



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the initial report of Turkey*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, at its fourteenth session (A/66/48, para. 26), established a procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its report. The replies of the State party to the present list of issues will constitute its report under article 73, paragraph 1, of the Convention. In accordance with General Assembly resolution 68/268, paragraph 16, the report should not exceed 31,800 words.

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

Part I

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

A. General information

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

(a) The rank of the Convention in domestic law, including examples of cases, if any, in which the Convention has been directly applied by national courts or administrative authorities;

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



(b) Bilateral and multilateral agreements that have been concluded with other countries pertaining to the rights of migrant workers and members of their families, in line with the Convention;

(c) Legislative and practical measures taken by the State party to ensure the rights guaranteed in part III of the Convention to migrant workers and members of their families who are non-documented or in an irregular situation;

(d) Any instruments of national legislation that provide for the application of the Convention to refugees and/or stateless persons (art. 3 (d) of the Convention);

(e) Clarification of the status granted to refugees who have fled their conflict-ridden countries outside the Council of Europe, particularly Syria.

2. Please inform the Committee about the measures, including specific legislative, administrative, judicial or other measures taken by the State party, to ensure the effective implementation of the Convention. Please include information on the ministry or institution responsible for coordinating and monitoring the implementation of the Convention in the State party. Please also include information on steps being taken to ensure the full implementation of the Act on Foreigners and International Protection (No. 6458) of 4 April 2013, and the harmonization of national legislation with the provisions of the Convention. Regarding that Act, please inform the Committee about the:

(a) Secondary legislation and implementation regulations;

(b) Specific coordination mechanisms, including at the ministerial and local levels, to ensure its full implementation;

(c) Establishment of new bodies to deal with the human rights of migrant workers, such as the Directorate-General for Migration Management and its human and financial resources.

3. Please inform the Committee about the main activities carried out by the Office of the Ombudsperson to promote and protect the human rights of migrant workers and members of their families, regardless of their administrative status, and the human and financial resources available for those activities. Please also clarify the Ombudsperson's mandate and authority to intervene on all migration-related administrative decisions and investigate complaints made by migrant workers, including those in an irregular situation.

4. Please provide details on the National Human Rights Institution (NHRI) and indicate whether its mandate includes monitoring the human rights of migrant workers. If so, please clarify whether it has investigative powers on issues related to the human rights of migrant workers, including those in an irregular situation. How is cooperation between the Office of the Ombudsperson and the NHRI assured, in order to avoid duplication and confusion?

5. Please provide information on the steps taken by the State party to promote and publicize the Convention and relevant migration legislation and to increase awareness and understanding of the provisions of those instruments within the State party among the general public, migrant workers and members of their families, employers, teachers, health workers and government officials, including law enforcement officials and the judiciary. With respect to migrant workers who are nationals of the State party working abroad, please also describe the measures taken by the State party to promote training programmes, including on gender sensitivity, for government staff dealing with migration issues. In particular, please provide information on training for those providing legal and consular assistance to nationals of the State party abroad who are seeking justice against abuse in the workplace, and regarding migrant workers or members of their families who have been arrested, held in prison, placed in custody pending trial or detained in any other manner.

6. Please provide information on the cooperation between the State party and civil society organizations working on migrant workers' rights in relation to the implementation of the Convention. Please also provide information on the involvement of civil society organizations in the design and implementation of policies related to labour migration and human rights. Please indicate whether civil society organizations were involved in the preparation of the replies to the present list of issues.

7. Please provide information on any reviews the State party has carried out or plans to carry out to withdraw or amend its reservations and declarations regarding articles 15, 40, 45, and 46 of the Convention.

B. Information relating to the articles of the Convention

1. General principles

8. Please provide information on: (a) judicial and/or administrative mechanisms competent to examine and decide on complaints by migrant workers and members of their families, including when they are non-documented or in an irregular situation, in case of a violation of their rights; (b) the complaints examined by such mechanisms in the past five years and their outcome; (c) any redress provided to victims of such violations; and (d) any measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

2. Part II of the Convention

Article 7

9. Please inform the Committee about measures taken to guarantee non-discrimination, both in law and in practice, to all migrant workers and members of their families with regard to the rights provided for in the Convention. Please include information on education, training and awareness-raising programmes to combat stereotypes, xenophobia and discrimination against migrant workers.

10. Please provide information on measures to ensure that migrant workers and members of their families who are documented/in a regular situation or non-documented/in an irregular situation, as applicable, enjoy the same treatment granted to nationals of the State party, in law and in practice, in relation to access to medical care, housing, including social housing schemes, social services, education and work.

3. Part III of the Convention

Articles 8 to 15

11. Please provide information on the measures taken to combat abuse and exploitation of migrant workers and members of their families, particularly women in an irregular situation, and to prevent the exploitation of migrant workers, particularly women, for prostitution in the State party.

Articles 16 to 22 and 83

12. Please describe the due process safeguards in situations of investigation, arrest and detention of migrant workers and members of their families for criminal offences and administrative infractions, and with regard to the latter, please include immigration-related matters. Please indicate whether the State party has taken any measures to provide for non-custodial alternatives to detention.

13. Please provide detailed information on migration detention centres, conditions of detention for migrant workers and efforts to improve those conditions, including whether:

- (a) The State party has in place alternatives to detention for immigration-related matters;
- (b) Persons detained for immigration reasons are held in separate facilities or together with convicted persons or persons detained pending trial;
- (c) Measures to ensure that alternatives to the detention of children exist in the State party. In cases in which alternatives are not used, please provide information on how the State party ensures that children and women are held in gender and age-appropriate detention conditions, including by separating children from adults and female from male detainees who are not family members or partners;
- (d) Women detainees are supervised by female personnel;
- (e) Family-friendly facilities are provided for families where possible and appropriate.

14. With regard to article 22, paragraph 4, and article 83 of the Convention, please provide information on the implementation of the right to appeal decisions on the withdrawal of residence authorization and expulsion. Please provide information on cases of collective expulsions.

Article 23

15. Please provide information on the mandate and resources of the Directorate-General for Consular Affairs with regard to Turkish workers abroad. Please indicate which consular services are provided to Turkish workers and members of their families abroad, including those in an irregular situation. Please also provide statistics on and examples of the legal assistance provided and indicate whether due process is observed, including in detention and/or expulsion cases. Please indicate whether foreign migrant workers and members of their families in Turkey are informed of their right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin whenever the rights recognized in the Convention are impaired, particularly in case of expulsion.

Articles 25 to 30

16. Please describe labour laws and regulations relating to remuneration and conditions of work, including on overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract and the minimum wage applicable to migrant workers in both regular and irregular situations. Please indicate whether the same labour laws and regulations relating to labour and social protection apply to nationals of the State party. Please describe the measures taken to ensure that migrant workers in an irregular situation enjoy equality of treatment with nationals of the State party with regard to conditions of work.

17. Please clarify to what extent migrant workers and members of their families in an irregular situation have trade union rights and access to social security and emergency health care.

18. Please describe how the different social security schemes in place in the State party are applied to migrant workers who are documented or in a regular situation and to those who are non-documented or in an irregular situation. Please indicate whether contributions made by migrant workers to pension schemes, if any, are reimbursed to them and/or whether Turkey is a party to bilateral or multilateral agreements on the recognition and transfer of accrued pension benefits.

19. Please indicate what measures the State party has taken to guarantee that children of migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, enjoy the right to be registered at birth and to have their nationality of origin ensured in law and in practice.

20. Please inform the Committee about the domestic legislation that guarantees access to education for all children, including the children of migrant workers. Please indicate whether primary and secondary education is compulsory and available free of charge for all children of migrant workers, including those who are non-documented or in an irregular situation, and provide statistical data on the enrolment of children of migrant workers at the primary, secondary and tertiary levels of education.

Articles 31 to 33

21. Please provide information on the measures taken to guarantee respect for the cultural identity of migrant workers and members of their families.

22. Please provide information on measures taken by the State party to ensure that during and upon the termination of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings and, in accordance with the applicable legislation, their personal effects and belongings. Please provide additional information on the measures taken to facilitate the transfer of those private funds, particularly to reduce the cost of such transactions.

23. Please inform the Committee about any steps taken to inform and guide its nationals going to work abroad prior to their departure, and migrant workers and members of their families in, or in transit through, the State party, of their rights and obligations in the State of employment, in a language that they understand.

4. Part IV of the Convention

Article 37

24. Please provide information on the measures taken to fulfil the right of migrant workers and members of their families to be fully informed of all conditions applicable to their admission, stay and remunerated activities in which they may engage, as well as of their rights under applicable laws in the State party.

Article 40

25. Please provide information on how the Trade Unions and Collective Labour Agreements Act (2012) that repealed the Trade Unions Act ensures fundamental trade union rights and meets international standards and commitments undertaken by the State party. Given that the new Act provides that foreign migrant workers may form associations and trade unions, please indicate whether the State party is considering withdrawing its reservation to article 40 of the Convention.

Article 41

26. Please provide information on the steps taken by the State party to facilitate the exercise by Turkish workers living abroad of the right to vote and to be elected at elections held in the State party, including updated information about amendment No. 6304 of 18 May 2012 to the electoral law.

Articles 46 to 48

27. Please provide detailed, updated information on the bilateral and multilateral agreements concluded in the field of migration, in particular temporary labour programmes and other agreements concerning employment, protection, double taxation and social security for migrant workers and members of their families.

28. Please provide information on remittances transferred by Turkish migrant workers abroad. Are any taxes levied on incoming remittances? Please provide information on any measures adopted to facilitate the transfer of migrant workers' earnings and savings to Turkey, including any agreements to reduce the cost of such transactions for migrant workers, and any State-run programmes to facilitate the productive use of remittances.

Article 49

29. Please provide information on measures taken to ensure that migrant workers in the State party, including those on short-term or temporary contracts, enjoy equality of treatment with nationals, are allowed freely to choose their remunerated activity without being regarded as in an irregular situation, and retain their authorization of residence in the event of termination of their remunerated activity prior to the expiration of their work permit or similar authorization. Furthermore, please provide information on measures taken to ensure that, in such cases, the authorization of residence is not withdrawn at least for a period corresponding to that during which the migrant worker may be entitled to unemployment benefits.

Article 56

30. Please inform the Committee about the legal grounds on which migrant workers may be expelled from the State party.

5. Part V of the Convention**Articles 57 to 63**

31. Please provide information on the particular categories of migrant workers in the State party, including how many migrant workers are in each category and the specific measures adopted for each category by the State party.

6. Part VI of the Convention**Article 64**

32. Please provide information on mechanisms and procedures to facilitate the identification of persons in need of international assistance and protection among migrants upon their arrival in the State party. Please include the measures taken by the State party to ensure that its migration control procedures safeguard the rights of vulnerable groups and individuals, such as children and persons fleeing violence and conflict in their own countries. Please include information with regard to the implementation of Act No. 6458 and the work and resources of the Directorate-General for Migration Management within the Ministry of the Interior, which was established under the Act.

33. Please provide information on the measures taken to prevent irregular migration, including through international agreements, policies and programmes. Please include information on how such measures have been mainstreamed in general migration policies and programmes and indicate whether a measurable result in terms of the number of irregular migrant workers has been determined. Please clarify how the Coordination Board

for Combating Irregular Migration, established under article 116 of Act No. 6458, ensures the human rights of irregular migrant workers.

Article 66

34. Please provide information on: (a) the ways and means by which Turkish nationals are typically recruited for work in foreign countries; (b) efforts to regulate recruitment activities within the State party; and (c) efforts to cooperate and consult with the main destination countries of Turkish migrant workers with a view to promoting sound, equitable and humane working and living conditions for Turkish nationals in those countries.

Article 67

35. Please update and disaggregate the information from the Ministry of Foreign Affairs web page, which refers to three million Turkish migrants who returned to Turkey.¹ Please also provide updated information on the efforts undertaken to facilitate the safe and sustainable return of Turkish migrant workers and members of their families and their reintegration into the economic and social life of the State party.

Articles 68 and 69

36. With regard to clandestine movements such as smuggling and trafficking in persons in the State party's territory, please provide information on:

(a) The extent of the phenomena, and data on relevant investigations, prosecutions, and sentences imposed on perpetrators in the past five years;

(b) Measures taken to prevent and eradicate trafficking and smuggling of migrant workers, systematically compile disaggregated data and bring perpetrators of trafficking and smuggling of migrants to justice, including in cases of complicity and involvement of public officials;

(c) The latest developments regarding the specific legislative measures announced by the State party to criminalize human trafficking, the legal status of victims of trafficking while recovering, and the procedures for the protection and recovery of victims, including access to justice.

37. Please indicate whether the State party considers the possibility of regularizing the situation of migrant workers and members of their families who are in an irregular situation within its territory, including informal sector workers and long-term residents without legal status. Please provide information on the various residence categories contemplated by law and indicate whether appropriate account is taken of the family situation of such migrant workers. In cases of migrant workers in an irregular situation, please clarify whether a labour relationship, such as an official employment contract, is sufficient legal grounds to obtain an authorization of residence in the State party and if so, please specify its duration.

¹ "Turkish community living abroad amounts to more than 5 million people, around 4 million of which live in Western European countries, 300.000 in Northern America, 200.000 in the Middle East and 150.000 in Australia. This number increases to 8 million when 3 million Turkish migrants who returned Turkey are taken into account". Available from www.mfa.gov.tr/the-expatriate-turkish-citizens.en.mfa (accessed 19 March 2014).

Part II

In this section, the Committee invites the State party to briefly (three pages maximum) provide information regarding the protection of migrant workers and members of their families with respect to:

- (a) Bills or laws and their respective regulations, including the law on border management, and constitutional reform;
- (b) Institutions and their mandates and institutional reforms;
- (c) Policies, programmes and action plans covering migration, including their scope and financing;
- (d) Recent ratifications of relevant human rights instruments;
- (e) Steps to make the declarations provided for in articles 76 and 77 of the Convention;
- (f) Recent comprehensive studies on the situation of migrant workers and members of their families.

Part III

Data, official estimates, statistics and other information, if available

1. Please provide updated, disaggregated statistical and qualitative data for the past three years (unless indicated otherwise) on:

- (a) The volume and nature of labour migration flows in and from the State party from the date of the entry into force of the Convention in the State party to the present;
- (b) Migrant workers in detention in the State party and in States of employment;
- (c) Migrant workers and members of their families that have been expelled or deported from the State party in the past five years;
- (d) Non-accompanied migrant children or migrant children separated from their parents in the State party;
- (e) Remittances from migrant workers who are nationals of the State party working abroad, information on legislation regulating remittances and government policies relating to remittances and development;
- (f) Applications for family reunification from nationals and foreigners, disaggregated by status of applicant, and the outcomes of the applications, including details of appeals, similarly disaggregated;
- (g) Migrant workers in an irregular situation. If precise data are not available, please provide the results of studies or estimates;
- (h) Legal assistance services provided to migrant workers and members of their families both inside the State party and for nationals of the State party working abroad;
- (i) Mechanisms aimed at collecting quantitative disaggregated statistical data and qualitative information on the rights of migrant workers in line with the Convention, inside and outside the State party. If applicable, please also provide information on the functioning of such mechanisms, including indicators of success and outcomes.

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

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