



**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**

Initial reports of States parties due in 2005

Burkina Faso*

[6 November 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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I. Introduction

1. Burkina Faso is a landlocked Sahelian country located in West Africa. With a total surface area of 274,122 km², it shares borders with Côte d'Ivoire to the south-west, Ghana and Togo to the south, Benin to the south-east, the Niger to the east and north-east, and Mali to the west and north. The climate of Burkina Faso is of the Sudano-Sahelian type, characterized by a long dry season from October to April and a rainy season from May to September. Vegetation is of the Sudano-Sahelian type. The hydrographic system comprises several watercourses, including the Mouhoun, the Nakambé and the Nazinon. Average annual rainfall is 250–500 mm in the far north, 500–1,000 mm in the centre-north and 1,000–1,300 mm in the west and south-west. The country's natural environment is arid. Generally speaking, the topsoil is thin and soil fertility low.
2. At the administrative level, Burkina Faso is subdivided into regional and local authorities (13 regions and 351 communes) and into administrative districts (13 regions, 45 provinces and 351 departments).
3. The 2006 General Population and Housing Census put the country's population at 14,017,262. The National Institute of Statistics and Demography estimated that the population had reached 15,224,780 by December 2009. The population is unevenly distributed over the national territory, with 80 per cent of the people living in rural areas.
4. Burkina Faso has a large diaspora of migrant workers living abroad. It is also the host country for many migrant workers from other countries. The sociopolitical organization of the country offers numerous opportunities for foreign nationals to integrate and the migrant population is likely to increase in the short-to-medium term.
5. Burkina Faso ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention on Migrant Workers) on 26 November 2003 without entering any reservations. In accordance with article 73, Burkina Faso hereby submits its initial report for consideration by the Committee on the legislative, judicial, administrative and other measures undertaken to implement the Convention. The report presents the institutional, administrative, legislative and regulatory level measures adopted to guarantee the rights of migrant workers and members of their families.
6. The report was prepared by the technical services of the Ministry of Human Rights and the Promotion of Civic Responsibility, in partnership with other ministerial departments, taking into account the guidelines regarding the form and content of initial reports. It was validated at a workshop attended by representatives of all public bodies and civil society organizations working on human rights issues in general and the rights of migrant workers in particular. The report was also submitted for consideration by the Interministerial Committee on Human Rights and International Humanitarian Law and adopted by the Council of Ministers.
7. Chapter II of the report contains general information on the implementation of the Convention, namely the nature and characteristics of migration and the objective difficulties in implementing certain provisions of the Convention. Chapter III details the legislative, administrative, judicial and other measures taken by Burkina Faso to give effect to the provisions of the Convention.

II. General information

A. Institutional framework

8. The institutional human rights framework has been described in the common core document for reports submitted to the monitoring bodies of the international human rights instruments. The Burkina Faso Constitution lays the foundation for the promotion and protection of human rights. It establishes Burkina Faso as a democratic, secular and unitary republican State (art. 31) and establishes republican institutions based on the separation of powers, political pluralism, respect for the rule of law and decentralization.

9. The political regime in Burkina Faso is semi-presidential, with the Head of State being elected by universal, equal and direct suffrage in a secret ballot for a term of five years, renewable once only. The Government, as the executive branch, is headed by the Prime Minister. The Prime Minister is responsible for conducting national policy, and the defence and security forces are at his or her disposal to carry out this task. The Prime Minister is appointed and dismissed by the Head of State and is accountable to Parliament, which oversees Government action.

10. Parliament has a single chamber, the National Assembly, and consists of 111 deputies elected by universal, equal and direct suffrage in a secret ballot for a renewable term of five years. The last election was held on 6 May 2007. The National Assembly is responsible for passing laws, approving taxation and overseeing Government action.

11. The judiciary is responsible for ensuring respect for the law. Pursuant to article 125 of the Constitution, it is the custodian of individual and collective liberties. Judicial power is exercised by the courts and tribunals. The three highest courts are the Court of Cassation (the highest court in the ordinary justice system), the Council of State and the Audit Court (the highest administrative courts). The Audit Court mostly oversees the management of the public finances.

12. To these courts may be added:

- The appeal courts;
- The courts of major jurisdiction;
- The commercial courts;
- The courts of minor jurisdiction;
- The administrative courts;
- The district and circuit courts;
- The labour courts;
- The Military Court;
- The High Court of Justice.

13. Certain institutions have direct responsibility for the promotion, protection and defence of the rights of all workers living in Burkina Faso, regardless of nationality or origin. Noteworthy among these institutions are:

- The Ministry of Labour and Social Security, which is responsible for the design and implementation of the Government's policy on labour law and labour relations. The ministry has a department for migrant workers as well as a labour inspectorate whose job is to amicably resolve disputes over labour law and social security issues;

- The National Social Security Fund;
- The National Employment Agency;
- The Standing National Committee on Migration, which is responsible for addressing all matters relating to migration;
- The Ministry of Employment, which is responsible for promoting employment and vocational training for young persons;
- The Ministry of Human Rights, which is responsible for promoting, protecting and defending the human rights of all categories of persons in Burkina Faso.

B. Domestic legal system

14. Burkina Faso has acceded to the main international and regional human rights instruments, including those of the International Labour Organization (ILO). Most of the rights recognized by these instruments are taken up and enshrined in the Constitution, the first title of which is devoted to human rights. Many other statutes and regulations also guarantee the rights of migrant workers.

1. Constitutional provisions

15. The fundamental principles recognized in the Convention on Migrant Workers are reaffirmed in the Burkina Faso Constitution. The Constitution affirms the principle of non-discrimination in article 1, paragraph 1, which provides that “discrimination of any kind, particularly that based on race, ethnicity, region, colour, sex, language, religion, caste, political opinion, wealth or birth, is prohibited”. Article 19 provides that “the right to work is recognized as an equal right for all”.

16. The duty to implement the Convention is reaffirmed in article 151 of the Constitution, which gives higher authority to duly ratified or adopted international treaties or agreements than to national laws. This article makes the Convention on Migrant Workers binding and gives it supra-legislative authority.

2. Main legislative provisions

17. There are no specific legal or regulatory provisions on the rights of migrant workers and members of their families. However, many laws contain provisions that directly or indirectly protect migrant workers’ rights. The most important of these are (a) the Labour Code, (b) the Civil Code and (c) the Personal and Family Code.

(a) *The Labour Code*

18. The Labour Code contains provisions that guarantee the observance of several principles. The first article of the Code prohibits discrimination in hiring; its provisions apply to all employees and employers in Burkina Faso. Article 4 prohibits discrimination in relation to occupation and employment. Any Burkina Faso or foreign national (employee or employer) can avail themselves of the Labour Code before the competent courts without discrimination.

19. Article 5 of the Labour Code absolutely prohibits forced or compulsory labour. Within the meaning of this article, “forced or compulsory labour” refers to all work or service which is exacted from any person under the menace of any penalty or punishment and for which the said person has not offered himself voluntarily. No one may have recourse to such labour in any form, including: as a means of political coercion or

education or as a punishment; as a method of mobilizing and using labour; as a means of labour discipline; or as a means of social, racial, national or religious discrimination.

20. Articles 275 et seq. guarantee freedom of association. Article 286 punishes any measure taken by employers that may be harmful to employees based on their membership or non-membership of a trade union. Articles 156 to 171 of the Labour Code grant workers the right to time off and to authorized absences.

21. The repatriation of the bodies of migrant workers or members of their family is provided for in article 180, which states that “in the event of the death of an expatriate or displaced worker or member of his or her family whose travel expenses were borne by the employer, the employer shall be responsible for repatriating the body of the deceased to the place of habitual residence”.

22. Article 182, paragraph 3, states that the principle of equal remuneration for men and women for work of equal value should be respected when determining rates of pay.

23. Articles 318 to 327 regulate the procedures to be followed in the event of individual or collective labour disputes. Article 182, paragraph 1, of the Labour Code provides that “where the conditions of work, the occupational qualifications and the output are equal, payment shall be equal for all workers, irrespective of origin, sex, age or status”.

(b) The Civil Code

24. The Civil Code protects the rights of migrant workers, notably in its provisions on the protection of property. The right to own property is protected under articles 544 to 554 of the Civil Code. The different means of acquiring property are regulated by articles 711 et seq. of the Code. There is no discrimination between nationals and foreign nationals in terms of the acquisition and protection of property. Migrant workers living in Burkina Faso therefore enjoy the same rights as nationals to acquire and dispose of movable and immovable property in accordance with the law.

(c) The Personal and Family Code

25. The Personal and Family Code affirms the right of everyone to be recognized as a person before the law. Pursuant to articles 1 and 2, every person living in Burkina Faso has the right to recognition as a person before the law from the moment of birth until death. Beyond such recognition, the Code also explicitly states that “foreign nationals in Burkina Faso enjoy the same civil rights as Burkina Faso nationals” (art. 5, para. 1).

3. Migration agreements

26. Burkina Faso is a party to numerous multilateral, bilateral and Economic Community of West African States (ECOWAS) agreements on migration, including:

- The ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), adopted on 24 June 1969;
- The General Convention on the Social Security of Migrant Workers, signed in N'Djamena on 29 January 1971 and ratified on 4 November 1976;
- ECOWAS Protocol A/P.1/5/79 of 29 May 1979 on Free Movement of Persons, Right of Residence and Establishment;
- Protocol A/SP.1/7/85 of 6 July 1985 establishing the Code of Conduct for the Implementation of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment;

- Supplementary Protocol A/SP.1/7/86 of 1 July 1986 on the Implementation of the Second Phase (Right of Residence) of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment;
 - Supplementary Protocol A/SP.2/5/90 of 29 May 1990 on the Implementation of the Third Phase (Right of Establishment) of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment;
 - The Treaty Establishing the West African Economic and Monetary Union, signed in Dakar on 29 January 1994.
27. Examples of bilateral agreements and Community instruments include:
- The Social Security Convention of 14 February 1994 between Burkina Faso and Mali;
 - The Bilateral Social Security Convention of 21 April 1994 between Burkina Faso and Côte d'Ivoire;
 - The Agreement on the Joint Management of Migration and Development Solidarity of 10 January 2009 between France and Burkina Faso.

C. Characteristics and nature of migration flows

28. Migration is a fact of life for the population of Burkina Faso. It is a long-established tradition in Burkina Faso and originates from the colonial period, when Burkina Faso was used by the colonial administration as a source of workers for farms in countries on the coast, particularly Côte d'Ivoire. Millions of people from the Upper Volta fled the country and took refuge in the Gold Coast (modern-day Ghana) to avoid paying head tax. As a result, and after being deemed non-viable as a colony, the Upper Volta was partitioned between Côte d'Ivoire, French Sudan (modern-day Mali) and the Niger in 1932, before being reconstituted in 1947. Underinvestment and poverty helped create a tradition of migration to these countries which continued after independence.

29. The head tax imposed by the colonial administration and the coercive measures used for collection led many people to migrate to neighbouring countries, particularly to the Gold Coast. Migration during this period and after independence played an important role in terms of demography. After the 1960s, migration continued in various forms, including under agreements signed between Upper Volta (modern-day Burkina Faso) and other countries. These included:

- The Convention on the Recruitment and Employment of Upper Volta Workers in Côte d'Ivoire, signed on 9 March 1960;
- The Convention on the Establishment and Movement of Persons between Mali and Upper Volta, of 30 September 1969;
- The agreement between Upper Volta and the Gabonese Republic signed on 13 August 1973.

Migration increased significantly during the severe droughts of the 1970s and 1980s.

30. From the colonial period until the present day, Burkina Faso has experienced significant levels of international migration. As migration continues to rise, its nature and impact on the country sometimes give cause for concern. However, in the 1996 census, net migration was negative (-80,243), with 121,931 departures compared with 41,688 entries in the 12 months preceding the census (1996 General Population and Housing Census, vol. II, p. 160). Emigration between 2002 and 2006 was characterized by a gradual increase in the number of persons leaving the country, with 38,323 departures in 2002, 49,209 in 2003,

60,914 in 2004, 62,222 in 2005 and 60,449 in 2006. According to the statistics, it is mostly men who emigrate, with at least four times as many men as women leaving the country. During the period 2002–2006, this gender gap decreased considerably: the proportion of men fell from 52.1 per cent in 2002 to 48.9 per cent in 2006. Various population censuses, specific studies on migration and diplomatic and consular data have been unable to give an exact figure for the number of Burkina Faso migrants abroad. Estimates put the proportion of migrants at 27.7 per cent of the resident population in 1985 and 30.7 per cent in 1996.

31. Although it has a high level of emigration, Burkina Faso is also a host country for communities of foreign nationals. The 1996 census showed that there were 61,650 foreign nationals out of a population of 10,312,609 inhabitants; in 2006 there were 60,074 foreign nationals out of a population of 14,017,262 inhabitants. The majority of foreign nationals residing in Burkina Faso come from Mali (30.8 per cent), Togo (14.5 per cent), Benin (9.7 per cent), the Niger (9.5 per cent), Nigeria (8.8 per cent), Ghana (4.3 per cent) and Côte d'Ivoire (3.9 per cent). The West African countries with the lowest number of nationals in Burkina Faso are Sierra Leone (0.1 per cent), Gambia (0.2 per cent), Guinea-Bissau (0.4 per cent) and Liberia (0.5 per cent). Other nationalities account for 12.1 per cent of the total migrant population living in Burkina Faso.

32. Data from the General Population and Housing Census show that Congolese, Ivorian, Gabonese, Gambian, Ghanaian, Guinean, Nigerian, Senegalese, Sudanese and Togolese nationals live in urban rather than rural areas. However, Burkina Faso does not have precise data on the foreign nationals working in its territory. The lack of accurate and reliable quantitative data is a concern in that the country is unable to take into account the real needs of the migrant population in its development projects, policies and programmes.

33. Crisis situations and social unrest in some host countries have often forced Burkina Faso nationals living abroad to move. Sociopolitical crises have led to the expulsion and repatriation of several thousand Burkina Faso migrants living in countries such as Côte d'Ivoire, the Sudan, Libya and Mali.

34. Managing migration in Burkina Faso is difficult at the moment, owing to the lack of reliable and disaggregated statistics. This problem is due in part to inadequate border controls.

35. Nevertheless, the State has put structures in place to manage migration. The High Council for Burkina Faso Nationals Living Abroad was established by Order No. 95-243/PRES/MAET of 29 June 1995 as a consultative body to represent all Burkina Faso communities abroad. Through its support unit, the permanent secretariat attached to the Ministry of Foreign Affairs and Regional Cooperation, the Council performs a public service by implementing Government policy on dealing with Burkina Faso nationals living abroad. A migration control division has also been created in the Ministry of Security to monitor and manage migration at the borders. Some civil society organizations are also working to protect the rights of migrants. They include Le Tocsin and the Centre for International Migration and Development Studies and Research.

D. Difficulties in implementing the Convention

36. Generally speaking, the provisions of the Convention on Migrant Workers present no implementation problems. However, it is proving difficult to implement articles 17 and 41 effectively. Article 17, paragraph 2, provides that “accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.” However, although the State tirelessly endeavours

to improve prison conditions, a lack of funds means that separate facilities cannot be provided for accused persons and convicted persons in prison. In remand prisons or reformatories, only men, women and children are separated. Certain highly dangerous detainees are also held separately.

37. Article 41 of the Convention states that “migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation”. Although the rights to vote and to stand for election are recognized for all Burkina Faso nationals living in and outside the country, it must be acknowledged that the implementation of these rights poses some practical problems. Burkina Faso has been unable to ensure that its citizens working abroad can participate successfully in the various elections organized in Burkina Faso. However, legislative steps have been taken to ensure that Burkina Faso nationals living abroad can exercise the right to vote. Act No. 19-2009/AN of 7 May 2009 on the revision of the Electoral Code provides for Burkina Faso nationals living abroad to be registered on electoral lists at Burkina Faso embassies and consulates. However, the effective application of this measure has been delayed by Act No. 003-2010/AN of 25 January 2010 on the modification of the Electoral Code. Article 1, paragraph 2, of this Act states that “the provisions relating to the right of Burkina Faso residents abroad to vote shall not enter into force until 2015”.

E. Measures taken to promote the Convention

38. The dissemination of the Convention on Migrant Workers is part of a wider effort to promote international human rights treaties. Burkina Faso has produced and disseminated a compendium of the international human rights agreements it has ratified. It has also, in partnership with the United Nations Development Programme (UNDP), produced a compendium of the main international human rights treaties, including the Convention on Migrant Workers. The compendium had a print run of 2,000 copies and was circulated to organizations and bodies that have a partnership with the Ministry of Human Rights.

39. The Ministry of Human Rights liaises and maintains partnerships with civil society organizations. At least 260 human rights NGOs have been registered by the ministry. Some of them work directly to promote and protect the rights of migrants. The ministry collaborates with these organizations to promote the various legal instruments on the promotion and protection of the rights of migrants, including the Convention on Migrant Workers. This cooperation primarily takes the form of technical and financial support to help the organizations carry out their work.

III. Information concerning the provisions of the Convention

A. General principles of the Convention

Article 1, paragraph 1, and article 7 Non-discrimination

40. Equal recognition before the law of all persons living in Burkina Faso is enshrined in article 4 of the Constitution, which provides that all Burkina Faso nationals and all persons living in Burkina Faso enjoy equal protection before the law.

41. Article 4 of Act No. 28-2008/AN of 13 May 2008 on the Labour Code prohibits any discrimination in relation to employment or occupation. The Code defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion,

political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, or such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

42. The Constitution, national laws and the international human rights conventions ratified by Burkina Faso provide for migrant workers to enjoy the same rights as national workers.

43. Equality is, therefore, a right enjoyed by all persons subject to Burkina Faso law, which, as a whole, contains no provision that might give rise to discriminatory actions.

44. Foreign nationals, regardless of their legal status in the country, enjoy all aspects of protection guaranteed by law, whether they are the victims of rights abuses or whether they are being prosecuted for an offence under Burkina Faso law. Furthermore, article 132 of the Criminal Code imposes a penalty of 1 to 5 years' imprisonment for any act of discrimination against individuals, regardless of their origin.

Article 83

Right to an effective remedy

45. The conditions for referring cases to the authorities are the same except for a few small differences. The Code of Civil Procedure requires foreign plaintiffs to put up a surety known as the *exceptio iudicatum solvi*. The amount of the surety is fixed by the judge to cover the payment of damages in the event of a conviction. This surety is only paid if the defence counsel requests it in their opening statement.

(a) Referral of cases to domestic courts by foreign nationals

46. Foreign nationals can freely access the courts in Burkina Faso. The jurisdiction of the courts in Burkina Faso is defined by law. In general, the jurisdiction of the courts in Burkina Faso takes into account:

- The defendant's place of residence, in the case of civil proceedings;
- The address of the building, where there is a right in rem on immovable property;
- The place where the offence was committed, in cases of tort or negligence.

Nationality is not a factor in accessing justice in Burkina Faso.

47. No special conditions are set for referring a civil or commercial case to a court, other than the legally established conditions governing the court's jurisdiction. The petitioner's nationality is no ground for finding that a court lacks jurisdiction as, where a foreign national is involved, the court can invoke the rules of private international law to settle the dispute. Petitions are also used in disputes over contracts.

48. The main requirement for taking a case to a labour court, in accordance with article 327 of the Labour Code, is that there must be an individual dispute between a worker and their employer or an apprentice and their master over an employment or apprenticeship contract. Migrant workers also have access to these courts, which settle:

- Disputes relating to occupational accidents or occupational diseases, including those involving the application of the social security scheme;
- Individual disputes relating to the application of collective agreements and regulations that serve the same purpose;
- Disputes between workers over employment contracts and direct action by workers against employers;

- Disputes between workers and employers about work and between the social security institutions, their beneficiaries and the taxpayer;
- Complaints by contractors against subcontractors.

49. Article 344 of Act No. 28-2008/AN of 13 May 2008 on the Labour Code states that proceedings in employment disputes can be brought before the court free of charge. Workers also benefit from legal assistance to have judgements in their favour enforced. This provision applies to all workers covered by the Labour Code, including migrant workers. No distinction is made between Burkina Faso nationals and foreign nationals.

50. Foreign nationals living in Burkina Faso can also apply to the administrative courts on ultra vires grounds for the annulment of illegal administrative acts that are prejudicial to their interests. They may also submit a claim to the administrative courts for compensation for any harm suffered as a result of an administrative act.

51. Any person who is the victim of a criminal offence can either file an ordinary complaint with the police or prosecutor's office or bring a criminal indemnification action before an investigating judge. Such a complaint or action may lead to the conviction of the perpetrator and payment to the victim of compensation for any harm suffered.

52. Any person living in Burkina Faso, regardless of their nationality, may bring a case before the courts if they feel that their rights have been violated. The courts have an obligation to act impartially and fairly on the cases brought before them.

53. However, certain difficulties hamper the smooth functioning of the justice system in Burkina Faso. These difficulties are linked in part to shortcomings in the judicial system in terms of organization, management, planning, methods of work and communication. One consequence of such difficulties is the slowness of the judicial process, as evidenced by the long delays in processing court cases, drafting decisions, issuing various documents, etc.

54. In an attempt to resolve these problems and to enable the judiciary to discharge its duties in full, the National Justice Policy was drawn up. Developing this policy gave the Ministry of Justice an opportunity to analyse the performance of the justice sector and identify its strengths and weaknesses.

55. The analysis highlighted the following strengths in the organization and functioning of the judiciary:

- The ongoing modernization of the judiciary;
- Improvements in access to justice;
- More and better motivated staff;
- Progress in the commercial justice system and improvements in the business climate;
- A number of beneficial sector-specific initiatives, such as the increase in human and material resources of the internal security forces, the adoption of Act No. 2003-032/AN of 14 May 2003 on internal security, the deployment of neighbourhood police forces and the establishment of the National Financial Information Processing Unit to combat money-laundering.

56. The weaknesses revealed in the organization and functioning of the judiciary included:

- Poor management of the judiciary's administrative apparatus and the subsequent failure to rationalize its structure, with the result that some courts were barely functioning, if at all;

- The slowness of the judicial process;
- The suboptimal functioning of the Supreme Council of Justice, making it hard to guarantee the independence of the judiciary;
- The controversy surrounding the independence of the judiciary;
- The incomplete reorganization of the judiciary, as reflected in the lack of separation between the ordinary and administrative courts;
- The continuing legislative and judicial uncertainty due, notably, to inappropriate legislation, the proliferation of unenforceable legislation, and ignorance of the judgements and orders handed down by the courts and tribunals;
- Persisting problems in the commercial justice system;
- The inadequacies of the courts and criminal legislation.

57. The National Justice Policy aims to address these shortcomings over the period 2010–2019. It focuses on six strategic areas:

- Strengthening the overall capacity of the judicial system;
- Revitalizing the management of the judicial sector;
- Improving physical and financial accessibility;
- Improving psychological accessibility;
- Strengthening the criminal justice system and prison management;
- Consolidating the status of the individual.

(b) Recourse to the Ombudsman

58. The institution of Burkina Faso Ombudsman was established by Organic Act No. 22/94/ADP of 17 May 1994. The Ombudsman is an independent authority who protects citizens against abuses by the public administration through mediation. In accordance with the Act, and in particular article 11 of the Act, the Ombudsman deals with all complaints regarding the functioning of the State, local authorities, public institutions and any other public-service bodies.

59. The Ombudsman can, *ex officio*, examine issues within his or her sphere of competence if he or she considers that a person or group of persons has been, or may be, harmed by an act or omission of a public body. Through its work, the institution helps strengthen the protection of citizens' rights. The Ombudsman has 10 representatives (in provincial and other public authorities) across the country.

60. Recourse to the Ombudsman is completely free of charge. All complaints must be submitted in writing. Migrant workers may refer a matter to the Ombudsman if they consider that an administrative act is prejudicial to their interests.

Article 84

Duty to implement the provisions of the Convention

61. Pursuant to article 151 of the Constitution, the provisions of the Convention on Migrant Workers have been incorporated into the domestic legal order and take precedence over national law. If there is any conflict with national law, the treaty provisions prevail. Migrant workers may thus invoke the provisions of the Convention before the domestic courts if they consider national measures to be inadequate.

B. Human rights of all migrant workers and members of their families

Article 8

Right to leave any State, including their State of origin, and right of return

62. Article 9 of the Constitution guarantees free movement of persons and goods, free choice of residence and the right of asylum. In addition to this constitutional provision, legislative, treaty-based and regulatory provisions have been adopted to implement free movement of persons and goods. Foremost among these are the following:

- The Act of 10 March 1927 on the extradition of foreign nationals (promulgated in French West Africa by order dated 2 April 1927);
- Safety and Security Directorate Order No. 9331 of 14 November 1958 introducing boarding, landing and transit cards for all airline passengers;
- Decree No. 73-80 on the implementation of the Vienna Convention on Consular Relations of 24 April 1963;
- The ECOWAS Protocol on Free Movement of Persons, Residence and Establishment, adopted in Dakar on 29 May 1979;
- Ordinance No. 84-49 of 4 August 1984 setting conditions of entry, residence and exit for Burkina Faso citizens and foreign nationals;
- *Zatu* (Act) No. 85-14 of 31 December 1985 establishing issuance fees and conditions for ECOWAS member State travel permits;
- Supplementary Protocol A/SP.1/7/86 on the implementation of the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, signed in Abuja on 1 July 1986 (ratified by *Kiti* (Decree) No. AN-VI 246 of 18 April 1989).

63. Together, these provisions establish a number of entry, residence and exit conditions for Burkina Faso. These include the following requirements:

- To be in possession of a valid travel document recognized by the authorities of Burkina Faso and a Burkina Faso visa;
- To be up-to-date with international health regulations;
- To hold a return ticket or to submit either a repatriation guarantee or a certificate of exemption from the need to provide one;
- To complete, sign and date an information form supplied by the authorities;
- To be in possession of a residence permit if the stay exceeds three months. This requirement is waived in the case of members of foreign diplomatic and consular missions, their spouses, relatives and minor children, and nationals of exempted countries.

64. Migrant workers who satisfy these conditions are free to remain in or leave the country. In practice, there are no restrictions on migrant workers' freedom to enter and leave Burkina Faso.

Articles 9, 10 and 11

Right to life; prohibition of torture and other cruel, inhuman or degrading treatment or punishment; prohibition of slavery and forced labour

65. The right to life, safety and physical integrity is guaranteed under article 2 of the Constitution of Burkina Faso. Article 2 also prohibits and penalizes slavery, slavery-like

practices, inhuman, cruel, degrading and humiliating treatment, physical or mental torture, cruelty and ill-treatment inflicted upon children and any form of degradation of human beings.

66. Offences against life and physical integrity are subject to the penalties defined in the Criminal Code, irrespective of the nationality of the accused or the victim and whether their legal situation in Burkina Faso is regular or not.

67. The Code of Criminal Procedure of Burkina Faso establishes a number of safeguards regarding implementation of the death penalty. It should be noted that the death penalty is no longer implemented in practice even though it still exists under Burkina Faso legislation. No migrant worker has ever been sentenced to death. Furthermore, Burkina Faso signed the United Nations moratorium on the death penalty of 18 December 2007.

68. Burkina Faso acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 on 4 January 1999. Torture and other cruel, inhuman or degrading treatment are offences punishable under the criminal law of Burkina Faso irrespective of the nationality of the victim or the perpetrator.

69. Article 314 of the Criminal Code of Burkina Faso prescribes the death penalty for any person who practises deportation or slavery, or routinely and systematically carries out summary executions, abductions of persons who subsequently disappear, torture or inhuman acts, for political, philosophical, racial, religious or other reasons as part of a concerted attack on a section of the civilian population or a group fighting against the ideological system in the name of which these crimes are committed.

70. Forced or compulsory labour is absolutely prohibited under article 5 of the Labour Code. Within the meaning of this article, “forced or compulsory labour” refers to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Thus, the law prohibits the use of all forms of such labour, including:

- As a means of political coercion or education or as a punishment for expressing certain political views;
- As a method of mobilizing and using labour for purposes of economic development;
- As a means of labour discipline;
- As a means of racial, social, national or religious discrimination;
- As a punishment for having participated in strikes.

71. Slavery is incompatible with the prevailing social order in Burkina Faso. Under Burkina Faso law, no person may be enslaved, whatever their nationality. Subjecting a person to forced labour is a criminal offence under article 314 of the Criminal Code.

Articles 12, 13 and 26

Right to freedom of opinion and expression; right to freedom of thought, conscience and religion; right to join a trade union

72. Freedom of belief, non-belief, conscience, religious views, philosophical views and worship, freedom of assembly, the free practice of customs and freedom of procession and demonstration are guaranteed under article 7 of the Constitution, subject to respect for the law, public order, morals and the human person. Freedom of opinion, freedom of the press and the right to information are guaranteed under article 8.

73. In Burkina Faso, all persons have the right to express and disseminate their opinions within the prevailing legal and regulatory framework. Freedom of association is also guaranteed and all persons have the right to form associations and freely to take part in the

activities of established associations. However, all such associations must operate in accordance with the statutes and regulations in force.

74. Migrant workers have the right to freely gather and take part in the activities necessary to the practice of their religion or belief. Places of worship are private places of religious teaching and culture and are open to both nationals and foreign nationals.

75. In his book on the rights of migrant workers in Burkina Faso from 1897 to 2003, entitled *Burkina Faso, migration et droits des travailleurs de 1897 à 2003* (Kharthala, 2004), Titinga Frédéric Pacéré notes (p. 101) that “it is good to see that today, as a result of migration, the towns of Burkina Faso are becoming familiar with the numerous religious ceremonies and practices which are freely organized by believers and in which migrant workers are participants, if not the leaders or pastors. Thus, Christianity in all its forms, Islam in its many varieties and the different traditional beliefs and ‘religions’ (whether ancestral or imported through migration) are popular and coexist happily in Burkina Faso; it is not unusual to see their followers gathered in the same place and expressing themselves in perfect communion in the universal quest for peace, salvation and happiness.”

76. Migrant workers also enjoy unrestricted freedom of association and are free to join the trade union of their choice. Under the provisions of article 281 of the Labour Code, “non-national workers may become trade union leaders after living in Burkina Faso for an uninterrupted period of at least five years”. In practice, many trade unions have migrant workers among their members.

Articles 14 and 15

Prohibition of arbitrary or unlawful interference with privacy, family, correspondence and other communication; prohibition of arbitrary deprivation of property

77. Article 2 of the Constitution provides that “the residence, home, personal and family life and confidentiality of correspondence of all persons shall be inviolable. No interference therewith shall be permitted except in the form and in the circumstances prescribed by law.” To give effect to this constitutional provision, the Criminal Code of Burkina Faso criminalizes violation of the privacy of the home. Specifically, article 360 of the Code provides that any person who, fraudulently or using threats or violence against persons or property, enters or attempts to enter the home of another is guilty of violating the privacy of another person’s home. Similarly, during investigations, no searches of private homes are permitted after 9 p.m.

78. Confidentiality of correspondence is also guaranteed by law. Personal data are protected under the Personal Data Protection Act (No. 010-2004/AN) of 20 April 2004. The purpose of the Act is to protect the rights of all persons, whether they are nationals or migrants, in connection with the use of their personal data. To this end, the Act provided for the establishment of the Commission on Information Technology and Freedoms, which is mandated to ensure that privacy and personal data are protected in the context of new information and communication technologies. The Commission has already carried out numerous information dissemination activities to raise awareness of the preventive and precautionary measures that should be taken to protect privacy and personal data, notably on the Internet.

79. The right to property is protected under article 15 of the Constitution. However, this right can be restricted in cases where its exercise would be contrary to the social good or detrimental to the safety, freedom, life or property of others.

80. Interference with the property of a person is permitted only in cases of public necessity, as defined by law. No person may be denied use or possession of their property except where expropriation is in the public interest and fair, prior compensation established

in accordance with the law is paid. This compensation must be paid prior to expropriation except in cases of emergency or force majeure. Freedom of enterprise is also protected within the current legal and regulatory framework. The State is taking steps to guarantee the protection and security of private property, including the private property of migrant workers.

Articles 16 (paras. 1 to 4), 17 and 24

Right to liberty and security of person; protection against arbitrary arrest and detention; right to recognition as a person before the law

81. Articles 2 and 3 of the Constitution establish the fundamental freedoms of the person and prohibit all forms of unlawful interference with the life, security, physical integrity and freedom of individuals. To support this provision, article 356 of the Criminal Code establishes prison sentences of between 5 and 10 years for any person who abducts, arrests, detains or kidnaps another or knowingly provides premises for the detention or abduction of a person, except when they are instructed to do so by an established authority or the law permits or requires such action.

82. The codes of conduct and professional ethics of the various sections of the public service expressly prohibit members of the defence and security forces from assaulting or physically abusing persons. For example, article 4 of Order No. 2004-077/SECU/CAB of 27 December 2004 establishing the code of conduct of the national police force stipulates that “the national police force shall be at the service of the nation. To this end, it shall perform its duties in compliance with the Universal Declaration of Human Rights, the Constitution, international treaties and the laws and regulations in force.” Similarly, article 12 of the Order provides that “no detainee placed under the care and protection of the police shall be subjected to violence or inhuman or degrading treatment of any form at the hands of police officers or any other person. Any police officer having custody of a person whose condition requires special care or attention shall call upon medical personnel and take the steps necessary to protect the life and health of the person.”

83. Articles 297 to 303 of the Code of Criminal Procedure establish the procedures applicable to crimes and offences committed by judges and other public officials, including offences they commit against individuals while carrying out their professional duties. In application of these provisions, disciplinary and/or criminal proceedings have been brought against State officials who, in the exercise of their duties, have improperly and unlawfully violated the physical integrity of persons.

84. All human beings present on Burkina Faso territory are recognized as persons before the law and consequently enjoy all other human rights. Thus, article 5 of the Personal and Family Code stipulates that foreign nationals present in Burkina Faso enjoy the same civil rights as citizens of Burkina Faso. However, the enjoyment of a right may be conditional upon reciprocity and subject to the applicable international treaties.

Articles 16 (paras. 5 to 9), 18 and 19

Right to procedural safeguards

85. A number of legislative and regulatory measures have been adopted to ensure that all persons living in Burkina Faso are protected by procedural safeguards. All nationals of Burkina Faso and all persons living in Burkina Faso enjoy equal protection under the law. Consequently, all persons have the right to be heard before an independent and impartial tribunal.

86. The right to be presumed innocent is established in the Constitution and the Code of Criminal Procedure. In criminal proceedings, the case for the prosecution and for the defence must be made by an independent judge. At the adjudication stage, the correctional

and criminal chambers must, in their turn, make the case for the prosecution and defence. The right to a defence, including the right freely to choose a defence counsel, is guaranteed in all courts. Criminal law is not applied retroactively. Persons may be tried and convicted only under laws promulgated and published before the punishable act was committed. Penalties are personal and individual. Furthermore, no person may be tried twice for the same offence.

87. In addition to general principles, the Code of Criminal Procedure establishes a number of specific safeguards that may be summarized as follows:

- To ensure that trials are not conducted in their absence, defendants are required to present themselves in person at a predetermined date prior to the start of the hearing. Hearings are public unless the court rules that they should take place in camera in the interest of public morals or public order;
- Lawyers must have the time necessary to prepare a defence for the accused and the State is required to appoint and pay for a defence counsel in cases where defendants cannot afford one;
- The services of an interpreter must, if necessary, be provided by the State;
- Defendants may contest any court decision issued in their absence;
- Defendants may, without fear of reprisals, lodge an appeal with the Court of Appeal or Court of Cessation or request a retrial;
- Defendants must be able to benefit from the law that has the most favourable legal consequences for them before any definitive judgement on their case is issued.

Article 20

Ban on imprisoning migrant workers, depriving them of their authorization of residence or work permit and expelling them merely on the ground of failure to fulfil a contractual obligation

88. Article 1 of the Criminal Code provides that “no offence may be punished and no sentence handed down except as established by law”. Failure to fulfil a contractual obligation is not a criminal offence. The Civil Code provides that cases of non- or improper fulfilment of contractual obligations are to be settled through the award of damages to the creditor.

89. Moreover, obtaining a residence permit is not linked to fulfilment or non-fulfilment of a contractual obligation and no migrant worker may be deprived of their authorization of residence or be expelled merely on the ground of failure to fulfil such an obligation. Any measure of this kind would be illegal under Burkina Faso law.

Articles 21, 22 and 23

Protection against confiscation and/or destruction of identity and other documents; protection against collective expulsion; right of recourse to consular or diplomatic protection

90. Destroying official documents is an offence under article 199 of the Criminal Code. Confiscating or withdrawing official documents is prohibited, except in certain circumstances established by law, notably where there is doubt as to the documents’ validity. In cases such as these, identity documents may be confiscated by the competent authorities for purposes of investigation, in accordance with procedures established by law and provided that the rights of the holders of the documents in question are respected. These measures are non-discriminatory and are not in any way linked to the fact that the persons concerned are foreign nationals.

91. When a foreign national in Burkina Faso is held for questioning in relation to an investigation or is charged with an offence, the judicial authorities are required under the Code of Criminal Procedure to inform the diplomatic or consular authorities of the person's State of origin, except in cases where the person objects. Foreign nationals are entitled to receive visits from diplomatic and/or consular officials of their State of origin at any time during the proceedings.

92. Migrant workers have the right to have recourse to the diplomatic protection of their States of origin in accordance with relevant international standards and practices. In order to do so, they must first exhaust all available domestic remedies.

Articles 25, 27 and 28

Principle of equal treatment in respect of remuneration and other conditions of work and terms of employment; social security and the right to receive urgently required medical care

93. Burkina Faso has ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Article 182 of the Labour Code prohibits discrimination of any kind in setting wages, stipulating that, for equal conditions of work, professional qualification and output, the wages of all workers must be equal irrespective of origin, sex, age or status. For certain jobs, wages are fixed by collective agreements. In the absence of a collective agreement or if the agreement is silent on wage-setting, salaries are fixed by agreement between the employer and the worker.

94. The principle of equal pay for male and female workers for work of equal value must be respected in setting wages and remuneration rates.

95. With regard to other conditions of work, it should be noted that workers who have to leave their usual place of residence to fulfil a work contract and cannot afford decent accommodation for themselves and their family are entitled to employer-provided housing. Collective labour agreements or, in their absence, individual employment contracts may provide for the payment of an allowance to compensate workers for additional expenses and liabilities incurred as a result of their stay in the place of employment if regional weather conditions in this place differ from those in their usual place of residence or if they are forced to assume specific expenses as a result of being away from their usual place of residence.

96. Workers also receive an allowance if, for work reasons, they are required to travel on an occasional and temporary basis away from their usual place of employment.

97. Similarly, in cases where workers cannot afford to buy regular supplies of essential food items for themselves and their families, employers are required to provide such items, subject to the conditions established in regulations issued by the Minister of Labour after consultation with the Labour Advisory Commission. All these regulations apply to workers of Burkina Faso nationality and migrant workers equally.

98. With regard to social security, Burkina Faso approved the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) on 24 June 1969. In addition, on 4 November 1976 it ratified the General Convention on Social Security for Migrant Workers signed in N'Djamena on 29 January 1971. Under these agreements, migrant workers enjoy the same social security protection and benefits as nationals.

99. At the level of bilateral relations, Burkina Faso has concluded social security agreements with a number of countries. These agreements allow workers who are nationals of foreign countries but covered by the National Social Security Fund (CNSS) of Burkina Faso to receive the CNSS social security benefits to which they are entitled directly, in their State of origin, without having to return to Burkina Faso. Payment agreements concluded

with the social security funds of other countries include the agreement signed on 31 August 1989 between the Burkina Faso CNSS and the National Social Insurance and Security Fund of Côte d'Ivoire and agreements signed with the social security institutions of Mali, Togo and Benin on 29 September 2000, 9 April 2001 and 12 April 2001 respectively.

100. No distinction is made between workers of Burkina Faso nationality and migrant workers in terms of access to health services. With a view to improving workers' health, the Government of Burkina Faso established the Workers' Health Office by Decree No. AN-VI 429/CNR of 31 July 1987. The mandate of this health-care institution is to promote workers' health and to undertake any initiative and any activity that may directly or indirectly help improve the quality of the care provided to all workers without distinction.

101. In addition, article 255 of the Labour Code requires employers to establish health units at all work sites with a view to ensuring that all workers have health cover and are protected against any impairment to their health that might be caused either by their work or working conditions.

102. Article 6 of the Hospitals Act (No. 034-98/AN) of 18 May 1998 provides that public and private hospitals, whether operated for profit or not, must guarantee equal access to all their services.

Articles 29, 30 and 31

Right of every child of a migrant worker to a name, to registration of birth and to a nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their family

103. Every child's right to a name, a nationality and registration of birth is guaranteed under the international and regional instruments to which Burkina Faso is a party. These rights are universal human rights recognized to every child without distinction, irrespective of their social origin or nationality. With these rights in mind, the Government of Burkina Faso has been operating a free birth certificate issuance scheme benefiting the entire population since 2009.

104. These rights are also recognized to all children of foreign workers. They are regulated by the Personal and Family Code which, in article 5, states that "foreign nationals in Burkina Faso shall enjoy the same civil rights as nationals".

105. Documents attesting to the civil status of persons residing in Burkina Faso and nationals of Burkina Faso residing abroad are noted, processed, registered and verified in accordance with the provisions of the Personal and Family Code. Article 56 of the Code provides that all births, deaths, marriages and other categories of civil act must be entered in the civil registry irrespective of the nationality of the persons concerned. Under the provisions of article 59, civil acts involving foreign nationals residing in Burkina Faso may be registered by diplomatic or consular representatives duly authorized by the Government of Burkina Faso and vested with civil registration authority under the law of their country. Article 60 adds that, notwithstanding the provisions of article 59, births and deaths of foreign nationals that occur in Burkina Faso must be reported to the civil registry of Burkina Faso.

106. The right of access to education of the children of migrant workers is guaranteed under the Constitution. The exercise of this right is governed by the Education Policy Act (No. 013-2007/AN) of 30 July 2007. Article 3 of the Act provides that all persons living in Burkina Faso have the right to education, without distinction of any kind, including on the grounds of race, colour, religion, political opinion, social origin, sex, nationality and state of health. This right is exercised on the basis of fairness and equal opportunity. Pursuant to the Act, all children of migrant workers residing in Burkina Faso are entitled to enrol in State and private schools on the same terms as children of Burkina Faso nationality.

107. To encourage cultural exchanges and cooperation between countries, Burkina Faso has concluded cultural cooperation agreements with a number of States and has acceded to the Cultural Treaty adopted by the League of Arab States. In implementation of these agreements, cultural bureaux and centres have been established in the States concerned.

108. Burkina Faso is home to numerous cultural bureaux and centres established by other States, including France, the United States of America and Libya, which organize activities for their respective communities that enable them to maintain contact with their countries of origin. In addition, to improve the integration of foreign communities living in Burkina Faso, each year “community days” are organized under the auspices of the National Commission for Integration, a body attached to the Ministry of Foreign Affairs and Regional Cooperation that is tasked with fostering regional integration. On these days, various cultural activities are organized by the various foreign communities in association with local communities. These activities encourage genuine cultural expression on the part of migrant workers living in Burkina Faso.

109. For the benefit of Burkina Faso nationals residing in other countries, the overseas embassies and consulates of Burkina Faso also work to promote national culture. Also, in many countries migrant workers of Burkina Faso nationality have formed associations to encourage solidarity among them and promote their culture. The High Council for Burkina Faso Nationals Living Abroad also works to promote the culture of Burkina Faso within the different communities of Burkina Faso nationals living abroad, notably by organizing consular missions. These missions not only provide consular assistance to Burkina Faso citizens living abroad, for example, by issuing administrative and civil status documents, but also help promote Burkina Faso culture within these communities.

Articles 32 and 33

Right of migrant workers to transfer their earnings, their savings and their personal belongings to their State of origin; right to be informed of their rights arising out of the Convention and dissemination of information

110. Migrant workers have the right to transfer their earnings, savings and personal belongings to their States of origin, subject to compliance with the legislation in force. Financial transfers to foreign countries are regulated by Act No. 17-94/ADP of 6 May 1994 on financial relations with foreign countries and the corresponding implementing regulations. Article 1 of the Act establishes that “except with the prior authorization of the Minister of Finance, foreign exchange transactions, capital transfers and payments of any kind made from Burkina Faso to a foreign country between residents and non-residents may be effected only through the intermediary of the Central Bank, the post and telecommunications service or an accredited intermediary bank. Direct payments to non-residents by means of a cheque drawn on an account with a bank based in Burkina Faso are therefore prohibited.”

111. In Burkina Faso, migrant workers are exempt from customs duties and taxes on the import and export of certain categories of personal belongings. Exemptions from customs duties in Burkina Faso are regulated by the Customs Code of the West African Economic and Monetary Union (WAEMU), by the Annex to Regulation No. 09/CM/WAEMU of 26 November 2002 establishing the Customs Code of WAEMU and by Order No. 404 FD of 2 November 1962 concerning procedures for the implementation of article 165 of the Customs Code and all subsequent amendments. Article 11 of the aforementioned Order stipulates that items and goods in use forming part of the personal belongings of foreign nationals authorized to settle or remain in Burkina Faso or of Burkina Faso nationals returning permanently to their homeland are exempt from custom duties and taxes.

112. Migrant workers residing in Burkina Faso who so wish may obtain information on their rights under the Convention and under domestic laws and regulations either from the

customs service or from migration control. Migrant workers of Burkina Faso nationality who live abroad are likewise able to obtain information on their rights and responsibilities under the Convention and the laws and regulations of their country of residence from the embassies and consulates of Burkina Faso. In addition, the High Council for Burkina Faso Nationals Living Abroad organizes regular consular missions to countries hosting workers from Burkina Faso. These consular missions are an opportunity to raise awareness and inform Burkina Faso nationals working abroad of their rights under international legal instruments such as the Convention on Migrant Workers. There are also a number of civil society organizations working to raise awareness of the rights of migrant workers in general and the rights of Burkina Faso nationals working abroad in particular.

C. Other rights of migrant workers and members of their families who are documented or in a regular situation

Article 37

Right to be informed before departure of the conditions of admission to the State of employment and of remunerated activities

113. The obligation to inform migrant workers of the conditions of admission to the State of employment and of remunerated activities lies first and foremost with the employers who recruit them to work in Burkina Faso. Employers who recruit workers in Burkina Faso for employment abroad are under the same obligation.

114. It should be noted, however, that the diplomatic and consular missions of Burkina Faso abroad are also responsible for providing the necessary information not only to all persons who wish to work in Burkina Faso but also to Burkina Faso nationals who wish to work abroad.

Articles 38 and 39

Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose one's residence in the territory of the State of employment

115. Article 9 of the Constitution states that "the free movement of persons and goods, the freedom to choose one's residence and the right to asylum are guaranteed under the laws and regulations in force". This constitutional right applies to all persons living in Burkina Faso regardless of their nationality.

116. Migrant workers with a visa authorizing them to stay have the right to move freely within the national territory of Burkina Faso. They also have the right to leave and return to the territory without this affecting their authorization to stay in Burkina Faso.

Articles 40, 41 and 42

Right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at elections of that State; procedures and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

117. Article 21 of the Constitution guarantees freedom of association and trade union rights. All persons have the right to form associations and to participate freely in their activities. The activities of associations must comply with all applicable laws and regulations.

118. Freedom to form and join trade unions is guaranteed for both national and migrant workers. Union activities are not subject to any limitations or restrictions except those set

forth in the law. Articles 276 and 277 of Act No. 28-2008/AN of 13 May 2008 (the Labour Code) provide that workers and employers may freely establish associations for persons engaged in the same, similar or related occupations involved in the production of specific goods. All workers and employers may freely join the union of their choice within their occupational group. Legally established unions may meet to analyse and protect their occupational interests. Unions may be established at the national or local level.

119. As far as union leadership is concerned, article 281 of the aforementioned Act states that “the members responsible for the leadership and management of the union must be Burkina Faso nationals or citizens of a State with whom an agreement on the reciprocity of union rights has been reached. All union members must be able to exercise their civil and civic rights. Non-national workers may become trade union leaders after living in Burkina Faso for an uninterrupted period of at least five years.”

120. To enable workers to be represented at the statutory assemblies held by their unions or the regional or international unions to which they belong, leaves of absence are granted provided that a personalized written invitation from the corresponding organization is submitted at least one week prior to the meeting. Such leaves of absence are granted with pay for up to a maximum of 20 working days a year and do not affect other paid-leave entitlements.

121. Freedom of association is governed by Act No. 10/92/ADP of 15 December 1992. The Act establishes that associations may be freely formed in Burkina Faso. No prior authorization is required, and there are no nationality requirements either. According to article 1 of the Act, “under this Act, an association is any group of natural or legal, national or foreign persons that, on a regular, not-for-profit basis, pursues common aims in cultural, sporting, social, spiritual, religious, professional, socioeconomic or other fields”.

122. There are numerous associations in Burkina Faso devoted to promoting friendship between peoples, as well as charities promoting the welfare of foreign students and their various communities. These associations and charities are active in the following fields, among others: support for families, child care, care for the elderly, cultural and educational services, sport, health care, religious instruction, the provision of social welfare services and the organization of festivals, seminars and cultural events.

123. It should be noted that, as far as political rights are concerned, the regime for migrant workers living in Burkina Faso is highly favourable: in addition to being able to participate in the political life of their country of origin, they can vote in local elections in Burkina Faso.

124. With regard to the former, the State of Burkina Faso authorizes diplomatic and consular missions of other States located in Burkina Faso to convoke their citizens as they see fit and to arrange for their participation in elections in their country of origin. Also, if the missions so request, the Government of Burkina Faso will provide security personnel to ensure that the electoral process in Burkina Faso takes place in a peaceful and orderly manner.

125. With regard to the right to vote, article 43, paragraph 2, of the Electoral Code states that “all foreigners who hold valid identity papers (e.g. a passport, identity card or consular identification card), have been resident in the country for at least 10 years, and can demonstrate that they are engaged in a legally recognized occupation or activity and are up to date with their tax obligations, are eligible to vote in local elections. The residency certificate must be issued by a competent authority.”

126. It should also be mentioned that family members of migrant workers, including children who are Burkina Faso nationals by birth and spouses who have become naturalized

Burkina Faso citizens or who have acquired Burkina Faso nationality, all fully enjoy their civic and political rights in the same way as Burkina Faso nationals.

Articles 43, 54 and 55

Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment in respect of protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

127. All migrant workers have access to remunerated work in Burkina Faso under the same conditions as national workers. Migrant workers' access to employment is governed by article 56 of Act No. 28-2008/AN of 13 May 2008 (the Labour Code), which states that "employment contracts requiring Burkina Faso nationals to work outside the national territory and employment contracts of non-nationals must be approved and registered by the pertinent labour inspectorate".

128. The employer is responsible for filing the corresponding visa application, which must be submitted at least 30 days after the date on which the employment contract starts. The visa is considered to have been granted if the competent authority processing the application fails to issue its decision within 15 days of receiving the application. If the employer fails to request a visa, the worker has the right to have the employment contract declared null and void and to claim damages. In that case, the employer is responsible for covering the migrant worker's repatriation expenses. Employers who fail to submit an employment contract for approval are subject to the penalties set forth in the Labour Code. The visa approval procedure allows the labour inspection authorities to ensure that migrant workers are not exploited or hired under illegal conditions.

129. Apart from the visa requirement, migrant workers enjoy the same employment and pay conditions as nationals. Article 38 of the Labour Code states that "employers must not discriminate in any way as far as access to employment, working conditions, vocational training and professional development, continuance of employment or dismissal are concerned".

130. With regard to other remunerated activities, the Code of Commerce, like the Labour Code, safeguards freedom of trade and industry, as well as freedom of enterprise, for all migrants who wish to undertake, develop or carry out commercial or industrial activities in Burkina Faso. Authorization to engage in such activities is granted to all migrant workers who meet the requirements established by law, including the requirement to register with the commercial registry. Commercial and industrial activity is facilitated by the numerous benefits granted under the Investment Code and the tax regime, which is highly favourable for foreign investors. To streamline the procedures for setting up a business, the Government has established an enterprise bureau to assist entrepreneurs, as well as one-stop shops where they can complete the formalities.

Articles 44 and 50

Protection of the unity of the families of migrant workers and family reunification; consequences of death or dissolution of marriage

131. The spouse and children of a migrant worker are authorized to live in Burkina Faso during the worker's stay in the country, in keeping with the principle of family reunification. Female migrant workers have the right to all the benefits granted to female workers under domestic legislation, including access to basic maternal health care (vaccinations, regular check-ups, etc.). The children of migrant workers are entitled to the same health care as Burkina Faso children, as well as access to medical and social services. As regards education, the children of migrant workers also have access to primary and secondary schools under the same conditions as children of Burkina Faso nationals.

132. When migrant workers or members of their families die, the diplomatic or consular representatives of their State of citizenship are notified. At the request of the family of the deceased, authorization may be granted for the body to be buried in the presence of the diplomatic or consular authorities of the deceased's country of origin. Permission may also be granted for the body to be repatriated, as agreed with those same authorities. In this regard, article 180 of the Labour Code states that "in the event of the death of an expatriate or displaced worker or member of his or her family whose travel expenses were borne by the employer, the employer shall be responsible for repatriating the body of the deceased to the place of habitual residence". It should be noted that the dissolution of the marriage of a migrant worker or member of his or her family as the result of the death of his or her spouse or as the result of a divorce does not, in principle, in any way affect their rights or the conditions of their stay in the country. However, when their new situation requires one or several of the family members to return to their country of origin, either of their own volition or to comply with a court ruling, the repatriation arrangements may be coordinated with the embassy of the country in question.

Articles 45 and 53

Equality of treatment for members of the families of migrant workers in relation to the points indicated and measures taken to guarantee the integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family

133. The Government makes every effort, in cooperation with States of origin, to provide migrant workers with the services needed in this regard. Through diplomatic connections, numerous cultural and educational services have been made available to the children of foreign nationals living in Burkina Faso. The school and cultural system is open to all in Burkina Faso, without discrimination.

134. Members of a migrant workers' family are free to choose a remunerated activity in Burkina Faso. As far as employment in the private sector is concerned, non-nationals have access to jobs on the same basis as nationals. As far as employment in the public sector is concerned, Act No. 013-98/AN of 28 April 1998, which establishes the regulations applicable to public service jobs and officials, authorizes the employment of foreign nationals by Government agencies in Burkina Faso. However, posts in areas of activity related to sovereignty matters — national defence, the judiciary and diplomacy — are reserved for Burkina Faso nationals.

135. As far as health care is concerned, migrant workers and members of their families living in Burkina Faso have access to the same benefits as Burkina Faso citizens, including health benefits. All persons, regardless of their legal status, have access to free basic health care (basic immunizations and growth and nutrition check-ups for children, vaccinations and check-ups for pregnant women, treatment for endemic diseases, early detection of disabilities, etc.). Article 6 of the Hospitals Act (No. 034-98/AN) of 18 May 1998 provides that public and private hospitals, whether operated for profit or not, must guarantee equal access to all their services.

Articles 46, 47 and 48

Exemption from import and export duties and taxes in respect of certain personal belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and measures to avoid double taxation

136. In Burkina Faso, all persons with a bank account are free to make as many transfers as they wish. The exchange rate between the national currency and foreign currencies is determined by the exchange market. Under current legislation, all persons may have foreign

currency holdings and transfer them freely to a foreign establishment through an accredited bank or bureau de change. There are also several money transfer services in Burkina Faso which allow migrant workers to transfer their earnings or savings. Migrant workers are free to open bank accounts and carry out foreign exchange transactions of any kind in Burkina Faso.

137. On the tax front, Burkina Faso has signed agreements to eliminate the double taxation of migrant workers. These include:

- The agreement between Burkina Faso and Mali signed on 14 November 1961 to facilitate the transit regime;
- The agreement signed on 30 November 1961 by the Governments of Côte d'Ivoire, Benin, the Niger and Burkina Faso to avoid double taxation on transferable securities and similar income sources;
- The agreement between Burkina Faso and France signed in Ouagadougou on 11 August 1965, as subsequently amended on 3 June 1971;
- The agreement between Burkina Faso and France signed on 10 January 2010 on the coordinated management of migration and solidarity-based development.

Articles 51 and 52

Right to seek alternative employment in case of termination of the remunerated activity of migrant workers not permitted freely to choose their remunerated activity; conditions and restrictions imposed on migrant workers who can freely choose their remunerated activity

138. In Burkina Faso, termination of the remunerated activity is not grounds for cancelling a visa. Upon termination of their remunerated activities, all migrant workers are authorized, without restriction, to seek and engage in employment as they see fit. When a migrant worker takes up another remunerated activity, the new employer is obliged to submit the employment contract for approval as set forth in article 56 of the Labour Code. This obligation is the employer's alone, and migrant workers cannot be held responsible for any failure to complete this formality.

139. There is no restriction whatsoever on migrant workers' right to choose freely a remunerated activity. Migrant workers may apply for any vacancy announced by companies operating in Burkina Faso.

140. As to the recognition of qualifications, Burkina Faso is a member of the African and Malagasy Council for Higher Education (CAMES), which establishes equivalences for the qualifications issued by the universities and institutes of higher education in its member States. All qualifications obtained abroad and validated by CAMES are recognized in Burkina Faso.

Articles 49 and 56

Authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion

141. Ordinance No. 84/49/CNR/PRES of 4 August 1984 sets out the conditions of stay for foreign nationals in Burkina Faso. According to article 5 of the Ordinance, foreigners wishing to stay in Burkina Faso must obtain a permit if they wish to stay for longer than three months. However, under the ECOWAS project to introduce a Community-wide permit, the Burkina Faso authorities do not require ECOWAS citizens to obtain a Burkina Faso residence permit. Foreign nationals wishing to stay in Burkina Faso for more than three months, including migrant workers who have settled there, are issued a 12-month

renewable long-stay visa. Visa renewal is a straightforward process for migrant workers provided that they file the corresponding application.

142. Expulsions may be ordered only by the courts or by the Prosecutor-General for threats to public order or public health. Burkina Faso has never carried out mass or collective expulsions of foreigners.

D. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Article 65

Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

143. Burkina Faso does not have a specific agency to deal with questions concerning the international migration of workers and members of their families. The border police are responsible for handling migration issues in general, but not migrant workers specifically. Work visa matters are handled by the offices of the Ministry of Labour and Social Security and, in the case of salaried workers, by the labour inspectorates as well. There are no specific data on other types of workers. The workshop held to validate the contents of this report recommended that a record-keeping system should be implemented to manage the cases of all migrant workers.

Article 66

Authorized operations with a view to the recruitment of workers for employment in another State

144. Burkina Faso law authorizes the individual recruitment of workers for employment in another State. However, article 22 of the Labour Code states that “the collective recruitment of workers for employment abroad is prohibited except with the prior authorization of the Minister of Labour after consultation with the ministers of employment, foreign affairs and local government”.

Article 67

Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

145. Burkina Faso does not specifically organize the reception and settlement of migrant workers in the country. Nor does it organize the return and resettlement of migrant workers in their countries of origin or other countries. Workers are therefore responsible for organizing their stay in Burkina Faso as well as their return to their country of origin. However, the Permanent Secretariat of the High Council for Burkina Faso Nationals Living Abroad organizes activities to inform and raise awareness among Burkina Faso migrant workers living abroad on, among other matters, how to purchase housing or invest in real estate in Burkina Faso and how to transfer their assets and effects, with a view to facilitating their return to the country when their work contract expires.

Article 68

Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

146. The illegal or clandestine movement of migrant workers is combated by controlling entry to the country. A migration control division has been set up for this purpose in the Ministry of Security. This division, which is a unit of the national police force, is

responsible for controlling the entry and stay of persons in Burkina Faso. It is responsible for issuing the long-stay visas granted to foreigners who request them. Checkpoints have also been established at the country's borders to control the movement of persons.

Article 69

Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to be taken into account in any regularization procedures

147. Burkina Faso legislation creates a highly favourable climate for the integration of migrant workers living in Burkina Faso, including their integration into society and the workforce. Burkina Faso does not take any measures to expel foreigners living in an irregular situation in the country. The residence permits granted to migrants are not conditional upon their being engaged in a remunerated activity.

148. Migrant workers in an irregular situation, especially those without a residence permit, have the obligation to go to the competent authorities to regularize their situation.

149. It should be noted that access to health care does not depend on a person's situation either. Foreign nationals living in Burkina Faso, whether in a regular or irregular situation, have access to public health services under the same conditions as nationals.

Article 70

Measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity

150. Burkina Faso has enacted legislation that makes no distinction between nationals and foreigners as regards fitness, health and safety.

151. The fitness, health and working conditions of workers are governed by the Labour Code and by cross-sectoral agreements, in accordance with the pertinent ILO conventions. The provisions of the Labour Code are applicable to all workers, whether they are Burkina Faso nationals or foreign nationals in a regular situation, without distinction or discrimination of any kind.

152. To ensure better health protection for all workers, article 236 of the Labour Code states that the person in charge of an establishment must take all necessary measures to ensure the safety of its workers, including temporary workers, trainees and interns, and to protect their physical and mental health.

153. The employer must, for example, take the necessary steps to ensure that places of work, machinery, materials, substances and work procedures under its control do not pose a risk to the health and safety of the workers. In terms of preventive action, the employer must take:

- Pertinent technical measures when new machinery and equipment or procedures are installed or introduced or added to existing installations and procedures;
- Organizational measures to ensure safety at work;
- Organizational measures to safeguard health at work;
- Measures to organize the work properly;
- Measures to train and inform workers.

154. Each year employers must draw up and implement a programme to improve working conditions and the work environment.

155. When workers from different companies are present on the same site, their employers must cooperate on the implementation of occupational health and safety norms. They are obliged to keep each other and their workers informed of any occupational hazards and the measures taken to prevent them.

156. The Labour Code also provides that when protection measures call for workers to use special gear, the employer must provide the necessary instructions for its use and optimal maintenance. In such cases, no workers may be admitted to the work site unless they are wearing their protective gear.

157. To enforce these measures, the labour inspectorate makes unannounced visits to work sites to check that employers are complying with the standards for occupational health and safety and workers' health. Companies that fail to comply with the Labour Code are penalized in the manner established by law.

Article 71

Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

158. When a migrant worker or a member of their family dies, the repatriation of the body to the State of origin is coordinated with the consular authorities of the State in question. All the financial benefits due under Burkina Faso law are disbursed and all the relevant contractual conditions, such as those specified in the employment contract of the person concerned, are met, including those regarding the benefits to which persons employed by several organizations are entitled.

159. Article 180 of the Labour Code states that "in the event of the death of an expatriate or displaced worker or member of his or her family whose travel expenses were borne by the employer, the employer shall be responsible for repatriating the body of the deceased to the place of habitual residence".

Conclusion

160. Burkina Faso is a hospitable place for migrant workers. Migrant workers living in Burkina Faso enjoy all the rights established in international human rights instruments in general and in the Convention on Migrant Workers in particular.

161. Socially, the traditional cultural values of welcoming and offering hospitality to all foreigners who arrive in the country are deeply entrenched in the various societies that make up Burkina Faso.

162. Politically, Burkina Faso is committed to promoting and protecting the human rights of all categories of persons. This commitment is apparent in the political will of the Burkina Faso authorities to safeguard human rights, which led to the creation of a ministerial department responsible for human rights in 2002.

163. Economically, migrant workers make a significant contribution to the development of Burkina Faso. This has been facilitated by the Government's economic liberalization policy, which promotes the free movement of goods and persons.

164. All forms of negative discrimination against migrant workers are prohibited under the Constitution and the laws and statutes of Burkina Faso. The domestic legislation of Burkina Faso is highly conducive to the integration of migrant workers.