cooperation between the State party and civil society organizations working on migrant workers' rights in relation to the implementation of the Convention. Recent reports indicate a lack of civil society organizations working on migrant workers' rights in the State party, notwithstanding the provision for their establishment in article 9 of the 2003 Immigration and Asylum Act. Please indicate whether representatives of civil society organizations are involved in the preparation of the replies to the present list of issues and if so, how they are involved.

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, 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) 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, death, and disability compensation and repatriation;

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

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

(e) Measures taken by the State party to strengthen the existing government-regulated licensing system for recruitment agencies, 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.

9. Please also provide information on the overall migration flow of Timorese in the aftermath of independence, indicating how many Timorese nationals returned and from where, how many Timorese nationals remain outside of the country, in which countries the majority of Timorese reside and the major migration-related difficulties faced by Timor-Leste.

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 and whether the courts have applied it. If so, please give examples. Please also provide information on: (a) judicial and/or administrative mechanisms competent to examine and decide on complaints by migrant workers and members of their families, including workers in an irregular situation; (b) the complaints examined by such mechanisms in the past five years and their outcome; (c) any redress, including compensation, provided to the victims of such violations; and (d) 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 ensures that all migrant workers and members of their families enjoy 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 (art. 1, para. 1, and art. 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 the gender sensitivity of the domestic migration laws. In addition to legislation, please provide information on all the measures taken by the State party to ensure non-discrimination, both in law and in practice. Please further provide information on access to health care and other social services for migrant workers and members of their families both in a regular and irregular situation, as well as education for children of migrant workers in a regular and irregular situation.

3. Part III of the Convention

Articles 8 to 15

12. Please provide information on the measures taken to combat labour exploitation of migrant workers, including those in an irregular situation, in particular those in the commercial, construction, fishing and hospitality sectors. Please also provide information on measures taken to combat the exploitation through prostitution of migrant women in the State party, and on the measures taken to protect migrant children in the State party from forced labour and from sexual exploitation and abuse.

13. Please provide information on measures taken by the State party to combat racism, discriminatory conduct, ill-treatment and violence directed at migrant workers and members of their families.

Articles 16 to 22

14. Please describe the due process safeguards in situations of investigation, arrest and detention of migrant workers and members of their families for criminal offences and administrative infractions, including immigration-related matters. Please also provide information on conditions of detention for migrant workers and indicate whether the State party has in place alternatives to detention for immigration-related matters.

15. Please provide information on measures taken to ensure that: (a) 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 and independent authority, following a procedure established by law and in conformity with the Convention; (b) the decision can be reviewed on appeal, especially with regard to reported instances of migrants heading for Australia by sea whose vessels are intercepted by the Timorese Maritime Police Unit (MPU); and (c) pending such appeal, the person concerned has the right to seek a stay of the expulsion decision.

16. The Committee is concerned about reports of workers without authorization who are either fined or deported back to their country of origin. The latter solution seems to have been used especially in cases of migrants who are intercepted at sea in boats heading for Australia. Please supply up-to-date information, including disaggregated statistical data, on undocumented and irregular migrant workers and their families who have been expelled, and on the deportation procedures. Please indicate whether there have been cases of collective expulsion and provide information on laws covering the issue of collective expulsion. Please also indicate how the State party ensures the due process of individuals in cases of collective expulsion. Please indicate whether migrant workers can challenge expulsion orders and whether such remedies have a suspensive effect.

Articles 23

17. Please provide details on the consular services provided by the State party for nationals working abroad, including those in an irregular situation. Please indicate whether legal assistance is provided, including in detention and/or expulsion cases. Please also indicate whether migrant workers and members of their families in the State party have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin whenever the rights recognized in the Convention are impaired, in particular in cases of arrest, detention and expulsion.

Articles 25 to 30

18. The Committee notes that Timorese labour legislation establishes that an employed foreign worker is entitled to the same rights and subject to the same obligations applicable

to national workers (2012 Labour Code, art. 77). The Committee additionally notes that, as far as the promotion of commercial activities by foreigners is concerned, the law on commercial licensing determines that the exercise of commercial activity in traditional markets or the itinerant trade is reserved for Timorese citizens (art. 6, para. 3, Decree Law No. 24/2011 of 8 June 2011). Please indicate whether the labour rights enjoyed by nationals apply on an equal basis to migrant workers in both irregular and regular situations, and provide clarification with respect to those cases where a distinction is made between nationals and non-nationals.

19. Please inform the Committee of the measures the State party has taken to ensure the rights 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 ensured in law and in practice. Please provide information on the measures taken to ensure the birth registration of foreign migrant children in the State party. Please also specify whether children of migrant workers who are undocumented or in an irregular situation enjoy the right to education.

4. Part IV of the Convention

Article 41

20. Please provide information on the steps taken by the State party to facilitate the exercise of its nationals residing and working abroad of the right to vote and to be elected at elections held in the State party.

Article 44

21. Please describe the measures taken by the State party to ensure the protection of the unity of the families of migrant workers and to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

Article 45

22. Please provide information on the measures taken by the State party to ensure access to educational institutions and services, vocational guidance and training institutions and services. Please also provide information on the measures taken by the State party to facilitate the integration of children of migrant workers in the local school system, including by teaching them the local language and their mother tongue and culture.

Articles 46 to 48

23. Please provide detailed, updated information on bilateral and multilateral agreements concluded in the field of migration, in particular temporary labour programmes and other agreements concerning employment, protection, double taxation and social security for migrant workers and members of their families. In that regard, please also provide information on agreements concluded with member States of the Association of Southeast Asian Nations (ASEAN) on related matters, and on the status of Timor-Leste within ASEAN.

Article 49

24. Please clarify whether separate authorizations to reside and to engage in employment are required under national legislation. If so, please provide information on whether migrant workers are ensured authorization of residence for at least the same period

of time as their authorization to engage in remunerated activity. Furthermore, it is not clear from the Immigration and Asylum Act which requirements migrants in possession of work visas must fulfil in order to apply for residence permits. Please provide clarification in that regard.

25. Please provide information on measures taken to ensure that migrant workers in the State party are allowed freely to choose their remunerated activity without being regarded as in an irregular situation, and 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. Furthermore, please provide information on measures taken to ensure that, in such cases, 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.

5. Part V of the Convention

Article 58

26. The Committee has received information that a Border Crossing Pass was introduced as a result of an agreement between the State party and the Republic of Indonesia on traditional border crossings and regulated markets, which was ratified by Resolution 21/2009, in order to facilitate local border crossings. Please provide information on measures taken to implement the plan aimed at improving the situation of frontier workers, and to include in national legislation the definition of frontier workers and specific provisions related to the protection of their rights, in accordance with article 58 of the Convention. In addition, please provide information on any measures that have been taken to improve the situation of frontier workers resident in the Oecusse region.

6. Part VI of the Convention

Article 64

27. Please provide information on the measures taken to prevent irregular migration, including through international agreements, policies and programmes. Please include information on how such measures have been mainstreamed in general migration policies and programmes and indicate whether a measurable estimate in terms of the numbers of irregular migrants has been determined.

Article 67

28. Please provide information on the efforts undertaken to assist returning migrant workers and members of their families, especially children, in their reintegration into the economic and social life of the State party.

Article 68

29. Please indicate the measures taken by the State party to combat trafficking and smuggling of migrants, in particular women and children, including by effectively detecting the illegal or clandestine movement of migrant workers and members of their families, systematically compiling disaggregated data and bringing perpetrators of trafficking and smuggling of migrants to justice. Please provide updated information on the number of reported cases of trafficking and smuggling of migrants, investigations, prosecutions, and sentences imposed on perpetrators since 2008. The Committee is particularly interested in being updated on the latest developments regarding the specific legislative measures announced by the State party on human trafficking. The Committee is particularly concerned that article 81 of the Immigration and Asylum Act does not contain any

reference to support for victims of trafficking while they are recovering, or to procedures for their protection.

Part II

In this section, 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 and institutional reforms;
- (c) Policies, programmes and action plans covering migration, including their scope and financing;
- (d) Recent ratifications of human rights instruments, including International Labour Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment, ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers and ILO Convention No. 189 (2011) concerning decent work for domestic workers;
- (e) Steps to make the declarations provided for in articles 76 and 77 of the Convention;
- (f) 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 for the past three years (unless indicated otherwise) on:
 - (a) Migrant workers in detention in the State party and in the State of employment;
 - (b) Migrant workers and members of their families that have been expelled or deported from the State party in the past five years;
 - (c) The number of non-accompanied migrant children or migrant children separated from their parents in the State party;
 - (d) Remittances from migrant workers who are nationals of the State party working abroad and information on legislation regulating remittances and government policies relating to remittances and development;
 - (e) Reported cases of trafficking and smuggling of migrants, investigations, prosecutions, and the sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking) and information on national human trafficking trends;
 - (f) Legal assistance services provided to migrant workers and members of their families both inside the State party and regarding nationals of the State party working abroad;

(g) Applications for family reunification made during each of the past six years for Timorese and for foreigners, disaggregated by status of applicant (Timorese national, holder of Special Stay Authorisation, holder of Residence Permit, etc.). Please provide data on the outcomes of such applications, including details of appeals, similarly disaggregated;

(h) Mechanisms aimed at collecting quantitative disaggregated statistical data and qualitative information on the rights of migrant workers in line with the Convention inside and outside the State party. If applicable, please also provide information on the functioning of such mechanisms, including indicators of success and outcomes.

2. Please provide additional information on any important developments and measures being taken to implement the Convention that are considered a priority.

3. Please submit general and factual information about the country, in accordance with the harmonized reporting guidelines for the international human rights treaties, including the Convention (HRI/GEN/2/Rev.6). Please also submit the common core document of the State party, in line with the same reporting guidelines, if it has not already been submitted. The common core document will complement the responses to the present list of issues.
