



**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**

**Consideration of reports submitted by States parties  
under article 73 of the Convention pursuant to the  
simplified reporting procedure**

**Initial reports of States parties due in 2004**

**Guinea\***

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\* This document is being issued without formal editing.



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## **Part I**

### **A. General information**

#### **Replies to the questions raised in paragraph 1 of the list of issues (CMW/C/GIN/QPR/1)**

##### **(a) Rank of the Convention in domestic law**

1. Guinea is a State with a monistic tradition, giving primacy to international law. Consequently, an international treaty that has been ratified becomes part of the domestic legal system as soon as it enters in force, without the need for enabling legislation (cf. article 151 of the Constitution), and, upon publication, duly approved or ratified treaties and agreements take precedence over statutes, subject to reciprocity. A law authorizing the ratification or approval of an international commitment cannot be promulgated if ruled unconstitutional (cf. article 150 of the Constitution).

2. Guinea reiterates its commitment to giving the international conventions that it has duly ratified precedence over domestic law and to bringing domestic law into line with them accordingly. Act No. L94/019/CTRN of 13 June 1994 sets the conditions for the entry and residence of foreign nationals in Guinea.

##### **(b) Domestic legislation relating to the protection of migrant workers**

3. Decree No. D/94/059 is the implementing legislation for Act No. L94/019/CTRN of 13 June 1994 on the conditions for the entry and residence of foreign nationals in Guinea.

4. Article 2 of the Act stipulates that, as regards their stay in Guinea, foreign nationals are subject to the provisions of the Act, except where it is at variance with international conventions or special laws and regulations. This demonstrates the rank of international conventions in the domestic legal order, where the entry and residence of foreign nationals is concerned.

5. The Labour Code was adopted under Act No. L/2014/072/CNT of 10 January 2014.

6. Article 131, paragraph 1, of the Code states: “An employer that is considering hiring a foreign worker from outside the Economic Community of West African States (ECOWAS) is required to obtain prior authorization from the State employment service under the conditions specified in an order of the Minister of Employment. The recruitment of foreign workers is governed by special regulations.”

7. Act No. L/2000/012/AN on the status of refugees in Guinea applies to all refugees in Guinea who come under the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR) and who meet the criteria set out in article 1 of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the protocol of 1967, and in the Organization of African Unity Convention governing the specific aspects of refugee problems in Africa of 10 November 1969.

8. Under article 1, paragraph 2, of Act No. L/2000/012/AN, “the term ‘refugee’ shall mean all persons who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside their country of nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country, or who, not having a nationality and being outside the country of their former habitual residence

as a result of such events, are unable or, owing to such fear, are unwilling to return to it. The term “refugee” shall also apply to all persons who, owing to external aggression, occupation, foreign domination or events severely disturbing public order in either part or the whole of their country of origin or nationality, are compelled to leave their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality.”

9. The Government set up a ministry responsible for Guineans abroad in 2011, the Ministry of Human Rights and Public Liberties in 2012, the National Ombudsman in 2011 and the National Independent Human Rights Institution in 2015. In 2014, an interministerial committee on human rights was established under the Ministry of Human Rights and Public Liberties by order of the Prime Minister. The committee is responsible for drafting all the reports submitted to treaty bodies and monitoring the implementation of recommendations issued following the consideration of these reports. The fact that Guinea has regularly taken part in the universal periodic review mechanism of the United Nations Human Rights Council (in 2010 and 2015) is a further guarantee of its active implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**(c) Harmonization of legislation with the provisions of the Convention**

10. Domestic legislation is currently being reformed and harmonized to bring it into line with the provisions of the new Constitution of May 2010 and with international human rights law.

11. As part of the justice reform undertaken by the authorities of the Third Republic, the revision of legislative texts (Criminal Code, Code of Criminal Procedure, Civil Code, Code of Civil Procedure, Code of Military Justice) will take into account the protection of migrants’ rights and the safeguards provided for in international human rights instruments to which Guinea is a party.

**(d) Bilateral and multilateral agreements on migration**

12. Guinea has signed cooperation agreements on migration with Algeria, Cuba, Morocco and the United Republic of Tanzania.

13. Guinea observes the freedom of movement for nationals of the member States and their possessions within the West African economic area enshrined in the treaty establishing ECOWAS. The treaty is applicable to 15 countries of the subregion: Benin, Burkina Faso, Côte d’Ivoire, the Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

**Replies to the questions raised in paragraph 2 of the list of issues**

14. The Government of Guinea has yet to adopt a specific policy on migrant workers. The following strategies and projects have nonetheless been put in place:

- An incentive programme for low-cost money transfers by the Guinean diaspora;
- The Migration for Development in Africa (MIDA) and Transfer of Knowledge Through Expatriate Nationals (TOKTEN) programmes, whose purpose is to temporarily bring back senior managers from the diaspora with skills in growth sectors and university education;
- Enhanced assistance for the voluntary return and reintegration of Guineans living abroad;
- A one-stop resource for the management of migratory flows at the various land, air, river and sea border crossings;

- A forum for Guineans abroad, with the aim of establishing a high council of Guineans abroad as a consultative body of the Ministry responsible for Guineans abroad.

#### **Replies to the questions raised in paragraph 3 of the list of issues**

15. State employment services are provided by the Guinean Agency for Employment Promotion. Under article 110, paragraph 3 of the Labour Code, “all employers are required to register their staff with the State employment services no later than 15 working days after their recruitment”. The Agency’s main function is to implement the Government’s social policy on employment. In that connection, its specific tasks are to:

- Monitor and energize the labour market;
- Scrutinize employment plans and monitor the commitments made by businesses registered under the Investment Code;
- Conduct surveys and studies on employment, the labour force, trades and professions and unemployment;
- Ensure that the labour force is used rationally;
- Receive information from employers about job vacancies;
- Track the job market in order to place job seekers;
- Promote the recruitment of Guinean workers to other countries through bilateral cooperation or under agreements between Guinea and other States;
- Prepare and issue the documentation required for the hiring of foreign workers.

#### **Replies to the questions raised in paragraph 4 of the list of issues**

16. While it clearly has an impact on the planning and development of a country, migration has not been the object of much study in Guinea. The 1996 census provided rich and varied information from which to draw a broad picture of migration in the country but did not measure migration stocks and flows.

17. Immigrants represented between 5 per cent and 7 per cent of the total population and most came from neighbouring countries like Sierra Leone and Mali.

18. When it comes to emigration, 9.8 per cent of Guineans aged 15 to 64 living in urban areas had migrated and 90.2 per cent had not. An analysis based on place of residence reveals that 11.3 per cent of the inhabitants of Conakry and 8.2 per cent of those in the interior stated that they had migrated at least once.

19. A survey conducted in 2012 on employment and decent work demonstrated that Guinean migrants tended to travel to other African countries. Ninety per cent of persons who had spent time abroad reported having lived in an African country, primarily in one of the six countries with which Guinea shares a border, because of cultural similarities and the openness of borders among African countries, particularly members of ECOWAS, which make it easier for Guineans to settle there. There are relatively few restrictions on migration in West Africa. Under the treaty establishing ECOWAS, migrants are only required to have a residence permit in order to enjoy their rights. Migrants are drawn to other African countries with a higher level of development than Guinea. Thus, many Guineans have settled in Angola or Gabon. Europe is the second most popular destination for Guinean migrants, being the destination of choice for 7 per cent of migrants, and that proportion grows with each successive migration: 11 per cent of those emigrating for the second time and 15 per cent of those emigrating for the third or fourth time chose Europe as their destination.

The issue of migrant flows is a concern in almost all European countries, which are tightening their immigration and asylum policies. The low rate of migration to Asia or the United States of America is due to distance, the difficulty of obtaining a visa and cultural differences. Of the urban employed who have migrated once, 87.9 per cent have gone to an African country, 9.1 per cent to Europe and 2.3 per cent to Asia.

20. An analysis by destination revealed that Africa was the region of choice for Guinean migrants, irrespective of residential area or sex.

21. Nevertheless, more women travelled to Asia (3.2 per cent) and the United States (1.1 per cent) than men (1.4 and 0.7 per cent), while Europe was favoured by more men (8.3 per cent) than women (5.1 per cent).

22. Of those with dependants at the time of departure, 80.4 per cent emigrated to an African country, 12 per cent to Europe and 5 per cent to Asia. When migrating for the first time, very few migrants without dependants travelled to Europe (4.7 per cent) compared with Africa.

23. The data show that recognition of qualifications was highest in Africa, with 63 per cent being recognized in African countries, followed by 27 per cent in Europe and 6 per cent in the United States. Of those whose qualifications were not recognized by the host country, 92.7 per cent were in African countries, as against 6 per cent in Europe. Of first-time migrants who were employed before leaving Guinea, the vast majority (88 per cent) migrated to an African country, 9.7 per cent to Europe and 0.3 per cent to the United States.

#### *Work and duration of employment in the host country*

24. It is not always easy to find work in the host country. Sixty per cent of active migrants did not do so. That being said, work was only the third most important reason cited for emigrating.

25. The proportion of female migrants who were unemployed in their host country was 74 per cent, compared with 50 per cent of men.

26. The average duration of employment of Guineans abroad was 56 months. Forty-two per cent were employed for at least 48 months. Women usually spent less time in the host country (on average 35 months) than men (on average 62 months, or 5 years).

#### *Area of activity*

27. In general, retail and repairs were the most accessible occupations for Guinean migrants, 45 per cent of whom worked in these fields, followed by 13 per cent in manufacturing and 9.7 per cent in community or individual services.

28. The data show that more than two thirds of employed women (68 per cent) worked in retail and repairs, 13 per cent in community or individual services and 8 per cent in manufacturing, while 38 per cent of men worked in retail and repairs, 15 per cent in manufacturing, 10 per cent in transport and communications and 9 per cent in community or individual services.

#### *Work status in the host country*

29. More than half of migrants (52 per cent) were self-employed and roughly one third (32.7 per cent) were employees. Most women (73 per cent) were self-employed, compared with 45.5 per cent of men. It is not clear whether this is a sign of greater entrepreneurship among women or of their difficulty in obtaining salaried employment.

30. More male migrants (40 per cent) than female migrants (11 per cent) were employees. The same was true of employer status and membership of a cooperative.

*Financial situation in the host country*

31. Overall, 58 per cent of migrants experienced an improvement in their financial situation. Among those whose income had increased, 40 per cent of men and 36.5 per cent of women reported a very considerable improvement in their financial situation.

32. Contrary to what is generally thought, 18 per cent of migrants considered that their financial situation had not changed and 8.5 per cent reported a lower income. A fall in income was more common among men (10 per cent) than among women (7 per cent).

*Gender, age and educational attainment of migrants*

33. The data showed that 12 per cent of men and 8 per cent of women had lived abroad at least once.

34. Findings regarding future migration revealed that 66 per cent of people planned to go or to return abroad and 33 per cent wanted to remain in Guinea. Plans to leave differed widely according to place of residence: 72 per cent of the inhabitants of Conakry and 60 per cent of those of other cities intended to emigrate. Moreover, 75 per cent of men and 58 per cent of women stated that they planned to leave.

35. The proportion of persons aged 15 to 64 who had migrated at least once increased with age, while the proportion of those wanting to leave decreased. Among those who had lived abroad, 4.2 per cent were aged 15 to 24 and 20 per cent were aged 45 to 64. The percentage of persons in these age brackets who wanted to go or to return abroad was 83 and 38.9 per cent, respectively.

36. The analysis of migration status by level of education showed that 14.6 per cent of persons with higher education, 10.1 per cent of those with vocational or technical training and 9 per cent of those with no schooling had lived abroad at least once. Seventy per cent of persons with an education planned to go or to return abroad, compared with 45 per cent of persons with no schooling.

37. The data on persons with qualifications living in urban areas demonstrate that those with a master's degree (22 per cent), a vocational degree (18 per cent), a bachelor's degree (11 per cent), a secondary leaving certificate (11 per cent) or a senior technician's certificate (10 per cent) were more likely to have lived abroad. The intention of going or returning abroad was much stronger among persons with a bachelor's degree (85.5 per cent), a secondary leaving certificate (84.5 per cent), a vocational training certificate (83 per cent), a lower secondary certificate (82 per cent) and a preliminary degree course (80 per cent).

*Reasons for future migration and occupation prior to migration*

38. The main reasons for international migration in the future cited by persons aged 15 to 64 living in urban areas were education (35.5 per cent), improved standard of living (33 per cent) and employment (19 per cent).

39. Men cited education first (35.5 per cent) and improved standard of living second (30 per cent), while women cited improved standard of living (37 per cent) over education (30 per cent). Employment was cited by 17 per cent of women, compared with 20 per cent of men.

40. Young people aged 15 to 24 cited education (53 per cent), improved standard of living (23 per cent) and employment (16 per cent) as the primary motivations for

migration, whereas persons over 25 planned to migrate to improve their standard of living (39 per cent of those aged 25 to 34; 48 per cent of those aged 35 to 44; and 41 per cent of those aged 45 to 64), seek employment and/or pursue their studies.

41. The higher the educational attainment, the more often the pursuit of education was named as the reason for departure. This motivation overtook improved standard of living among those who had completed lower secondary education or higher. For example, 57 per cent of those with higher education wanted to go abroad to complete or further their education. A considerable number of students (52 per cent) wanted to leave as soon as they completed their higher secondary education. Young people who wanted to go abroad were often influenced by family pressures that sometimes undermined their will and/or their ability to pursue their studies in another country. Those who wished to emigrate and already had an education that might be recognized in the host country stood a better chance of continuing their education. Holding a secondary leaving certificate, which gives access to higher education in all countries, may facilitate the pursuit of education. Since the immigration of students is regulated, one of the stipulations made by the organization Campus France, for example, for the submission of applications is the successful completion of the secondary leaving certificate. It should be noted that 58 per cent of certificate holders wished to pursue their studies abroad. A strong intention to study abroad was also found among persons with a preliminary degree course (57 per cent), a bachelor's degree (58 per cent), a lower secondary certificate (50 per cent) and a master's degree or above (50 per cent).

42. Among Guinean migrants, 38 per cent had held a job before leaving, while 49 per cent had not. Among women who migrated, 42 per cent were in an income-generating activity before leaving, compared with 32 per cent of men.

#### *Number of dependants*

43. Overall, 37 per cent of migrants, roughly the same proportion of women and men, had dependents before going abroad. The 2012 survey on employment and decent work revealed that returning migrants had an average of six dependants before migrating. Thirty-one per cent had two or three dependents, 26 per cent had four or five and 22 per cent had six to eight. Less than 5 per cent had only one dependant. The average number of dependants prior to departure was slightly lower for women (five) than men (six); on the other hand, the number of men who had no dependants prior to departure was higher than that of women.

#### *Return of migrants*

44. Political problems in host countries typically cause mass population displacement. When conflict arises, Guinean migrants, who are mainly living in neighbouring countries, return to Guinea. The data on periods of migrant returns showed that nearly half of migrants had returned to Guinea between 1990 and 2007, a period of political instability in some bordering countries, which caused Guinean migrants to return en masse and prompted a massive influx of refugees from the wars in Liberia, Sierra Leone, Guinea-Bissau and Côte d'Ivoire. The second large wave of migrant returns (22 per cent) occurred between 2008 and 2011, at the time of the military coup in Guinea, the political crises in Guinea-Bissau and the post-electoral crisis in Côte d'Ivoire.

45. The average age of migrants was 26. One third returned between the ages of 20 and 29, while 4.4 per cent returned at the age of 50 and under 10 per cent were children returning with their parents.

46. There were generally two reasons why migrants returned: one positive (improvements in the country of origin, homesickness, desire for higher social



standing, family reunification) and the other negative (deteriorating economic situation in the host country, difficulties with integration, forced departure).

47. Migrants named several reasons for returning to Guinea: family problems or constraints were cited by 18.4 per cent and homesickness by 15 per cent of returning migrants, far outstripping reasons such as war or rebellion (1.1 per cent) and expulsion (0.9 per cent). Employment issues were cited by approximately 7 per cent of returning migrants. Among migrants who had left to maximize their income, the higher their earnings the more successful their reintegration. Prolonged absence tended to make it more difficult to reintegrate into the job market.

#### **Replies to the questions raised in paragraph 5 of the list of issues**

48. Migrant workers and members of their families have access to the same remedies as all Guinean nationals, namely:

- The National Ombudsman, which is provided for in articles 127 to 131 of the Constitution of May 2010, is a non-contentious, independent mediator between the authorities and the general public. It receives, in accordance with the conditions prescribed by law, complaints from members of the public concerning their dealings with central, district or local government authorities, public institutions and any other public service bodies or entities to which public service functions have been attributed by law. The National Ombudsman was appointed in 2011 but did not take office until February 2015;
- The Independent National Human Rights Institution, which is governed by articles 146 to 148 of the Constitution of May 2010, is mandated, inter alia, to receive and investigate complaints of human rights violations, seek solutions and provide or facilitate legal assistance for victims, especially women, children and other vulnerable persons. The Institution was established in April 2015, pursuant to an institutional act of September 2011 adopted by the National Transition Council;
- The Ministry of Human Rights and Public Liberties is the department responsible for designing and implementing the national policy on the promotion and protection of human rights. It oversees the National Directorate for the Protection of Human Rights, which receives complaints of human rights violations and ensures that they are processed by the competent authorities. Several Guinean nationals and foreigners who were victims of human rights violations have received counselling, guidance or assistance from the Minister or senior officials;
- Human rights non-governmental organizations (NGOs) can also provide advice, guidance and social and legal assistance to any victim of human rights violations, including migrant workers nationwide.

49. The bill to amend the Code of Criminal Procedure now gives the right to bring a criminal indemnification action to all associations that have been accredited for at least five years with the mission of combating racism or discrimination on the grounds of nationality, ethnicity or religion. However, an association can bring such an action only if it can demonstrate that it has the victim's consent or that of the guardian or administrator when the victim is a minor or a person deprived of legal capacity.

50. Lastly, human rights NGOs are currently advocating the ratification by Guinea of the Optional Protocol to the International Covenant on Civil and Political Rights, thereby recognizing the Human Rights Committee's competence to receive communications from individuals claiming to be victims of violations of their rights under the Covenant. A number of these rights are also enshrined in the Constitution.

**Replies to the questions raised in paragraph 6 of the list of issues**

51. The Government has taken a number of initiatives to promote the Convention. For example, it supported the participation of trade union organizations in the regional workshop on the rights of migrant workers, held in Nouakchott, Mauritania, from 17 to 21 May 2010. Participants described their role in promoting policy on the protection of migrant worker rights in their respective countries and their role in international trade unions and the International Labour Organization (ILO). In May 2015, the International Organization for Migration (IOM), in collaboration with the Ministry responsible for Guineans abroad, held a panel discussion at Kofi Annan University in Conakry on the topic of illegal immigration and its consequences. The discussion was chaired by the Minister of International Cooperation and African Regional Integration and attended by other members of the Government, parliamentarians, the IOM representative in Guinea and foreign ambassadors. In addition, the Minister responsible for Guineans abroad took part in the Diaspora Ministerial Conference in Geneva on 18 and 19 June 2013.

**Replies to the questions raised in paragraph 7 of the list of issues**

52. The Government attaches particular importance to cooperation with international organizations in the area of migration. It has developed a vibrant partnership with UNHCR, giving it legal status in Guinea through the headquarters agreement and the memorandum of understanding on refugee status, which has made possible the processing of applications for refugee status and asylum.

53. The headquarters agreement between IOM and the Government was signed in 2005. Stricter entry and residence conditions in a number of countries have deterred some migrants from returning to their country of origin. Abrupt changes in standard of living and difficulties encountered in re-entering the job market are generally considered the greatest challenges for returning migrants, who therefore want a degree of certainty that they can go back to the host country in order to avoid a failed return and facilitate their integration in their country of origin. Some host countries, particularly in Europe, have set up programmes to help migrants integrate. In that connection, IOM provides various services, including:

- Preparation for return;
- Travel;
- Assistance upon arrival;
- Resettlement assistance;
- Entrepreneurial training and funding for reintegration projects.

Since 2005, 1,200 Guineans, 8 per cent of them women and children, have received assistance and guidance from IOM.

54. IOM has provided assistance to Guineans returning from Angola, Egypt, Libya and Morocco.

55. The Swiss State Secretariat for Migration funds a voluntary return and reintegration programme, which accounts for 30 per cent of IOM programming in that area, to promote the voluntary and permanent return of Guineans from abroad. As part of efforts to prevent illegal migration by Guineans, Switzerland has funded projects to:

- Develop microenterprises to provide employment for 200 young job seekers in Kindia and Labé in 2007 and 2008;

- Help women's groups and youth associations establish microenterprises in seven towns (Koundara, Kindia, Coyah, Forécariah, Dubréka and Fria) in 2014 and 2015;
- Strengthen the migration-management capacity of the security services.

56. The data show that 19 per cent of migrants received assistance from their host country in order to return to their country of origin. More women (20 per cent) received such assistance than men (18 per cent). A person's age appears to be one of the eligibility criteria for return assistance: almost 20 per cent of returnees over the age of 50 received assistance, compared with 9 per cent of those under 10.

57. As part of collaboration with civil society, the French Association of Guinean Youth and the Ministry of Employment, Technical Education and Vocational Training, acting through the Guinean Agency for Employment Promotion, held an employment forum in Paris in November 2012. The purpose was to recruit particularly able Guineans living abroad in order to facilitate their return to Guinea. There were over 800 candidates of diverse backgrounds, more than 1,000 participants and 40 Guinea-based businesses, and over 200 interviews took place.

#### **Replies to the questions raised in paragraph 8 of the list of issues**

58. Private employment agencies are not involved in the recruitment of Guinean workers living abroad; however, their operations are regulated under the Labour Code.

59. Under article 110, paragraph 1, of the Code, "employers are free to recruit, without intermediaries, the job seekers of their choice. They may also use both public and private employment agencies."

60. In order to protect workers against the abusive practices of some employment agencies, article 110, paragraph 5, of the Code states: "It is prohibited for private employment agencies to charge job seekers a fee for their recruitment or employment services."

#### **Replies to the questions raised in paragraph 9 of the list of issues**

61. It should be noted that Guinea has already ratified 58 ILO conventions. The Government intends to initiate the ratification process in respect of the ILO Domestic Workers Convention, 2011 (No. 189).

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

### **1. General principles**

#### **Replies to the questions raised in paragraph 10 of the list of issues**

62. Migrant workers and members of their families affected by abuses of power or violations of their rights enjoy access to all the remedies available to all Guinean nationals.

63. Thus, at the judicial level, migrant workers and members of their families can apply to:

- Director General of National Security to set aside decisions denying entry to the country, ordering expulsion or escort to the border or denying or withdrawing a residence permit. Orders relating to such actions can be revoked under articles 41 and 54 of Decree No. D/94/059 implementing Act No. L/94/019/CTRN of 13 June 1994 setting the conditions of entry and residence of foreign nationals in the Republic of Guinea;

- Specialized courts. Where appeals to the same administrative authority to reconsider its decision and to a higher administrative authority are unsuccessful, all cases, including those relating to the residence of migrant workers and members of their families, can be brought before the administrative courts. Although these courts come under the category of courts of general jurisdiction, they are competent to rule on applications to set aside administrative decisions involving abuse of authority and on applications for damages arising out of the actions or activities of public officials, including those affecting migrant workers;
- Courts of general jurisdiction. Litigants dissatisfied with a ruling by a magistrate in one of the country's 33 prefectures or by one of the courts of first instance (located in the main towns of the eight administrative regions) can apply to one of the courts of appeal in Conakry or Kankan, depending on their place of residence. Magistrate's courts and courts of first instance hear cases at first instance and have general competence in all civil, commercial, economic, minor criminal, administrative and social cases, but also all cases relating to personal, family and inheritance matters. Criminal cases are heard by the courts of assize, special bodies with the same status as the courts of appeal in Conakry and Kankan. Cassation appeals relating to the rulings of these courts of appeal are heard by the Supreme Court in Conakry, which rules on points of law.

64. Article 96 of the Constitution of May 2010 provides that all plaintiffs can raise the objection of unconstitutionality of a law before any court. In such cases, the court defers judgement and refers the case to the Constitutional Court, which issues a ruling within 15 days of the referral.

65. The Constitutional Court hears cases of violations of fundamental rights and public freedoms committed by the State, its representatives or citizens. Cases may thus be brought before it by the Independent National Human Rights Institution.

66. The draft revised Code of Criminal Procedure also addresses the important issue of the constitutionality of laws and refers to the provisions of the Constitutional Court Act on referral procedure. It should be noted that the Court was set up during the first quarter of 2015 and is not yet operational.

67. In Guinea, migrant workers and members of their families enjoy the same right of appeal as Guinean nationals, namely equal access to justice and the procedural guarantees of a just and fair trial enshrined in title II of the Constitution of May 2010 and clearly reaffirmed in the provisions of the draft revised Criminal Code, including such rights as the presumption of innocence, access to counsel from the moment of arrest, the right to inform one's consulate or a person of one's choice, the right to an interpreter and the right to have one's case heard within a reasonable period by a competent and impartial court.

68. Migrant workers and members of their families also have access to other remedies available to all Guinean nationals.

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

### **Article 7**

#### **Replies to the questions raised in paragraph 11 of the list of issues**

69. Non-discrimination relating to respect for and enjoyment of all the rights enshrined in the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families is guaranteed in Guinea by several legal texts.

70. Non-discrimination forms the basis of all the provisions of the Constitution of May 2010. Article 8 states: “All human beings are equal before the law; men and women have the same rights; no one shall be favoured or disfavoured because of his or her sex, birth, race, ethnicity, language, beliefs or political, philosophical or religious opinions”. Under the provisions of article 20 of the Constitution, all persons have the right to work, without discrimination. The State undertakes to create the conditions necessary for the exercise of that right and to ensure that no one living in its national territory is discriminated against in the workplace on account of his or her sex, race, ethnic origin or opinions or on any other basis.

71. The principle of non-discrimination in the field of employment and work in the Guinea is also enshrined in article 4 of the new Act No. L/2014/072/CNT of 10 January 2014 on the Labour Code. Under the Act, employers and their representatives are prohibited from taking into consideration sex, age, national extraction, race, religion, colour, political or religious views, social origin, membership or non-membership of a trade union, trade union activity or disability when making decisions relating to recruitment, the conduct or distribution of work, staff development, advancement, promotion, remuneration, allocation of social benefits, disciplinary measures or termination of employment contracts. However, the benefits and privileges granted to women, children and persons with disabilities in order to facilitate their enjoyment, on an equal basis, of all the rights accorded to citizens by the Constitution and the international legal human rights instruments to which Guinea is a party cannot be considered to constitute discrimination. Equally, persons living with HIV/AIDS may not be discriminated against owing to their status, even where state of health is a determining factor in recruitment.

72. Under Act No. L/94/019/CTRN of 13 June 1994 on the conditions of entry and residence of foreign nationals in the Republic of Guinea, all foreign nationals, without discrimination, who fulfil the requirements of the Department of Security, have the right to enter, settle in and move freely throughout the national territory. Articles 56 to 58 of the Act set out the administrative regulations governing the entry, residence and employment of foreign nationals in Guinea, in line with the labour legislation in force. Articles 73 to 76 of the Act provide for severe penalties for any foreign national in breach of the relevant provisions, without discrimination.

73. Under articles 295 to 300 of the draft revised Criminal Code, any form of discrimination in various spheres of life, committed by natural or legal persons, is forbidden. Discrimination is punishable by between 1 and 3 years’ imprisonment and a fine of 500,000 to 10 million Guinean francs. However, article 298 of the draft revised Criminal Code provides that this sanction will not be applied in cases where candidates for vacancies have been rejected on the basis of their nationality in line with the statutory provisions on the civil service.

74. Under article 2 of the Guinean Children’s Code, all persons under the age of 18 years enjoy all the rights accorded therein to children, regardless of their or their parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, financial status, state of health, birth or other status.

75. This principle of non-discrimination also applies to all issues affecting children’s lives. For example, under the provisions of article 411 of the Children’s Code, employers are prohibited from using children to carry out work disproportionate to their capacities or likely to have a negative impact on their education, health or physical and moral development.

76. Lastly, the principle of equality and non-discrimination is enshrined in article 46 et seq. of the Guinean Civil Code through the grant of nationality on the grounds of birth in Guinea, filiation, marriage, residence in Guinea or declaration of nationality or through a decision issued by the public authorities.

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

#### **Articles 8-15**

##### **Replies to the questions raised in paragraphs 12 and 13 of the list of issues**

77. In its first years of independence, the Republic of Guinea ratified a number of international instruments, including:

- Convention on the Rights of the Child (1989), ratified on 10 April 1990;
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ratified on 10 December 2001;
- ILO Minimum Age Convention, 1973 (No. 138), ratified on 10 December 2001;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), ratified on 10 December 2001;
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000), ratified on 10 December 2001;
- Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.

78. Guinea also acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2004.

79. The provisions of all the aforementioned treaties relating to children's rights have been incorporated into the Children's Code, which was promulgated on 19 August 2008. Chapter V of the Code is entirely devoted to child labour. Articles 411 et seq. of the Code prohibit the use of children in the worst forms of labour and in a number of hazardous jobs. It also regulates children's access to employment, depending on their age, and protects them against exploitation and abuse. All these guarantees also apply to children who are members of the families of migrant workers. The Code prescribes harsh penalties to any employer, or an accomplice, who violates its provisions.

##### **Replies to the questions raised in paragraph 14 of the list of issues**

80. Article 6 of the Constitution provides that no person may be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

81. Guinea ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1989.

82. Guinea ratified the Convention on the Rights of the Child on 10 April 1990. Article 37 of the Convention explicitly prohibits the use of torture and the imposition of capital punishment or life imprisonment without possibility of release on persons below 18 years of age.

83. Guinea submitted its initial report on the implementation of the Convention against Torture in May 2014 after a period of 25 years. The report was considered by

the Committee against Torture in Geneva the very same day, at its fifty-second session. Civil society, including the Organisation guinéenne des Droits de l'Homme (Guinean Human Rights Association), Lawyers Without Borders-Guinea and les Mêmes droits pour tous (The Same Rights for All), produced and submitted a shadow report during the session, with the support of Action by Christians for the Abolition of Torture-France and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

84. At the end of the meeting, the Committee commended the Guinean delegation on the quality of the report, the openness with which it participated in the constructive dialogue and its willingness to fight effectively against the practice of torture in its territory. The Government is currently publicizing and giving effect to the recommendations arising from the consideration of the report, in cooperation with various national stakeholders and technical and financial partners.

85. Since 2010, the Government has been celebrating the International Day in Support of Victims of Torture on 26 June with the technical and financial support of the OHCHR country office in Guinea and the International Organisation of La Francophonie.

86. Since 2010, the NGOs les Mêmes droits pour tous, l'Association des parents et amis des victimes du 28 Septembre 2009 (Association of Relatives and Friends of the Victims of 28 September 2009) and le Centre mère et enfants (Centre for Mothers and Children) have been receiving support from the United Nations Voluntary Fund for Victims of Torture with a view to carrying out relevant activities in Guinea. As part of the implementation of the first phase of the Priority Plan for Peacebuilding in Guinea, a project to assist victims of torture and gender-based violence was launched in support of the 50 victims of the events of 28 September 2009 and other events following the elections in 2010 and 2013. Since 2014, a committee responsible for monitoring human rights violations, including cases of torture, composed of members of the defence and security forces, key government departments, NGOs working in the field of human rights and OHCHR, has been exchanging information, investigating every month the cases identified in the field and engaging in joint advocacy before the competent judicial and administrative authorities with a view to finding an appropriate remedy for such violations.

87. Torture is not covered by the Guinean Criminal Code. This poses practical problems in naming and prosecuting the perpetrators of such acts. During the 2012 session of Conakry Court of Assize, Judge Boiro invoked the Convention when trying a gendarme and sentencing him to 15 years in prison for acts of torture against a young student aged 21, while he was in police custody, who was suspected of having stolen a motorcycle in Kindia.

88. Torture and other cruel, inhuman or degrading treatment or punishment have been included as offences in the draft revised Criminal Code, which has been drawn up as part of the ongoing reform of the justice sector in Guinea and which is in the process of being adopted by the National Assembly. It prescribes severe penalties for the perpetrators of such offences and their accomplices, taking the form of a prison term of between 5 and 20 years and additional penalties or heavy fines, depending on the circumstances in which the acts are committed.

89. The adoption of the new text by the National Assembly will thus remove a significant omission in the law.

90. In addition, to ensure that persons in custody are treated humanely and to prevent the use of torture, the Code of Criminal Procedure contains provisions regulating the initial investigation conducted by the criminal investigation police, which relate to the medical examination of persons in custody on the decision of the

prosecutor or at the request of the accused or their counsel (article 64 of the Code) and the supervision of custody by the authorities of the prosecution service and the indictment chamber in question. To that end, article 65 of the Code provides that “if criminal investigation officers commit acts of abuse in connection with the application of custodial measures, the public prosecutor shall inform the Prosecutor General, who shall refer the matter to the indictment chamber. In accordance with its powers under articles 227, 230 and 231 [of the Code of Criminal Procedure], the indictment chamber may either temporarily or permanently remove the perpetrator of the abuse from his or her post or refer the case to the Prosecutor General for the opening of legal proceedings, if it is established that a criminal offence has been committed”.

91. The Code of Criminal Procedure also lays down a rigorous procedure for monitoring the enforcement of warrants for committal and pretrial detention (article 142 et seq. of the Code).

## **Articles 16-22**

### **Replies to the questions raised in paragraphs 15, 16, 17 and 18 of the list of issues**

92. The draft revised Code of Criminal Procedure provides persons involved in judicial proceedings with more effective guarantees.

93. The new Act on maintaining public order in the Republic of Guinea, which was adopted on 2 June 2015 by the National Assembly, also contains provisions on all forms of abuse and violations of the physical and moral integrity of citizens. To that end, article 5 of the Act stipulates that the use of force is to be exercised within the strict framework of the legal and regulatory provisions governing it. Article 24 establishes the criminal and disciplinary liability of the commander of the security forces when he or she refuses to respond to a request for assistance or a lawful requisition or when he or she responds to a request for assistance or a requisition that is unlawful.

94. Lastly, articles 403 and 404 of the Children’s Code provide that any person found guilty of physically or psychologically abusing or voluntarily depriving children of care or food, whether in a family, school, institutional or other setting, incurs a prison sentence of between 1 and 2 years and a fine of between 100,000 and 250,000 Guinean francs or only one of these penalties. If the acts committed result in loss of blood, injury or illness, the perpetrator incurs a prison sentence of between 1 and 3 years and a fine of between 100,000 and 500,000 Guinean francs. If the child dies, the guilty party incurs a life sentence.

95. In addition, to ensure that persons in custody are treated humanely and to prevent the use of torture, the Code of Criminal Procedure contains provisions regulating the initial investigation conducted by the criminal investigation police, which relate to the medical examination of persons in custody on the decision of the prosecutor or at the request of the accused or their counsel (article 64 of the Code), and the supervision of custody by the authorities of the prosecution service and the indictment chamber in question. To that end, article 65 of the Code of Criminal Procedure provides that “if criminal investigation officers commit acts of abuse in connection with the application of custodial measures, the public prosecutor shall inform the Prosecutor General, who shall refer the matter to the indictment chamber. In accordance with its powers under articles 227, 230 and 231 [of the Code of Criminal Procedure], the indictment chamber may either temporarily or permanently remove the perpetrator of the abuse from his or her post or refer the case to the Prosecutor General for the opening of legal proceedings if it is established that a criminal offence has been committed”.



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99. It has to be said that detention conditions in Guinea are poor, owing to dilapidated facilities and prison overcrowding. Foreign nationals who have come into conflict with the law are afforded the same treatment as Guinean nationals.

#### **Replies to the questions raised in paragraph 19 of the list of issues**

100. The Guinean authorities may expel a foreign national only in accordance with article 64 of Act No. L/94/019/CTRN when there are exceptional circumstances or when the foreign national is declared "undesirable".

101. In accordance with article 64 of the Act, the public authorities may take the following action in relation to the foreign national:

- Refoulement;
- Expulsion;
- House arrest;
- Escort to the border.

102. The decision to expel a foreign national is taken by order of the Director General of National Security. Article 67 of the Act sets out the circumstances in which such a measure may be taken:

- If the administrative authorities consider that the presence of a foreign national in the Republic of Guinea constitutes a threat to public order;
- If a foreign national has received a final sentence that includes a prison term for an offence or misdemeanour. The expulsion measure becomes enforceable only after the prison term has been served in full. The deadline set by the expulsion order begins on the prisoner's release date;
- If the authorities refuse to issue or decide to withdraw a residence permit and a foreign national has not left the national territory within the prescribed time, unless the person concerned can demonstrate that his or her delayed departure is due to a case of force majeure.

103. The Guinean authorities may order foreign nationals to be escorted to the border, by a reasoned decision, where:

- They cannot prove that they have entered the country lawfully;
- They have stayed in Guinea beyond the prescribed time without a valid residence permit;

- They have stayed in the country after the extension of their temporary visa has been refused.

104. Article 69 sets out the categories of persons who cannot be subject to an expulsion decision.

105. The article provides that “a foreign national is sometimes unable, for a valid reason, in particular if he or she is a political refugee, to return to another country. In this case, the Director General of National Security may issue an order to have the foreign national placed under house arrest if he or she has a fixed abode and require him or her to report to the police at regular intervals.”

106. Article 70 provides that the public or judicial authorities may prohibit a foreign national from leaving the country “either because he or she has not complied with the legislation governing the residence of foreign nationals or because he or she is the subject of criminal proceedings”.

107. Thus “the Prosecutor General or the public prosecutor has the power to prevent a person strongly suspected of having committed a crime from eluding justice by leaving the country. In all other cases, the Director General of National Security alone has the authority to prohibit a foreign national from leaving the country for any reason that he or she thinks is justified.”

108. Lastly, the law prescribes penalties for foreign nationals staying unlawfully in the territory of Guinea. These penalties range from a prison term of between 1 month and 5 years and a fine of between 200,000 and 5 million Guinean francs, depending on the circumstances of the offence.

#### **Reply to the questions raised in paragraph 20 of the list of issues**

109. There are no statistical data available.

#### **Replies to the questions raised in paragraph 21 of the list of issues**

110. Article 18 of the Constitution states: “Marriage and the family, which constitute the natural foundation of life in society, are protected and promoted by the State. Parents have the right and the duty to ensure the education and physical and mental health of their children. Children owe the duty of care and assistance to their parents.”

111. Act No. L/94/019/CTRN on the conditions of entry and residence of foreign nationals in the Republic of Guinea contains provisions on family reunification for foreign nationals residing lawfully in the country.

112. Article 27 of the Act states:

- “Nevertheless, children under the age of 15 accompanying their parents, are exempt from the requirement to hold a residence permit;
- Family members of experts residing in the Republic of Guinea who are over 15 years old must each hold a residence permit whose validity date may not under any circumstances exceed the duration of the employment contract of their parents.”

### **Article 23**

#### **Reply to the questions raised in paragraph 22 of the list of issues**

113. In an effort to strengthen the links between the Guinean authorities and the diaspora, the Government has set up a number of consulates to provide local services to its nationals. Guinean consulates can be found across the globe in:

- Munich;
- Buenos Aires;
- Vienna;
- Liège;
- Brazil;
- Yaoundé;
- Calgary, Montreal, Toronto, Vancouver;
- Limassol;
- Brazzaville;
- Alexandria;
- Barcelona;
- Las Palmas;
- Valencia;
- Los Angeles, Philadelphia;
- Bordeaux, Lyons, Marseilles;
- Banjul;
- Genoa, Naples;
- Luxembourg;
- Monaco;
- Cetinje;
- Manila;
- Lisbon;
- Porto;
- Bucharest;
- Geneva;
- Bangkok.

## **Articles 25-30**

### **Replies to the questions raised in paragraphs 24, 25 and 26 of the list of issues**

114. The principle of equal treatment with regard to remuneration is guaranteed by article 20 of the Constitution of May 2010. The State's main obligations in this area include creating the conditions necessary for the exercise of this right and ensuring that no one is discriminated against in the workplace on accounts of his or her sex, race, ethnic origin, opinions or on any other basis.

115. The conditions for the practical application of this principle are regulated by article 241, paragraph 2, et seq. These require all employers to:

- Remunerate all employees equally for the same work or work of equal value, irrespective of their origin, sex or age, and in accordance with the conditions provided for in this title;

- Ensure that the various components of remuneration are based on the same standards for men and women;
- Ensure that the categories, classification criteria and professional promotion, and all the other bases used to calculate remuneration, including the criteria for evaluating posts, are the same for employees of both sexes;
- Ensure that all employees are entitled to a guaranteed cross-sectoral minimum wage.

116. Like their Guinean counterparts, foreign traders residing in Guinea are required to pay duty and income tax.

#### *Right to social security*

117. Article 31 of the Constitution provides that “the State, public institutions and the local authorities shall take steps to mobilize all available means to facilitate equal access by citizens to conditions enabling them to enjoy the right ... to social security, medical coverage and support under mutual benefit schemes or schemes organized by the State”.

#### *Provisions relating to health*

118. The right to health was enshrined in the Constitution adopted in May 2010. Article 15 of the Constitution provides that all persons have the right to health and physical well-being and requires the State to promote these and to combat epidemics and social problems.

119. The Government has thus made considerable efforts to realize the right to health by such means as the construction of health-care facilities close to the majority of communities; the provision of training and the deployment of qualified health-care personnel; and the stocking of health-care facilities with essential medicines. These measures are intended to benefit all persons living in Guinea, including foreign nationals.

120. The Ebola epidemic that ravaged Guinea at the beginning of 2014, causing more than 2,000 deaths, has weakened the country’s health system. There is an urgent need to begin reforming the health sector in cooperation with technical and financial partners and in partnership with the authorities of Sierra Leone and Liberia.

#### **Replies to the questions raised in paragraph 28 of the list of issues**

121. Following the consideration of the initial report of Guinea on the implementation of the Convention on the Rights of the Child in 1999, the Committee on the Rights of the Child, in paragraph 19 of its concluding observations, recommended that the State party should take all available measures to ensure the immediate registration of the birth of all children and that birth registration procedures were made widely known and understood by the population at large, in accordance with articles 7 and 8 of the Convention.

122. Since independence, Guinea has adopted legislative and other measures, to make birth registration compulsory throughout the country. The main laws governing registration in Guinea and making birth registration compulsory are the following:

- Basic Law (which has since become the Constitution);
- Act No. 53/AN/62 of 4 April 1962 on the establishment and operation of the registry of the Republic of Guinea;
- Decree No. 142/PRG/SGG of 14 April 1965 establishing the status of registrar;

- Ordinance No. 19/PRG/SGG of 21 April on the establishment, organization and operation of rural development communities;
- Revised Civil Code, title VII of which deals with registration.

123. On the basis of these texts, programmes and projects have been initiated and conducted to support this policy. Advocacy efforts and social mobilization have led to the establishment the creation of a national registry within the Ministry of Decentralization and Local Development, which, along with a number of local offices, is responsible for ensuring that births are registered correctly in the different prefectures and sub-prefectures of the country.

124. It is important to highlight the substantial contributions made by the United Nations Children's Fund (UNICEF), UNHCR, Plan International Guinea and ChildFund International to strengthening the birth registration system in Guinea. Birth registers have been put in place and local officials have received training. However, the results are not very encouraging, as the birth registration rate stands at only 28 per cent. It should be noted that a number of registration centres and registry archives were ransacked and burned during the events of January and February 2007. However, thanks to the material support provided to the centres and victims by UNICEF, registration services are currently operating normally throughout the country.

125. It is clear from an assessment of the efforts undertaken by the State and its partners in respect of paragraph 19 of the concluding observations of the Committee on the Rights of the Child in 1999 that significant support has been provided to facilitate the proper functioning of registration services. This has taken the form of providing equipment, building the capacity of officials and raising public awareness, especially in rural areas.

126. Thus, in order to promote birth registration in Guinea, UNICEF set up a project to arrange for free birth registration over a period of six months in 2006 with a view to raising the registration rate. Moreover, in 2007, it also provided support for training registrars in how to keep civil records, encouraged rural and community radio stations to broadcast a number of programmes on birth registration and provided registrars with birth registers and civil records for villages.

127. Furthermore, in 2005, the Government drafted and approved a policy on the comprehensive development of young children aimed at ensuring that, by 2015, all children up to the age of 8 were registered at birth, were protected from violence, exploitation and discrimination, were in good health, and exhibited well-balanced physical, cognitive, social, emotional and psychological development.

128. Act No. L/2008/011/AN relating to the Children's Code was promulgated on 19 August 2008. Article 1 of the Code defines a child as any human being below the age of 18. The Code requires parents to register their child immediately after birth. The child has the right to life, a name, a nationality, education and health.

129. Article 157 et seq. of the Children's Code set out the modalities for registering children at birth, such as the deadline for parents to complete the procedure, the courts competent in such matters and the specific role played by registrars, by members of crews of ships or aircraft and by diplomatic and consular officers.

130. As of 19 August 2008, when the Code entered into force:

- Declarations of birth must be made to the registrar in the child's place of birth within six months;
- In the case of births that take place in another municipality or abroad, this deadline is extended to eight months;

- When a birth has not been declared within the statutory time limit, the registrar may enter it in the register only once a ruling has been made by the competent court in the prefecture of the child's place of birth, with a brief entry in the margin of the date of birth;
- If a child's place of birth is unknown or the birth cannot be declared, the competent court is deemed to be that closest to the petitioner's home;
- The birth of a child must be declared by the father and/or the mother or, failing that, by the doctors, midwives or other persons in attendance at the birth and, if the mother gives birth in a location that is not her normal place of residence, by the person in whose place of residence she gives birth. The birth certificate must be issued immediately;
- If a birth takes place during a sea voyage, a birth certificate must be drawn up within a week, upon a declaration by the father, if he is on board, or by the mother or by two witnesses from among the officers of the vessel or, in their absence, from among members of the crew;
- If a birth takes place while the vessel is in port, a birth certificate must be drawn up in the same way, when it is impossible to communicate with the authorities on land or when there is no Guinean diplomatic or consular officer with the status of registrar in the port in question if the vessel is abroad;
- If the birth takes place on an aircraft, the same procedure must be observed by the captain;
- At the next port at which the vessel makes land for any other reason, the commanding officer is required to deposit two copies of each birth certificate drawn up on board with the maritime authority in a Guinean port or with the Guinean Consul in a foreign port;
- If there is no maritime authority or Guinean Consul at the port in question, such deposition is made at the next port of call;
- One copy must be dispatched to the Ministry of Transport, which shall transmit it to the registrar in the last known place of residence of the father of the child, or in the residence of the mother if the last known place of residence of the father cannot be determined or if it is located outside Guinea. The birth is then registered in Conakry. The other copy remains in the archives of the consulate or the offices of the maritime authority.

131. The children of migrant workers also enjoy the legislative safeguards provided for in the Children's Code.

## **Articles 31-33**

### **Replies to the questions raised in paragraph 29 of the list of issues**

#### *Exemption from import and export duties and taxes on certain personal effects*

132. Under the provisions of article 188 of the Customs Code, "travellers coming to stay temporarily in the customs territory may import under a temporary duty-free arrangement items intended solely for their personal use, except those whose importation is prohibited".

133. Exemption from duties and taxes also applies to exportation. Thus, "travellers who are staying temporarily in the customs territory may export under a temporary duty-free arrangement items intended solely for their personal use that they are carrying with them".

*Right to transfer earnings and savings from the State of employment to the State of origin or any other State*

134. Under prevailing exchange control regulations, resident and non-resident foreigners benefit from a liberal regime that guarantees them full freedom to conduct foreign currency transactions.

135. Instruction No. 32/DGEEM/RCH of the Central Bank of the Republic of Guinea regulates the activity of institutions executing money transfers in Guinea.

136. Pursuant to article 13 of that document, money transfer services are intended exclusively for the dispatch and receipt of financial resources between residents and non-residents in accordance with payment orders issued by the senders.

137. Article 19 states that “money transfer institutions may receive or send amounts denominated in any currency traded on the foreign exchange market in the Republic of Guinea ...”.

**Replies to the questions raised in paragraphs 30 and 31 of the list of issues**

138. The right to information is assured through the services of the Ministry of Foreign Affairs, including Guinean diplomatic and consular missions abroad, of the National Directorate of Air and Border Police, which is part of the Ministry of the Interior, and of government entities dealing with employment, including the Labour Inspectorate and the Guinean Agency for Employment Promotion.

139. Under article 513, paragraph 6, of the Labour Code, labour inspectors are required to disseminate information to employers and workers. They also carry out studies and surveys on social and economic issues at the request of the minister overseeing labour issues. Accidents at work and cases of occupational disease must be reported to the Labour Inspectorate in the cases and in the manner prescribed by law. A labour inspector investigates the causes and circumstances and who is responsible.

140. The Labour Inspectorate provides advisory and reconciliation services and oversees the implementation of legislation, regulations and collective agreements relating to remuneration, working conditions, hygiene, health, safety, collective bargaining and the right to organize.

141. Admittedly the Government has not developed a real training programme. However, forums are organized from time to time, as in May 2015, when IOM, in collaboration with the Ministry responsible for Guineans abroad, organized a panel discussion at Kofi Annan University in Conakry on the topic of illegal immigration and its consequences. This event was chaired by the Minister of International Cooperation and African Regional Integration, along with other government officials, parliamentarians, the IOM representative in Guinea and foreign ambassadors.

**Replies to the questions raised in paragraph 32 of the list of issues**

142. Guinea is located in West Africa and has a surface area of 247,857 km<sup>2</sup>. It is bordered by Mali and Senegal to the north, Sierra Leone and Liberia to the south, Mali and Côte d’Ivoire to the east and the Atlantic Ocean and Guinea-Bissau to the west. It comprises 7 administrative regions, 33 prefectures, 38 urban municipalities, 304 rural development communities and the capital city, Conakry, which has a special status.

143. At the time of the 2007 census, Guinea had a population of 9,136,176, of whom 51 per cent were women. This population is distributed throughout the national territory, with an average density of 31 inhabitants per km<sup>2</sup>, and an annual growth rate of 3.1 per cent. Guinea has some 30 ethnic groups, each with its own practices and customs.

144. Three main religions — Islam, Christianity and animism — coexist harmoniously. French is the official language. The economy of Guinea is based essentially on agriculture, animal husbandry and mining. The estimated gross domestic product (GDP) per capita in 2006 was US\$ 321.70. The average annual GDP growth rate per capita increased from 1.1 per cent in 2006 to 1.4 per cent in 2007. In 2007, 53.6 per cent of the population was living below the poverty line, compared with 49.2 per cent in 2002 (estimates by the World Bank and the National Statistics Office).

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

##### **Article 40**

###### **Replies to the questions raised in paragraph 33 of the list of issues**

145. Article 10 of the Constitution guarantees the freedom of assembly and the freedom to hold peaceful demonstrations, the freedom of association and the freedom to join a trade union or a political party. The conditions for exercising these freedoms are set out in the corresponding legislation.

146. Article 20 of the Constitution states that “everyone has the right to join the trade union of his or her choosing and to defend his or her rights through union action. Every worker has the right to participate, through representatives, in determining working conditions. The right to strike is recognized. It is subject to relevant legislation. It may not under any conditions undermine the right to work ...”.

147. In addition, article 321, paragraphs 1 and 2, of the new Labour Code of 10 January 2014 requires the State and employers to promote the freedom of association among workers at all levels in the private, formal, informal and public sectors by, for example, recognizing a workers’ right to choose whether or not to join a trade union or participate actively in union activities. Therefore, workers can freely, without prior authorization, form a union in the geographical area of their choosing to defend and safeguard their individual and collective rights as workers. They can join a trade union in an enterprise, a community, a prefecture or a region, even if one or several trade unions already represent workers plying the same trade or working in the same industry.

148. The new Labour Code of January 2014 protects the rights guaranteed by the international labour conventions ratified by Guinea and the rights enshrined in the main ILO conventions, which include:

- Freedom of association and protection of the right to organize;
- Prohibition of all forms of forced labour;
- Effective elimination of child labour;
- Prohibition of discrimination in employment and occupation.

##### **Article 42**

###### **Replies to the questions raised in paragraph 34 of the list of issues**

149. Aware of the role played by its diaspora in the country’s socioeconomic development, Guinea has established the Ministry responsible for Guineans abroad, whose mandate includes:



- Ensuring the protection of Guinean nationals living abroad temporarily or permanently and of their interests;
- Promoting the return of Guineans from abroad and their integration;
- Promoting the employment of Guinean professionals by international organizations;
- Developing and disseminating the implementing legislation of treaties, agreements, conventions and protocols related to the immigration and reintegration of Guineans from abroad;
- Working to mobilize resources in host countries to finance programmes and projects promoting the reintegration in Guinea of Guineans abroad and investment by them in the country;
- Promoting the establishment of associations of Guineans living abroad;
- Ensuring, in cooperation with the competent services, the establishment of an administrative and legal framework to facilitate and ensure the mobilization, repatriation and transfer of savings accumulated by Guineans living abroad;
- Participating in the negotiation and implementation of measures to provide legal and administrative assistance with family law and with remittances from Guineans living abroad.

150. The Ministry of Employment, Technical Education and Vocational Training is responsible for implementing national policies relating to employment, the labour force, social security and trade union rights. Specifically, it is responsible for:

- Drafting laws and regulations in the areas of work, the labour force, social security and trade union rights;
- Monitoring the implementation of laws and regulations concerning private- and public-sector employers and those straddling the two sectors; workers; and institutions and bodies dealing with social security;
- Providing advice and recommendations to employers;
- Documenting, providing advisory services for, coordinating and overseeing the work of the various entities involved in implementing social legislation;
- In the context of these various responsibilities, carrying out all studies and investigations relating to various social issues — work, health, the labour force, social security — and their economic context.

151. State employment services are provided by the Guinean Agency for Employment Promotion. Under article 110, paragraph 3, of the Labour Code, “all employers are required to register their staff with the State employment services no later than 15 working days after their recruitment”. The Agency’s main function is to implement the Government’s social policy on employment. In that connection, its specific tasks are to:

- Monitor and energize the labour market;
- Scrutinize employment plans and monitor commitments made by businesses registered under the Investment Code;
- Conduct surveys and studies on employment, the labour force, trades and professions, and unemployment;
- Ensure that the labour force is used rationally;
- Receive information from employers about job vacancies;

- Track the job market in order to place job seekers;
- Promote, through bilateral cooperation or under agreements between Guinea and other States, the recruitment of Guinean workers to other countries;
- Prepare and issue the documentation required for the hiring of foreign workers.

## **Article 43**

### **Replies to the questions raised in paragraph 35 of the list of issues**

152. Under article 7 of the Constitution, everyone is free to learn and to acquire information from sources accessible to all. In practice, members of the families of migrant workers in a regular situation who have all the required documentation have no difficulty gaining access to public or private educational institutions, regardless of their immigration status. Guineans are subject to the same requirements in order to obtain access to education. Furthermore, there is no discrimination against foreigners wishing to enrol in private educational institutions, if they are able to pay the tuition fees.

153. The Government takes these measures in accordance with the prevailing legislation and the international commitments undertaken by Guinea in ratifying the Convention on the Rights of the Child (arts. 28 and 29), the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other instruments. Since Guinea became independent, on 2 August 1958, educational programmes have been established to preserve cultural identity and the country's history.

154. During the regime of Sékou Touré (1958-1984), teaching took place in the national languages (Susu, Pulaar, Malinke, Guerze, etc.). The Guinean history curriculum taught in schools and universities was systematically modelled on the ideology of the ruling party (Democratic Party of Guinea-African Democratic Rally) and was designed to preserve communities' cultural identity and promote national unity. Theatre, dance and music were practised in all the prefectures of the country, both as part of school and university curricula and in everyday life.

155. The liberal regimes that followed were unable to sustain this level of intense cultural development. However, currently there are the Ministry of Culture, the Ministry responsible for Guineans abroad and the Ministry responsible for pre-university education and literacy. Associations and other private cultural initiatives promote cultural identity through such activities as dance schools and theatre performances.

156. Except for measures to maintain public order, there is no legislative, administrative or other limitation on the right of migrant workers and members of their families to obtain education and engage in artistic and cultural activities (including language use and the practice of their religions) that strengthen their cultural identity throughout their stay in Guinea.

## **Article 44**

### **Replies to the questions raised in paragraph 36 of the list of issues**

#### *Protection of the unity of the families of migrant workers and family reunification*

157. Article 18 of the Constitution states: "Marriage and the family, which constitute the natural foundation of community life, are protected and promoted by the State.

Parents have the right and the duty to ensure the education and physical and mental health of their children. Children owe the duty of care and assistance to their parents.”

158. Act No. L/94/019/CTRN on the conditions of entry and residence of foreign nationals in the Republic of Guinea provides for family reunification for foreigners residing lawfully in Guinea.

159. Article 27 of the Act states:

- “Nevertheless, children under the age of 15 accompanying their parents are exempt from the requirement to hold a residence permit ...;
- Family members of experts residing in Guinea who are over 15 years old must each hold a residence permit whose validity dates may not under any circumstances exceed the duration of the employment contract of their parents.”

160. The following foreign nationals have the special status of foreigners resident in Guinea for family reasons:

- Foreign women married to Guinean men and foreign women who have been divorced from or widowed after marriage to Guinean men, and who wish to remain with their children residing in Guinea, while retaining their original nationality;
- Foreign men married to Guinean women;
- Foreign nationals having a Guinean parent.

#### *Consequences of death or dissolution of marriage*

161. Under article 42 of the Act, a residence permit is rescinded if its holder dies. The decree implementing the Act states that a foreigner’s residence permit and government-issued identity card are specific to the person concerned. Such permits can also be issued to foreign children under the age of 15.

162. Under article 67 of the Act, the death of a foreign national does not constitute grounds for expelling that person’s family members.

163. Article 340 of the Civil Code states that a marriage is dissolved as a result of death or divorce.

## **Articles 46 to 48**

### **Replies to the questions raised in paragraph 37 of the list of issues**

164. Private-sector employers have a legal obligation to register their employees. This obligation applies equally to Guinean and foreign workers. It allows registered workers to enjoy a range of benefits, such as retirement benefits. Some benefits, such as family allowance and medical benefits, are extended to the family members of a worker registered with the National Social Security Fund.

165. However, according to workers interviewed, fewer than half of employees (47.3 per cent) are registered with the Fund. The highest proportions of employees registered with the Fund are in Conakry (48.4 per cent) and among male workers (48 per cent). Registration with the Fund is correlated with an employee’s educational level. Of those who have not attended school, 22.4 per cent are registered, as against 48 per cent of those with a secondary education and 63 per cent of those with higher education.

## Article 52

### Replies to the questions raised in paragraph 38 of the list of issues

166. The Labour Code does not limit access by migrant workers to remunerated activity. Under the provisions of article 131, paragraph 1, “when an employer is considering hiring a foreign worker from outside the Economic Community of West African States (ECOWAS), it must obtain prior authorization from the State employment service under the conditions specified in an order of the Minister of Employment ...”.

167. However, “the duration of an employment contract concluded with a foreign worker may not exceed four years, including any renewal”.

168. If an employment contract is concluded, the employer must request a visa from the competent services under the provisions of article 131, paragraph 1, of the Labour Code. “An employment contract concluded with a foreign worker must be in writing. It is subject to approval by the State employment service. The employer is responsible for making the corresponding visa application. The visa is considered to have been granted where the State employment service does not issue its decision within 30 days of receipt of the application. If approval has not been granted, either explicitly or implicitly, the contract cannot take effect.

169. “Unless otherwise specified, a tourist visa does not grant the right to be employed in the Republic of Guinea.”

## Article 54

### Replies to the questions raised in paragraph 39 of the list of issues

*Protection against dismissal, unemployment benefits and access to alternative employment and equal treatment in the exercise of remunerated activity*

170. The Labour Code guarantees equality of treatment in the exercise of a remunerated activity.

171. It also guarantees equality of treatment with regard to protection against dismissal.

172. Thus article 5 of the Labour Code states: “Discrimination is prohibited in all its forms. No employer or his or her representative or any other person may take into account an employee’s sex, age, national extraction, race, religion, colour, political or religious views, social origin, membership or non-membership of a trade union in connection with recruitment, the conduct and distribution of work, vocational training, advancement, promotion, remuneration, the granting of social benefits, disciplinary actions or termination of the employment contract.”

173. Concerning access to alternative employment, the recruitment of a migrant worker by another employer when the remunerated activity has ended requires renewal of the employment contract in accordance with article 121, paragraph 1 et seq., of the Code on the granting of employment contracts.

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

### **Articles 58 and 59**

#### **Replies to the questions raised in paragraphs 40 and 41 of the list of issues**

174. Guinean legislation does not contain specific provisions concerning these categories of migrant workers or members of their families. However, there is a heavy cross-border migration owing to the cultural similarities among African countries and the opening of borders between them, particularly members of ECOWAS, which are more welcoming of settlement by Guineans. There are relatively few restrictions on migration in West Africa. Under the ECOWAS Treaty, those emigrating to another member State require merely a residence permit in order to enjoy their rights.

175. Other cross-border migration trends are related to mining activities in certain areas. For example, some migrants from Mali, Burkina Faso and Sierra Leone come to Upper Guinea looking for gold and diamonds.

### **Article 61**

#### **Reply to the questions raised in paragraph 42 of the list of issues**

176. See the reply to the questions raised in paragraph 1.

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

### **Articles 64-68**

#### **Replies to the questions raised in paragraph 43 of the list of issues**

177. The Swiss State Secretariat for Migration funds a voluntary return and reintegration programme, which accounts for 30 per cent of programming in this area, to promote the voluntary and permanent return of Guineans from abroad. With a view to preventing illegal migration by Guineans, Switzerland has funded projects to, for example:

- Develop microenterprises to provide employment for 200 young job seekers in Kindia and Labé in 2007 and 2008;
- Help women's groups and youth associations establish microenterprises in 2012 and 2013 in seven towns (Koundara, Kindia, Coyah, Forécariah, Dubréka and Fria) in 2014 and 2015;
- Strengthen the migration-management capacity of the security services.

178. The Guinean authorities have developed various measures to prevent the movement and illegal or clandestine employment of migrant workers in an irregular situation, including:

- The development of a national migration policy;
- The establishment of information, referral and monitoring offices at borders;
- The holding of debates on illegal immigration;
- Energetic efforts to combat human trafficking.

179. These measures led to the interception on 14 March 2014 of a truck carrying 22 teenagers aged approximately 16 to 18. These children, accompanied by guides, were

headed to Saraya prefecture in Senegal to work in gold mines. This operation was made possible by close collaboration between the Senegalese and Guinean authorities.

**Replies to the questions raised in paragraphs 44, 45, 46 and 47 of the list of issues**

180. In 2005, the Government of Guinea also developed and approved a policy on the comprehensive development of young children, with the aim that, by 2015, all children up to the age of 8 were registered at birth, were protected from violence, exploitation and discrimination, were in good health and exhibited well-balanced physical, cognitive, social, emotional and psychological development. It must be acknowledged that the Government has not made sufficient efforts to find a long-term solution to the situation of migrant workers in an irregular situation in its territory.

181. However, it should be noted that, on 1 June 2015, the Guinean police arrested 35 Indian nationals. These Indians, some of whom were women, were accused of “selling products past their expiry date, copper bracelets, expired and adulterated ampicillin powder, rings and bracelets, talismans and motor oil”. The investigations were conducted by the air and border police under the direction of the central police stations in Conakry.

182. Most of those arrested turned out to have 90-day visas, legally obtained from the Guinean Embassy in India or the Guinean consulates in Benin, Mali or Côte d’Ivoire, but the visas had expired.

**Article 69**

**Replies to the questions raised in paragraphs 48 and 49 of the list of issues**

183. The Government intends, after validating the results of the general census, to begin regularizing the status of all immigrants in an irregular situation, taking into account the provisions of the Act on the entry and residence of foreign nationals in the Republic of Guinea.

**Replies to the questions raised in paragraph 50 of the list of issues**

184. In July 2014 Guinea began taking steps to strengthen cooperation in combating illegal immigration.

185. This cooperation will focus on the conditions governing Guineans’ stay in Belgium and on the support provided for voluntary return.

186. Ms. Maggie De Block, the Belgian Secretary of State for Asylum and Immigration, paid a working visit to Guinea for that purpose on 4 July 2014.