



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 Lesotho*

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 this 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 initial report should not exceed 31,800 words.

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

Part I

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

A. General information

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

- (a) The rank of the Convention in domestic law and whether the Convention has direct effect or is part of the domestic law through implementing legislation;
- (b) National legislation relevant to the protection of migrant workers and members of their families, and migration policies under the Convention;

* Adopted by the Committee at its twenty-first session (1–5 September 2014).



(c) Measures taken by the State party to harmonize its legislation with the provisions of the Convention. In particular, please indicate whether the 1971 draft Domestic Violence Bill has been enacted, and whether the 1992 Labour Code Order and the Citizenship Order have undergone reforms aimed at harmonizing domestic legislation on the protection of the rights of migrant workers with the provisions of the Convention;

(d) Bilateral and multilateral agreements with other countries relating to the rights of migrant workers and members of their families under the Convention, in particular with South Africa, but also with Zimbabwe, Tanzania, Botswana, Zambia, Swaziland, Malawi, Mozambique, Namibia and Angola.

2. Please provide information on all policies and strategies relating to migrant workers and members of their families adopted by the State party, including information on specific time-bound and measurable goals and targets to monitor progress effectively 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 the implementation of these policies and strategies and on the results obtained.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination 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 statistical data disaggregated by sex, age, nationality and migration status, on labour migration flows, including returns, and on other labour migration-related issues, as well as qualitative information. 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 particular those working in less regulated sectors such as agriculture and domestic services. Please additionally provide information on measures taken by the State party to establish a coherent and cross-comparable system of data collection on these issues.

5. Please provide information on whether the State party has taken any significant steps to create an independent mechanism, such as a national human rights institution, which would have the explicit mandate of independently monitoring the human rights situation within the State party, including the rights of all migrant workers and members of their families, under the Convention. Please also provide information on complaint mechanisms and other services, including helplines, offered by the Office of the Ombudsperson. Please additionally provide information on the human, technical and financial resources made available to the institution, as well as awareness-raising activities by the State party among the general public, and migrant workers in particular, on the services offered by the institution, including the right to file a complaint directly with the institution.

6. Please provide information on the steps taken by the State party to promote and publicize the Convention, and to increase awareness and understanding of its provisions among the general public, migrant workers and members of their families, employers, teachers, health workers and government officials, including law-enforcement officials and the judiciary. For 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 and related issues. Such staff would include, in particular, those providing legal and consular assistance to nationals of the State party abroad seeking justice against abuse in the workplace, as well as to 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 and interaction between the State party and civil society organizations working on migrant workers' rights 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 this list of questions.

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

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

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

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

(d) Information on complaints against agencies and inspections, as well as penalties and sanctions for noncompliance;

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

B. Information relating to the articles of the Convention

1. General principles

9. Please indicate whether the Convention has been directly applied by officials in the administration and/or invoked directly before the courts and whether the courts have applied it, and 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 migrant workers in an irregular situation;

(b) The complaints examined by such mechanisms in the past five years and their outcome;

(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

10. Please clarify whether the national legislation, in particular the Constitution 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 the legislation 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 all the measures taken by the State party to ensure non-discrimination, both in law and in practice. Please additionally provide information on access to health care and other social services for migrant workers and members of their families both in a regular and in an 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

11. Please provide information on the measures taken to bring the national legislation into compliance with International Labour Organization (ILO) Convention No. 29 concerning Forced and Compulsory Labour (1930) and ILO Convention No. 105 concerning the Abolition of Forced Labour (1957) and to combat labour exploitation of migrant workers, both in regular and in irregular situations, in particular those working in the agricultural, mining and domestic work sectors. The Committee is concerned that migrant women and children, and young girls in particular, are vulnerable to sexual exploitation in the State party. Please provide information on legislative amendments, such as the enactment of the 2010 Penal Code Act (which provides against abduction, unlawful sexual acts with children and prohibits forced prostitution), and other measures taken to prevent and combat domestic servitude, forced labour and commercial sexual abuse and exploitation of migrant workers, in particular women and children.

12. Please provide detailed information on the measures taken to investigate allegations 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 indicate the number of law-enforcement officials that have been investigated, prosecuted and convicted in this regard, as well as specify the nature of the charges and sentences imposed.

Articles 16 to 22

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

14. Please provide information on detention centres and conditions of detention of migrant workers, disaggregated by nationality, gender, age and other grounds. If families and children are in migration-related detention, please provide particular information on sanitary conditions, food and water, communication with and visitation by family members, medical care and education, and access to complaint procedures. Please also provide information on whether detention takes place in a public establishment and whether such an establishment is distinct from the prison system. Please also provide information on whether the State party has in place alternatives to detention for immigration-related matters, especially for unaccompanied children and families with children.

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

16. Please provide up-to-date information, including disaggregated statistical data, on undocumented and irregular migrant workers and their families who have been expelled or

who are subject to expulsion proceedings. Please indicate whether collective expulsion is prohibited in the domestic laws of the State party. Please indicate whether migrant workers can challenge expulsion orders and whether such remedies have suspensive effect.

Articles 23

17. The Committee is concerned about cases of arbitrary detention and unlawful expulsion facing Basotho migrant workers abroad, especially in South Africa. Please provide detailed information on the roles of the State party's embassies, consulates and labour attachés in assisting and protecting Basotho migrant workers abroad, in particular those deprived of their liberty. Please indicate whether migrant workers who are deprived of their liberty are visited periodically, and whether legal assistance is provided, including in detention and/or expulsion cases or whenever the rights recognized in the Convention are impaired.

18. Please indicate whether migrant workers and members of their families residing in Lesotho 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

19. 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 ILO Convention No. 100 concerning Equal Remuneration (1951) and ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation (1958), and whether the rights enjoyed by nationals apply on an equal basis to migrant workers, both in irregular and in regular situations. Please also provide information on measures taken by the State party to ensure that migrant workers enjoy equality of treatment with nationals in 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.

20. Please provide detailed information on the measures taken to ensure in practice the right of equality of treatment of migrant workers, especially in the agricultural, manufacturing and domestic sectors, and to monitor effectively their conditions of employment. Please indicate what legal and labour protection and enforcement mechanisms are in place to ensure that migrant workers, including in the agricultural, manufacturing and domestic sectors, enjoy treatment not less favourable than that which applies to nationals regarding remuneration and conditions of work.

21. 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 have adequate access to basic services such as urgent medical care.

22. The Committee notes that, while the nationality legislation of Lesotho is to a large extent in compliance with international standards on prevention of statelessness, a few gaps nevertheless remain. The Committee is particularly concerned about the impossibility for Basotho citizens who were born abroad to pass on their Lesotho nationality to their children born abroad, which may lead to statelessness. Please provide information on the measures taken by the State party to ensure 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 ensured 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.

23. The Committee commends the State party on the enactment of the 2010 Education Bill, which provides for compulsory primary education. However, the Committee remains concerned about reported low levels of attendance among children of migrant workers, in particular those in an irregular situation, as a result of child labour, early marriage and fear of being denounced to the authorities. Please provide information on the measures taken to ensure that the children of migrant workers have full access to education, regardless of their migration status.

Articles 31 to 33

24. Please describe the measures taken to ensure that migrant workers arriving in, or preparing to come to, the State party have access to clear information on immigration procedures, including full information on the conditions applicable to their admission, stay, and remunerated activities in which they may engage, as well as the applicable laws and legislation in force. Please also provide information on pre-departure programmes for State party nationals who are considering emigration, including information on their rights and obligations in the State of employment. Please clarify 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 this process.

25. Please provide information on whether the State party has conducted any specific information and training programmes on the Convention for public officials such as law-enforcement officials, embassy and consular staff, social workers, judges, prosecutors and government officials.

4. Part IV of the Convention

Article 43

26. The Committee commends the State party on the adoption of the Race Relations Bill in 2004, which prohibits racial discrimination in access to public places, in the use of public facilities or services, and in schools. Please provide information on measures taken, including legislation, effective remedies and recourse mechanisms, to ensure that migrant workers enjoy equality of treatment with nationals in relation to access to educational and/or vocational institutions and services as well as housing and cultural life.

Articles 46 to 48

27. The Committee notes that Basotho households depend heavily on remittances from family members working abroad; in particular in mines, on farms and as domestic workers in South Africa. According to the International Organization for Migration, these remittances reached US\$ 520 million in 2013, which accounted for a quarter of the gross domestic product of the country. The Committee is concerned that high transfer costs, double taxation and corruption impede the use of regular channels for remittance transfers and the full development impact of these transfers. Please provide information on the policies and mechanisms in place to facilitate remittances. Please additionally 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

28. The Committee is concerned that, as a result of incidents of domestic violence or as a consequence of HIV/AIDS, children are forced to move to border towns or neighbouring

countries, including South Africa, Zambia and Zimbabwe, where they face situations of forced labour and sexual exploitation. Please provide information on measures taken to prevent the irregular migration of Lesotho nationals, in particular women and unaccompanied children, including through multilateral and bilateral agreements, policies and programmes aimed at enhancing legal migration channels. Please include information on how such measures have been mainstreamed in general migration policies and programmes and whether a measurable result on the numbers of irregular migrants has been ascertained.

Article 67

29. The Committee is concerned about the reported high number of children engaged in animal herding, street trading, textile and garment factories, and domestic work. Please provide information on measures taken by the State party to ensure the rights of migrant children and their protection from economic exploitation, particularly those unaccompanied and/or in an irregular situation, in or in transit through the State party, including the allocation of sufficient resources to the effective enforcement of labour laws and the protection of children from economic exploitation. Please provide information on steps taken to protect children from hazardous work, including through the implementation of ILO Convention No. 182 (1999) on the Worst Forms of Child Labour and the strengthening of the labour inspection system.

Article 68

30. Please provide information on the measures taken to intensify and allocate adequate financial and other resources to prevention campaigns aimed at countering misleading information relating to emigration and raising awareness among nationals of Lesotho, including children, about the dangers of irregular migration. Please also provide information on cooperation efforts with countries of transit and destination, with a view to ensuring the safety of the State party's migrant workers abroad, including migrant children, whether accompanied or not, in transit through third States and upon arrival in the countries of destination.

31. Please provide information on measures taken — including through international, regional and bilateral cooperation — with countries of origin, transit, and destination, in order to prevent trafficking, through information exchange and harmonization of legal procedures aimed at investigating and prosecuting traffickers. Please also indicate whether migrant workers who are victims of trafficking are protected from such prosecution.

32. While welcoming the enactment of the Anti-Trafficking in Persons Act (2011) to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the enactment of the Children's Protection and Welfare Act (2010), the drawing up of a Memorandum of Understanding with the Government of South Africa to assist police operations along the border of Lesotho and the establishment of the Multi-Sectorial Committee on Combating Trafficking in Persons, the continuing prevalence of trafficking in men, women and children remains of concern to the Committee. Please provide information on measures taken by the State party to prevent and eliminate trafficking and smuggling of migrants, in particular women and children, through addressing the root causes of trafficking, including poverty, unemployment and lack of economic opportunities, and providing training to the judiciary and law-enforcement officials, border guards and social workers in all parts of the country, especially in rural and remote areas, on how to identify victims of trafficking. Please also provide information on measures taken to ensure systematic monitoring and periodic evaluation, including the collection and analysis of data related to trafficking and exploitation, that effectively detect the illegal or clandestine movement of migrant workers and members of their families and

bring to justice the perpetrators of trafficking and smuggling of migrants. Please also provide updated information on the number of reported cases of trafficking and smuggling of migrants, investigations, prosecutions and the sentences imposed on perpetrators.

33. The Committee is concerned about a reported decrease in the State party's efforts to enforce anti-trafficking laws and protect and assist victims of trafficking. Please indicate the steps taken by the State party to establish victim care centres, develop and implement a formal mechanism to refer victims to care centres and service providers, and complete a national action plan to address the problem of trafficking in persons. Please also provide information on programmes aimed at identifying, assisting, re-integrating and/or repatriating victims of trafficking. Please indicate whether the State party has taken the necessary steps to ensure that victims of trafficking, especially women and children, have access to shelters, quality medical care, counselling, financial support, adequate housing and training opportunities, as well as free legal services.

Article 69

34. Please provide information on any measures taken to ensure that migrant workers and members of their families in an irregular situation within the State party are offered the possibility of regularizing their situation in accordance with the provisions of article 69 of the Convention. Please also describe the actions undertaken by the State party to improve the protection and assistance afforded to nationals of Lesotho abroad, including its efforts to promote the regularization of their situation.

Part II

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

- (a) Bills or laws, and their respective regulations;
- (b) Institutions (and their mandates) or institutional reforms;
- (c) Policies, programmes and action plans covering migration and their scope and financing;
- (d) Recent ratifications of human rights instruments, including International Labour Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment, ILO Convention No. 143 (1975) concerning Migration 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 on inter-State and individual complaint procedures;
- (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 updated disaggregated statistical data and qualitative information for the last three years (unless indicated otherwise) on:

- (a) The volume and nature of migratory flows in and from the State party for the period from the date of entry into force of the Convention in the State party to the present;
 - (b) Migrant workers in detention in the State party, and migrant workers, nationals of the State party, detained abroad in States of employment, and whether such detention is immigration-related;
 - (c) Migrant workers and members of their families that have been expelled/deported from the State party;
 - (d) Non-accompanied migrant children or migrant children separated from their parents in the State party;
 - (e) Remittances from nationals of the State party working abroad, and legislation and policies relating to those transfers;
 - (f) 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);
 - (g) Legal-assistance services provided to migrant workers in the State party and to nationals working abroad.
2. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that the State party considers a priority.
3. Please submit an updated core document, in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at the fifth Inter-Committee Meeting of the human rights treaty bodies, in June 2006 (HRI/MC/2006/3).

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