



# 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 combined initial and second periodic reports of Jamaica\*

#### Section I

##### A. General information

1. Please provide details on the national legal framework in relation to the Convention, including:

(a) Measures adopted to bring the legislation into line with the Convention, in particular the Deportation (Commonwealth Citizens) Act (1942), the Immigration Restriction (Commonwealth Citizens) Act (1945) and the Aliens Act (1946);

(b) The existence and scope of bilateral and multilateral migration agreements concluded with other States pertaining to the rights of migrant workers and members of their families under the Convention, in particular with Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and with member countries of the Caribbean Community and Common Market (CARICOM). Please specify how these agreements protect Jamaican migrant workers' rights in transit and destination countries, as well as the rights of migrant workers in Jamaica. Please provide information on whether the provisions in the Free Movement of Skilled Persons Act are effectively implemented and allow migrant workers from CARICOM member countries to benefit from all rights guaranteed therein, including within the State party. Please provide information on any measures taken to strengthen the protection of migrant workers from the State party abroad, including by reviewing and amending the above-mentioned agreements, also with respect to the collection and sharing of relevant data among States.

2. Please provide information on all policies and strategies relating to the rights of migrant workers and members of their families adopted by the State party, including information on specific time-bound and measurable goals and targets to effectively monitor progress in the implementation of the rights of migrant workers and members of their families in the State party. Please also provide information on the human, technical and financial resources allocated for their implementation and the results obtained.

3. Please provide information on the management of migration, including the government ministries or institutions responsible for intergovernmental coordination of the implementation of the Convention in the State party, such as the Ministry of Foreign Affairs and Foreign Trade, the three interagency coordination committees and the National Task Force against Trafficking in Persons. Please provide information on the available human, technical and financial resources of such ministries and institutions, and on the results obtained, including through monitoring activities and follow-up procedures, in promoting,

\* Adopted intersessionally by the Committee on 5 February 2021.



protecting and fulfilling the rights of migrant workers and members of their families (para. 19).<sup>1</sup>

4. Please provide qualitative information and statistical data, disaggregated by sex, age, nationality, ethnic origin, disability and migration status, on labour migration movements to and from the State party, including returns, other labour migration-related issues, unaccompanied children and children left behind by migrant parents. Please also provide qualitative and statistical data or, if precise data are not available, studies or estimates, on migrant workers in an irregular situation in the State party and abroad, in particular those working in agriculture and the service sector. Please provide information on any challenges faced by the State party's data-collection system; on measures taken by the State party to ensure that the Statistical Institute of Jamaica is provided with adequate human and financial resources; and on measures to enhance its collaboration with embassies and consulates to facilitate the compilation of data on nationals of Jamaica who are working abroad, including a systematic evaluation of the situation of irregular migrant workers and returnees (para. 21).

5. In the light of the Committee's previous recommendation (para. 23), and the recommendation accepted by the State party during the third cycle of the universal periodic review (A/HRC/46/18, para. 79), please provide information on whether the State party has established an independent mechanism, such as a national human rights institution, that has the explicit mandate of monitoring the situation of human rights within the State party, including the rights of all migrant workers and members of their families under the Convention, and on measures taken to ensure the independence and effective functioning of the mechanism. Please inform the Committee about whether it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please provide information on the human, technical and financial resources made available to the institution. Please also provide information on activities of and services offered by the institution, such as complaint mechanisms and helplines, and on whether it conducts visits to detention centres for migrant workers and members of their families.

6. Please provide information on the steps taken to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, migrant workers and members of their families, employers, teachers, health workers, civil society and the media. Please also provide information on efforts to raise the awareness of migrant workers and members of their families on the legislative and regulatory framework applicable to them, by providing them with such information in languages they understand. Please indicate any measures taken to raise the awareness of the general public on issues such as migration-related offences and trafficking in persons, including cases involving domestic servitude, forced labour and child sexual exploitation. Please also indicate how the media participate in disseminating information about the Convention and in promoting the rights contained in the Convention.

7. Please provide information on measures taken to develop and implement systematic and regular training on the human rights of migrant workers and members of their families for government officials, including embassy and consular personnel, law enforcement officials, border police and the judiciary. Such training should include information on an approach that focuses on gender, age, disability and diversity and on the application of the Convention.

8. In the light of the Committee's previous recommendation (para. 27), please provide information on the cooperation and interaction between the State party, civil society organizations and other social partners working on the rights of migrant workers and members of their families, on measures taken to fulfil the State party's obligations related to training on the application of the Convention and its dissemination to all relevant stakeholders. Please indicate whether and how representatives of civil society organizations and other stakeholders are involved in the preparation of replies to the present list of issues.

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<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the Committee's previous concluding observations (CMW/C/JAM/CO/1).

9. Please provide information on efforts to license, regulate and monitor private employment agencies in the State party that are recruiting migrant workers to work abroad, and the laws, rules and regulations pertaining to private recruitment, in particular on:

- (a) Measures taken to provide information and training to migrant workers on their rights and obligations, as well as to protect against abusive employment situations;
- (b) The role and responsibilities of recruitment agencies and their joint responsibility with the employer abroad for claims and liabilities that may arise in connection with the implementation of the employment contract, including wages, disability compensation, repatriation and death, including repatriation of the bodies of deceased migrant workers;
- (c) Whether recruitment agencies provide life, disability and/or workers' compensation insurance to migrant workers for work-related injuries and death;
- (d) Information relating to the issuance and renewal of licences of such employment agencies;
- (e) Complaints lodged against recruitment agencies, labour inspections conducted, and penalties and sanctions imposed in cases of non-compliance with the law;
- (f) Measures taken by the State party to strengthen mechanisms to regulate and control private employment agencies, including through the Ministry of Labour and Social Security of Jamaica, and to avoid situations where such agencies act as intermediaries for abusive foreign recruiters;
- (g) Progress made with a view to the ratification of the International Labour Organization (ILO) Private Employment Agencies Convention, 1997 (No. 181).

## **B. Information requested, by article of the Convention**

### **1. General principles**

10. Please indicate whether the Convention has been directly applied by officials in the administration. Please provide information on and examples of judicial cases and judgments in which the Convention has been invoked directly before the courts. Please also provide information on:

- (a) The judicial and administrative mechanisms competent to examine and decide on complaints by migrant workers and members of their families, including those in an irregular situation;
- (b) The number and type of complaints examined by such mechanisms in the past five years and their outcome, disaggregated by sex, age, nationality and migration status;
- (c) Whether legal assistance was provided both to immigrants in Jamaica and to nationals of Jamaica who are living as migrants abroad;
- (d) Any redress, including compensation, provided to the victims of rights violations under the Convention;
- (e) Measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

11. Please provide information on restrictions placed on the full exercise of the rights of migrant workers and members of their families in the face of the coronavirus disease (COVID-19) pandemic, including restrictive measures taken at borders in relation to their entry or exit from their countries of origin, transit or destination. Please also provide information on measures taken in relation to voluntary return to their countries of origin in the context of the pandemic. Please indicate the measures taken to ensure that the pandemic does not affect the process of asylum applications or migration procedures, including in relation to the suspension of procedures. Please indicate efforts taken on behalf of migrant workers and members of their families to:

- (a) Include them in national pandemic prevention and response plans, especially in relation to ensuring access to a vaccine;
- (b) Ensure their access to health-care services;
- (c) Uphold the necessary sanitary measures to prevent contagion and maintain the desired level of health protection at their workplaces;
- (d) Prevent infections in detention centres and provide health-care services to those who have been infected;
- (e) Ensure that families of migrant workers who have died of the disease are informed of their deaths and receive their remains;
- (f) Protect their rights in other respects and mitigate the pandemic's adverse effects, in view of the joint guidance note of the Committee and the Special Rapporteur on the human rights of migrants on the impacts of the COVID-19 pandemic on the human rights of migrants.<sup>2</sup>

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

### **Article 7**

12. Please indicate whether the national legislation, in particular the Jamaica (Constitution) Order in Councils (1962), the Foreign Nationals and Commonwealth Citizens (Employment) Act (1964), the Immigration Restrictions (Commonwealth Citizens) Act (1945), the Aliens Act (1946) and the Jamaica Nationality Act (1962), ensures that all migrant workers and members of their families enjoy the rights established in the Convention, without distinction of any kind, and whether such legislation covers all the prohibited grounds of discrimination, including sex, age, gender identity and sexual orientation, disability, language, national, ethnic or social origin, nationality, economic status, property, marital status, and birth or other status. In the light of the Committee's previous recommendation (para. 29), please provide information on measures taken to review the legislation and repeal all discriminatory provisions. Please also provide information on measures taken to ensure non-discrimination, protection of labour rights and gender equality in all matters relating to migration policy, both in law and in practice, and within the framework of CARICOM.

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

### **Articles 8 to 15**

13. Please provide information on any cases identified in the State party of exploitation of migrant workers and members of their families (para. 33 (c)), in both regular and irregular situations, in particular cases involving individuals working in agriculture, forestry and the service sector. Please also provide information on any cases identified in the State party of domestic servitude, forced labour or sexual exploitation involving migrant workers, in particular women and children, and on measures to prevent and combat these phenomena. In addition, please provide information on measures taken by the State party to ensure that the rights of child migrant workers, in particular those who are unaccompanied, those in an irregular situation and those transiting through the State party, are respected and protected from all forms of exploitation, in particular those working in agriculture, including in the sugar industry.

14. In light of the Committee's previous recommendation (para. 35), please provide information on measures taken to combat racism and xenophobia, discriminatory conduct, ill-treatment and violence directed at migrant workers and members of their families. Please also provide information on measures taken to prevent and mitigate stigma and discrimination against persons living with HIV/AIDS in the migrant worker community.

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<sup>2</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Special Rapporteur on the human rights of migrants, "Joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants", 26 May 2020.

15. Please provide information on the measures taken to bring national legislation into compliance with the ILO Forced Labour Convention, 1930 (No. 29); the ILO Abolition of Forced Labour Convention, 1957 (No. 105); and the ILO Domestic Workers Convention, 2011 (No. 189).

16. Please provide information on the measures taken to address any instances of corruption and efforts to carry out inquiries into allegations of corruption by public officials. Please also provide information on any information campaigns, conducted or envisaged, with a view to encouraging migrant workers and members of their families who are victims of corruption to report that corruption.

### **Articles 16 to 22**

17. In the light of the Committee's previous recommendation (para. 37 (d)), please provide information on measures taken to decriminalize irregular migration and ensure that migrant workers and members of their families have access to the due process safeguards, including access to a lawyer and an interpreter, in situations of investigations, arrests, detentions and expulsions of migrant workers and members of their families for immigration-related offences. Please describe measures taken to ensure that the obligation contained in article 16 (7) of the Convention on contact with consular or diplomatic authorities of the State of origin of the detained migrant worker or members of their families is given effect in law and in practice. Please include information on specific due process safeguards for unaccompanied children in migration related administration procedure, including the right to be heard and the right to a guardian.

18. Please indicate whether the State party has taken measures to ensure the right to liberty and freedom from arbitrary detention of migrant workers and their families in the context of migration administrative procedures, including entry, residence and expulsion. In the light of the Committee's previous recommendation (para. 37 (a)), please explain measures taken to adopt and effectively implement alternatives to immigration detention. Please provide information on up-to-date statistical data on the number of detained migrants, disaggregated by nationality, sex, age and migration status of migrant workers and members of their families, indicating the duration of such detention and how many such persons have been freed from detention and are now subject to an alternative procedure. Please also provide information on measures taken to prohibit detention of children who are, or whose parents are, in an irregular situation, in accordance with joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration.

19. Please provide detailed information on detention facilities for migrants, conditions of detention for migrant workers and efforts to suspend immigration detention and adopt alternatives to immigration detention. In the light of the Committee's previous recommendation (para. 37 (a)), please indicate measures taken to ensure that detention is used only as an exceptional measure. Please indicate what measures have been taken to ensure that detained migrant workers and members of their families are segregated from convicted criminals. Please also provide information on the number of migrant workers arrested, detained and expelled for immigration-related infractions, the reasons for their detention and expulsion, and their detention conditions, including the length of detention (para. 37 (e)).

### **Article 23**

20. Please provide detailed information on the assistance and protection provided by the consular services of the State party, to Jamaican migrant workers and members of their families in transit and destination countries, including those in an irregular situation and particularly in cases of abuse, arrest, detention and expulsion. Please also indicate the measures in place to facilitate outreach to migrant workers from the State party in transit and destination countries, particularly in those where the State party does not have diplomatic or consular representation. In the light of the Committee's previous recommendation (para. 43 (a)), please provide information on measures taken to formulate a policy on consular protection designed to protect the rights of migrant workers and members of their families

abroad, and to develop a standardized tool for the collection of quantitative and qualitative data by Jamaican consulates, specifically designed to show to what extent the rights of Jamaican migrant workers and members of their families who are detained in and deported from countries of destination are protected or infringed, and to record the reasons for migration given by persons who receive consular assistance (para. 43 (d)).

### **Articles 25 to 30**

21. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work (for example, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract and minimum wage) are in full compliance with the ILO Equal Remuneration Convention, 1951 (No. 100), and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Please also indicate whether these laws and regulations apply on an equal basis to migrant workers, in both regular and irregular situations, and to nationals of Jamaica. Please provide information on measures taken to monitor the employment conditions of migrant workers in order to ensure that they enjoy decent and safe working conditions and are guaranteed a wage and access to benefits, including to social security, under conditions equal to those applied to nationals of Jamaica.

22. In the light of the Committee's previous recommendation (para. 47), please provide information on the measures taken to ensure that the children of migrant workers have full access to education, regardless of their migration status, including information on the measures taken to ensure that schools are not obliged to report children's migration status to the authorities. Please also provide information on cooperation engaged in with destination countries to ensure that children of migrant workers who reside abroad can continue their education at all levels, including tertiary and higher education.

23. Please provide information on the measures taken by the State party to ensure that all migrant workers and members of their families have adequate access to health-care services. Please indicate whether migrant workers and members of their families can benefit from the national health insurance programme. Please also provide information on measures taken to adopt policies and strategies relating to health care and related services, in particular the current status of the Sexual and Reproductive Health Policy, and indicate whether it takes into account and is applicable to migrant workers and members of their families in the State party.

24. In the light of the Committee's previous recommendation (para. 55 (e)), please provide information on the measures taken by the State party to ensure the right of children of migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, to be registered at birth and to have their nationality recognized in law and in practice. Please indicate whether the Jamaica Nationality Act (1962) and the Aliens Act (1946) also covers foreign migrant children in the State party and children of migrant workers abroad. Please indicate specific measures taken to prevent statelessness.

### **Article 33**

25. Please provide information on the measures taken to ensure that migrant workers arriving in or preparing to come to Jamaica have access to clear information on immigration procedures, including full information on the conditions applicable to their admission, stay and remunerated activities in which they may engage, and on applicable legislation.

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

### **Article 37**

26. Please provide information on pre-departure programmes for nationals of Jamaica who are considering emigration, including information on their rights and obligations in the State of employment. Please indicate which institution is responsible for providing such information, and whether any legislation, policies or programmes have been developed to ensure transparency and accountability in this process.

**Article 40**

27. Please provide information on the measures taken to guarantee to migrant workers and members of their families the right to form, and be part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention and parts I and II of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

**Article 41**

28. Please provide information on the measures taken by the State party to review its legislation and on other steps to facilitate the exercise of voting rights by migrant workers and members of their families from the State party abroad, in particular:

- (a) The right to participate in public affairs in the State party;
- (b) The right to vote in the State party;
- (c) The right to be elected to public office in the State party.

**Article 44**

29. Please provide information on measures taken to protect the unity of the families of migrant workers and to facilitate the reunification of migrant workers with their spouses or persons who have a relationship with the migrant worker that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children, including in the context of expulsion procedures.

**Articles 46 to 48**

30. In light of the Committee's previous recommendation (para. 53), please provide information on the measures taken to ensure that migrant workers can transfer their earnings and savings to their countries of origin. This applies both to migrant workers from Jamaica who reside abroad and wish to transfer funds to Jamaica and to migrant workers who reside in the State party and wish to transfer funds to their countries of origin. Please indicate the costs incurred by migrant workers in making such transfers. Please also provide information about the measures taken by the State party to guarantee that the families of migrant workers receive these remittances under the best conditions and without restrictions.

**5. Part VI of the Convention****Articles 64 to 71**

31. Please provide information on the measures taken, including consultations and cooperation with other States, to promote sound, equitable and humane conditions in connection with the international migration of migrant workers and members of their families, including through multilateral and bilateral agreements, and policies and programmes. Please describe the measures taken to address irregular migration of nationals of the State party, including through multilateral and bilateral agreements, policies and programmes aimed at improving legal migration channels and at addressing the root causes of irregular migration. Please also provide information on the measures taken to assist returning migrant workers and members of their families in their resettlement and reintegration into the economic and social life of the State party. Please provide information on measures taken to ensure the voluntary return of migrant workers and members of their families to the State party when they decide to return or when they are in the State of employment in an irregular situation. Concerning migrant workers in a regular situation, please provide information on cooperation programmes between the State party and relevant States of employment to promote adequate economic conditions for resettlement and reintegration in the State party (para. 61).

32. In the light of the Committee's previous recommendations (para. 65), please provide information on measures taken by the State party, including through international, regional and bilateral cooperation with countries of origin, transit and destination, to prevent and combat trafficking in persons, in particular women and children. Please describe the institutions established to combat trafficking in persons, such as the Office of the National

Rapporteur on Human Trafficking and the National Task Force against Trafficking in Persons, chaired by the Ministry of Justice. Please indicate measures taken to develop a national referral mechanism for the screening and identification of potential victims of trafficking and other vulnerable migrants. Please provide information on the measures taken by the State party to implement the Trafficking in Persons (Prevention, Suppression and Punishment) Act (2007), the Child Care and Protection Act (2004) and other relevant legislation, which prohibit trafficking in persons for sexual or labour exploitation, and to adopt other legislation or policies in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Please also provide information on the following:

- (a) Training activities for the identification of victims of trafficking and smuggling for the judiciary, law enforcement officers, border guards and social workers, in particular in remote and rural areas;
- (b) Reported cases of trafficking in and the smuggling of migrant workers, disaggregated by sex, age, nationality and purpose of trafficking, and on investigations and prosecutions carried out and criminal sentences imposed on perpetrators;
- (c) Measures taken to provide age-appropriate and gender-sensitive shelters, medical care and psychosocial support to assist victims of trafficking in persons.

## **Section II**

33. The Committee invites the State party to provide information (no more than three pages) regarding the protection of migrant workers and members of their families with respect to the following:

- (a) Bills or laws and their respective implementing regulations;
- (b) Institutions and their mandates and institutional reforms undertaken since 2014;
- (c) Policies, programmes and action plans covering migration and their scope and financing;
- (d) Recent ratifications of human rights instruments and other relevant instruments, including the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- (e) Recent comprehensive studies on the situation of migrant workers and members of their families.

## **Section III**

### **Data, official estimates, statistics and other information**

34. Please provide, if available, updated disaggregated statistical data and qualitative information for the past three years on:

- (a) The volume and nature of migratory movements to and from the State party during the reporting period;
- (b) Migrant workers in detention in the State party and migrant workers who are nationals of the State party detained abroad in States of employment, and whether such detention is immigration-related;
- (c) Migrant workers and members of their families who have been expelled from the State party;
- (d) The number of unaccompanied migrant children or migrant children separated from their parents in the State party;
- (e) The number of migrant workers and members of their families who have contracted SARS-CoV-2, the number who have received a COVID-19 vaccine, and the number who have died as a result of COVID-19, disaggregated by sex, age and nationality;

- (f) Remittances received from nationals of the State party working abroad;
- (g) Reported cases of trafficking in and smuggling of migrants, investigations, prosecutions and sentences imposed on perpetrators, disaggregated by sex, age, nationality and purpose of trafficking;
- (h) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

35. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that are considered a priority, including whether the State party envisages making the declaration under article 76 of the Convention recognizing the competence of the Committee to receive and consider State-to-State communications and/or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

36. Please submit a core document in line with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6). In accordance with paragraph 16 of General Assembly resolution 68/268, the common core document should not exceed 42,400 words.

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