



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

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English

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

List of issues to be taken up in connection with the consideration of the initial report of Burkina Faso,* adopted by the Committee at its eighteenth session (15–26 April 2013)

I. General information

1. The report states that the existing data do not provide accurate up-to-date information on the number of migrant workers and their family members residing in the State party and the number of Burkina Faso migrant workers living abroad (paras. 30–32). Please describe the measures taken to improve the collection of statistical data disaggregated by sex, age and nationality, in order to assess the extent and nature of migration flows in the State party, including those resulting from irregular migration. Please also indicate, as far as possible, the number of Burkina Faso migrant workers returning (voluntarily or involuntarily) to the country.

2. Please indicate whether the State party intends to make the declarations provided for in articles 76 and 77 of the Convention. Please explain whether domestic legislation provides for the application of the Convention to refugees and stateless persons (Convention, art. 3 (d)).

3. The report indicates that there are no legal or regulatory provisions specifically devoted to the rights of migrant workers and members of their families, although it does indicate that the Labour Code, the Civil Code and the Personal and Family Code contain provisions that do so directly or indirectly (para. 17). Please provide more detailed information on the legislative measures taken to bring other internal laws and regulations into line in connection with application of the Convention, and on the content and implementation of the provisions that apply to immigration, including those mentioned in paragraphs 62, 63, 141 and 142 of the report, related to the residence permit and the 12-month renewable long-stay visa.

4. With regard to Act No. 062-2009/AN of 21 December 2009, which reformed the National Human Rights Commission, please provide information on the Commission's mandate, main activities and human and financial resources, particularly in respect of matters that affect migrant workers.

5. Please inform the Committee of the progress made toward adopting a national migration policy that includes monitoring mechanisms. Please also give detailed information on Government policy on dealing with Burkina Faso nationals living abroad mentioned in paragraph 35, as well as on the specific activities of the High Council for Burkina Faso Nationals Living Abroad (paras. 35 and 145), its human and financial resources and its visibility.

6. Please indicate whether the State party has taken any steps, besides the publication of a compendium of international human rights agreements that includes the Convention (para. 38), to promote and disseminate the Convention and to promote awareness and understanding of its provisions to the general public, to migrant workers and members of their families, and to State officials, including those working for the National Employment Agency, the National Social Security Fund and the Standing National Committee on Migration (para. 13). In particular, please also provide information on any information strategies aimed at migrant workers in Burkina Faso and Burkina Faso migrants abroad regarding legislation and Government policies and programmes to protect their rights. Furthermore, please indicate whether any specific training programmes have been introduced, including on the legal aspects of the Convention, for the officials concerned, such as judges and prosecutors, members of the border police, embassy and consular staff and social workers.

7. Please give more detailed information on cooperation in application of the Convention between the State party and civil society organizations that work in the area of migrants' rights (para. 39), and the extent to which they were involved in the preparation of the State party report (para. 6). Please also indicate whether representatives of the diaspora and migrants' associations were invited to take part in its preparation.

II. Information relating to the articles of the Convention

A. General principles

8. Please give information on the measures taken by the State party to inform migrant workers of the judicial and administrative remedies available to them, including in the area of immigration, and to encourage migrant workers who are victims of exploitation to denounce abuses so that they can be investigated and the perpetrators punished. Please also describe the mechanisms that allow migrant workers to obtain legal assistance in all of the above cases.

9. Please provide detailed information on: (a) the judicial bodies and/or administrative structures authorized to examine complaints from migrant workers and their family members concerning violations of their rights; (b) the complaints examined by those bodies since ratification of the Convention by the State party, including by the Burkina Faso Ombudsman (paras. 58–60) and the National Human Rights Commission; (c) the violations generally alleged, including those based on article 132 of the Criminal Code, on discrimination (para. 44); (d) subsequent decisions; and (e) any compensation awarded to victims of such violations.

B. Part III of the Convention

Articles 16, 17 and 18

10. Please describe the types of criminal or administrative penalties incurred by migrant workers for violating immigration laws.

11. Please provide data disaggregated by sex, age and nationality on the number of migrant workers who have been deprived of liberty since 2010, as well as the conditions in which they are held. Please explain the reasons for their detention, giving information on the decisions taken in their cases and indicating whether any migrant workers are currently being held for violating immigration laws. If so, please specify the average length of their detention and indicate whether current legislation provides for a maximum period during which such persons may be held in custody.

Article 21

12. The Committee is informed that the confiscation or withdrawal of official documents is prohibited, except in certain circumstances established by law, notably where there is doubt as to the documents' validity (para. 90). Please provide details of the cases established by law in which official documents such as residence permits or long-stay visas may be withdrawn and please describe the procedure that allows the confiscation of such identity documents or other documents authorizing entry, stay, residence or establishment in the country. Please also indicate whether a detailed receipt is given when documents are confiscated and whether appropriate remedies are available to the persons concerned.

Article 22

13. Although the State party indicates that it does not take any measures to expel foreigners living in an irregular situation in the country (paras. 142 and 147), the report does note that expulsions may be ordered by the courts or by the Prosecutor-General for threats to public order or public health (para. 142). Please provide statistics disaggregated by sex, age and nationality on migrant workers and members of their families expelled from the State party since 2010. Please describe in detail the expulsion procedures that apply in the State party, including the relevant legal provisions, and specify whether any deportation measures issued have been accompanied by the necessary procedural safeguards, and specifically if and how a migrant worker subject to an expulsion order may submit arguments against the expulsion and whether appeals against such orders have suspensive effect. Please also indicate whether collective expulsion is expressly prohibited by law.

Article 23

14. Please indicate what measures have been taken or are planned to guarantee and inform migrant workers and members of their families of their right to have recourse to consular assistance from their State of origin in the case of violations of rights recognized under the Convention. Please also inform the Committee of the effectiveness of consular services in responding to requests for protection from Burkina Faso migrant workers and members of their families abroad, in particular those deprived of their liberty. Are they provided with legal assistance in the case of detention or expulsion?

Article 25

15. Please indicate what measures have been taken or are planned to protect migrant workers employed in domestic service, agriculture and the mining sector, particularly women and children who are regularly exposed to abusive conditions, against labour exploitation. Please indicate if the labour inspectorate also monitors the employment conditions of migrant workers in the informal economy, what mechanisms allow workers to lodge complaints against employers responsible for abusive practices and, where appropriate, what penalties are imposed. Please also indicate if the State party plans to accede to the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189).

Article 26

16. According to the report, both national and migrant workers enjoy the right to organize (para. 118), and many trade unions do have migrant workers as members (para. 76). The Committee further notes that article 281 of the Labour Code only allows migrant workers to occupy a position of leadership in a union if they are nationals of a State with which a reciprocal agreement in the area of trade union rights has been signed, or if they can show proof of five years of residence in the State party (para. 119). If possible, please provide figures for workers who are members of trade unions in the State party, including those holding leading positions. In addition, please indicate whether there are other restrictions in practice when migrant workers wish to obtain the assistance of trade unions and other associations set up in accordance with the law, and participate in their meetings and activities to protect their economic, social, cultural and other interests.

Articles 28, 29 and 30

17. The report states that no distinction is made between national workers and migrants in terms of access to basic health services,

such as vaccinations, growth and nutrition check-ups for children, check-ups for pregnant women, treatment for endemic diseases and early detection of disabilities (paras. 100, 102 and 135); it does not, however, provide information on the conditions of access to emergency care for migrant workers. Please inform the Committee of the measures taken by the State party to ensure that migrant workers, including those in an irregular situation, have the right to receive such care. Please also indicate whether migrant workers and members of their families are duly informed of all the health-care provision available to them in the State party.

18. In light of the information available to the Committee showing that the birth registration rate remains too low, especially for children in rural areas and those born outside of Burkina Faso, please give information on the measures taken to safeguard the right of children of migrant workers to be systematically registered at birth and to have a nationality. Please also inform the Committee of the progress made since the launch in 2009 of the free birth certificate issuance scheme (para. 103), in both urban and rural areas, and give details of the efforts made by the State party to step up its information campaigns on the subject.

19. The report notes (para. 106) that article 3 of the Education Policy Act, No. 013-2007/AN of 30 July 2007, enshrines the principle of access to education for children of migrant workers on the same terms as the children of Burkina Faso nationals. Please provide additional information on how this principle is applied to ensure effective access to education for children of migrant workers. In particular, please specify whether primary education is compulsory and free for all children of migrant workers, including those in an irregular situation. Lastly, please give statistical data on the enrolment rate of children of migrant workers in primary, secondary and higher education.

C. Part IV of the Convention

Articles 41 and 42

20. Please explain why the entry into force of the revised provisions relating to the right of Burkina Faso nationals residing abroad to vote has been postponed until 2015 (para. 37). Furthermore, given the practical problems mentioned in paragraph 37 of the report, please provide information on the measures taken by the State party to make it easier for migrant workers who live abroad to exercise their right to take part in public affairs, to vote and to be elected in elections held in the State party. The Committee is informed that migrant workers can participate in local elections as voters (para. 123); please describe the steps taken to inform migrant workers of their right to vote and to facilitate the exercise of this right in municipal elections held this year.

Articles 46 and 47

21. Please specify whether migrant workers from member States of the Economic Community of West African States (ECOWAS) and of the West African Economic and Monetary Union, who are subject to the same rules as nationals of Burkina Faso in respect of imports, are exempt from import taxes in regard to their personal effects on first arrival in the State party and on their final return to their country of origin. Furthermore, given the large amount of funds transferred into the State party by Burkina Faso nationals living abroad, please provide information on the measures adopted to facilitate the exercise of their right to transfer their earnings and savings into the State party and indicate whether such funds are taxed.

D. Part V of the Convention

22. Please provide information disaggregated by age, sex and nationality, or estimates, on the number of frontier and/or seasonal workers engaged in a remunerated activity in the State party, and please indicate if the State party intends to establish a registration system for such workers. Please describe the measures taken to ensure that frontier and seasonal workers receive treatment equal to that of national workers with regard to remuneration and conditions of work. Please also provide updated information on the implementation of bilateral and multilateral agreements governing the movement of frontier workers to which Burkina Faso is a party, in particular those concluded in the framework of ECOWAS (para. 46).

E. Part VI of the Convention

Article 64

23. The Committee refers to an altercation that took place between Malian and Burkina Faso migrants working in artisanal mining in Diyabougou (Kédougou, south-eastern Senegal), which led to 7 deaths and about 30 wounded. It is reported that, as a result of the incident, 120 Burkina Faso nationals working in the area decided to return to Burkina Faso. Please provide full and detailed information on the specific measures taken by the State party to restore the rights of the migrant workers who were victims of this tragedy, as well as their family members. What form of assistance has been provided to those who have decided to return to their country of origin? Please also indicate whether measures have been taken in collaboration with the host country to ensure that the rights of Burkina Faso migrant mine workers in Diyabougou are respected and, in particular, that they have healthy, fair and decent working conditions.

Article 67

24. Please provide information on the programmes and policies developed and implemented to ensure that the return of thousands of Burkina Faso nationals from Côte d'Ivoire, the Sudan, Libya and Mali, as mentioned in paragraph 33 of the report, was properly organized. Please describe the support and assistance measures taken to facilitate their sustainable economic, social and cultural reintegration, particularly with regard to access to identity documents and care for unaccompanied minors. Please clarify whether there are any bilateral agreements that facilitate the return and reintegration of these migrant workers.

Article 68

25. The Committee has been informed that there are human trafficking circuits in the State party that smuggle children from neighbouring countries who are then: (a) forced to work in agriculture or in artisanal mines; (b) forced to beg in the street as *talibés* or *garibous*; or (c) used as domestic slaves or for the purposes of sexual exploitation and prostitution. Please indicate the measures taken since ratification of the Convention to combat the trafficking and smuggling of migrants, particularly women and children, including information on progress made in preparing and/or implementing a new plan of action to combat cross-border trafficking in children. Please provide detailed information on cases in which individuals have been convicted for offences related to trafficking in persons and smuggling of migrants, specifically the number of cases reported, the prosecutions brought and the penalties imposed on the perpetrators since 2010. Please provide information on the procedures in place to ensure the rapid identification of victims of trafficking and smuggling of migrants, particularly children and women, as well as on the effectiveness of the labour inspectorate in detecting such cases. Please also indicate how the Ministry of Security migration control division (para. 146), the social services and the procuratorial services collaborate to provide treatment and protection for victims of trafficking. Please also indicate whether measures have been taken to encourage victims to report violations and to offer them free psychological, medical and legal assistance and appropriate support to help in their reintegration.

Article 69

26. The report states that residence permits granted to migrants are not conditional upon their being engaged in a remunerated activity, but that migrant workers in an irregular situation have the obligation to go to the competent authorities to regularize their situation (paras. 147 and 148). Given the increased flow of migrants into the State party following recent crises, notably in Côte d'Ivoire, Libya and Mali, please describe the measures taken by the State party to facilitate the regularization of migrant workers who are in an irregular situation in the country.