



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

Distr.: General
30 August 2023
English
Original: French
English, French and Spanish only

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

**Consideration of the initial report submitted by
Benin under article 73 of the Convention, due in
2019^{*}, ^{**}**

[Date received: 9 September 2022]

* The present document is being issued without formal editing.
** The annexes to the present document are available on the Committee's web page.



I. Introduction

1. In recent decades, migration has continuously developed been continually evolving and the number of migrants is continuing to grow. Human mobility is increasingly becoming a major concern for all stakeholders, especially States and the international community. Migration, which has become a factor in development, is a cross-cutting issue that affects every sector, particularly in the socioeconomic and political spheres.

2. Migrants make a considerable contribution to the development of countries in the migration chain. Thanks to their labours, migrants support their relatives, using transactions of various kinds through international financial institutions and informal channels. The funds that migrants send to their countries of origin, most of which are developing countries, have become an important source of funding for maintaining balances both the internally and externally. Thus, in development strategies, the funds transferred by migrants feed into the statistical data that all countries use to establish their development bearings.

II. General information

A. Legal and institutional framework

3. The legal and institutional framework includes the benchmark standards used in guaranteeing and protecting the recognized rights and freedoms of migrant workers and members of their families in Benin and the institutions that strive to ensure effective compliance.

1. Legal framework

4. The benchmark standards applicable to migrant workers and members of their families have been adopted at the international, regional and national levels.

(a) *International level*

5. The main international human rights instruments applicable to migrant workers and members of their families ratified by Benin are:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The International Convention on the Elimination of all Forms of Racial Discrimination
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The United Nations Convention against Transnational Organized Crime
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

- The International Convention on the Elimination of all Forms of Racial Discrimination
- The International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the purpose of which is to eradicate irregular migration and the illegal employment of migrants
- The ILO Forced Labour Convention, 1930 (No. 29)
- The ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- The ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- The ILO Equal Remuneration Convention, 1951 (No. 100)
- The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- The ILO Minimum Age Convention, 1973 (No. 138)
- The ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
- The ILO Abolition of Forced Labour Convention, 1957 (No. 105)
- The ILO Labour Inspection Convention, 1947 (No. 81)
- The ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- The ILO Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
- The ILO Protection of Wages Convention, 1949 (No. 95)
- The ILO Collective Bargaining Convention, 1981 (No. 154)
- The ILO Occupational Health Services Convention, 1985 (No. 161)

(b) *Regional level*

6. There is no specific convention promoting and protecting the rights of migrant workers and members of their families at the African regional level.

7. However, certain provisions contained in ratified conventions protect the rights of such workers. The conventions in question are:

- The African Charter on Human and Peoples' Rights
- The African Charter on the Rights and Welfare of the Child

8. The African Charter on Human and Peoples' Rights is an integral part of the Beninese Constitution. This gives it constitutional status, along with the rights and freedoms that it guarantees.

9. Benin is also a member State of the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA). The treaty establishing the Economic Community of West African States, concluded in 1975, recognizes the principle of free movement of people and goods and their rights of residence and establishment, in line with the aims of the African Union.

10. Protocol A/P1/5/79 is the main Community instrument on freedom of movement, residence and establishment.

11. The first phase referred to in the Protocol, which concerns the right of entry and the abolition of visas, allows all Community citizens to enter and reside freely in the territory of one of the member States for a maximum period of 90 days (art. 4).

12. The second phase, which concerns the right of residence, recognizes the right of Community citizens, including migrant workers, to seek and carry out income-earning employment (Protocol of 1986, art. 2).

13. The third phase, which concerns the right of establishment, provides that all Community citizens, having obtained authorization from the competent authorities of the State of employment, may settle or establish themselves in a State other than their State of origin, have access to and carry out economic activities, and set up and manage enterprises, in particular companies, under the conditions defined by the legislation of the host member State for its own nationals (Protocol of 1990, art. 1).

14. In addition to political rights, the Protocol provides for residence cards, which confer on any national of a Community member State the same rights and freedoms as nationals of the host member State. Nevertheless, the issuance of residence cards is at the discretion of the State concerned. Residence cards are equivalent to three-year residence permits and grant migrant workers the freedom to choose employment.

15. The principle of freedom of movement is reaffirmed by UEMOA, in line with the concept of economic integration within the area (Treaty on the West African Economic and Monetary Union of 10 January 1994, art. 91). Article 91 of the Treaty allows any national of a member State to seek employment and carry out a specified service in any other member State. The only restrictions permitted by this law are those justified on grounds of public order, public security or public health.

16. Under article 92 of the Treaty, nationals of a member State are entitled to the right of establishment throughout the Union, while companies and legal persons formed in accordance with the law of a member State and having their registered office, central administration or principal place of business within the Union are entitled to the same treatment as those of the member States.

17. Along the same lines, the Union also recognizes the right of certain professionals to exercise their activities in any member State of the Union, in compliance with the ethical standards and legal requirements of the host State. Mention should also be made of the adoption of the Directive of 16 December 2005, which reduces the number of checkpoints on cross-border roads within the Union.

18. Within the framework of regional groupings, Benin is also party to several agreements and conventions established to provide social protection to workers employed abroad.

19. One such example is the General Convention on Social Security of ECOWAS, adopted in 2013.

20. This Convention applies to workers who are, or have been, subject to the laws of one or more of the contracting parties and who are nationals of a contracting party, as well as members of their families and their survivors. The Convention applies to all laws relating to social security schemes concerning disability benefits, benefits for older persons, benefits for survivors, benefits relating to occupational accidents and illnesses, family benefits, maternity benefits, medical care, and sickness and unemployment benefits. Articles 6–10 of the Convention provide for equal treatment for nationals and foreigners in relation to social security, participation in voluntary insurance schemes subject to the completion of insurance qualifying periods, the accumulation of periods completed under the law of the first party, the elimination of territorial restrictions and of their impact on the granting of benefits, the review of benefits and the non-accumulation of benefits, with the exception of those for persons with disabilities, older persons, survivors and persons with occupational illnesses. The Convention promotes the ongoing applicability of bilateral or multilateral social security agreements previously concluded between contracting parties when they provide for more favourable conditions than those provided under the Convention.

21. The Inter-African Conference on Social Security, which was established in 1993 and adopted in 2006, was ratified by Benin pursuant to Decree No. 2010-412 of 24 September 2010. The corresponding Convention applies to workers who are nationals of a member State and who are, or have been, subject to the laws of one or more member State and to members of their families. It applies to all laws relating to social security schemes in the member States. It therefore covers family benefits, old-age benefits, benefits relating to occupational injuries and illnesses, disability benefits, death benefits and survivors' benefits, but it does not cover sickness benefits, which are subject to the harmonization of the relevant national provisions.

It also strengthens the social protection of migrant workers, by establishing a number of facilities and benefits that had not previously been provided under national law.

22. The convention of the former Afro-Malagasy Common Organization was signed on 29 January 1971 by Benin and, following its ratification, entered into force pursuant to Order No. 71-44 of 11 September 1971.

23. The Air Afrique Convention covers nationals of member States who worked for Air Afrique, as well as their family members and survivors. This Convention is quite specific in that it covers only Air Afrique employees.

24. In addition to these multilateral conventions, there are also bilateral conventions on the social protection of migrant workers:

- A convention between France and Benin, signed on 6 November 1979, came into force following its ratification by Decree No. 81-140 of 13 May 1981. Its purpose is to regulate, on a reciprocal basis, relations between the two countries in the area of social security.
- A coordination agreement between Benin and Côte d'Ivoire was established between the pension scheme of the Insurance and Pension Institute of West Africa and the Employees' Pension Fund of Côte d'Ivoire. Its purpose is to enable salaried employees who have worked for companies covered by the Employees' Pension Fund of Côte d'Ivoire and those that have joined the Insurance and Pension Institute of West Africa to accumulate insurance periods completed under the aegis of the two institutions in order to qualify for old-age benefits.

25. These two schemes have common administrative arrangements and liaison forms and they both provide for the accumulation of insurance periods, voluntary insurance, voluntarily continued insurance and sickness benefits.

26. At the bilateral level, Benin has signed several agreements with African, European and Arab countries to strengthen the protection of its diaspora.

27. One of the most significant of these is the agreement on the joint management of migratory flows and co-development concluded between Benin and France on 28 November 2007.

28. A labour exchange agreement between Kuwait and Benin was signed on 16 July 2009 in Cotonou. The main purpose of this agreement is to regulate labour migration between the two countries.

29. Agreements have also been signed with the funds of other countries to guarantee the right to social protection of Beninese nationals employed abroad. These agreements, which concern the payment of benefits, are generally restricted to retirement pensions and benefits for occupational injuries and illnesses. They include the following:

- An inter-fund payment agreement between the Beninese Social Security Office and the National Social Security Fund of the Niger, of April 1992
- An inter-fund payment agreement between the Beninese Social Security Office and the National Social Security Fund of Burkina Faso, of 12 April 2001
- A 2003 payment agreement between the Beninese Social Security Office and the Retirement Insurance Institution of Senegal

30. Other agreements that may be mentioned include:

- The Convention on the Movement and Residence of Persons between Benin and France of 21 December 1992
- The bilateral agreements between Benin, Nigeria and the Republic of the Congo on the prevention, punishment and elimination of trafficking in persons, especially women and children
- A labour exchange agreement between Qatar and Benin (currently being negotiated)

- An agreement on labour migration between Benin and Gabon (currently being negotiated)

31. These international and regional instruments have also been incorporated into the country's positive law currently in force.

(c) *National level*

32. The main law relating to the rights of migrant workers is the Constitution (Act No. 2019-40 of 7 November 2019 amending Act No. 90-32 of 11 December 1990 establishing the Constitution). Article 38 of this Act grants foreign nationals the same rights and freedoms as Beninese citizens.

33. Act No. 98-004 of 27 January 1998 establishing the Labour Code draws on a number of provisions of the Constitution to ensure the realization of the rights and duties of migrant workers. These include access to education and vocational training; registration with the national social security fund; protection against unfair dismissal, forced labour and inhuman and degrading treatment; and the promotion of the right to join a trade union to defend the rights of people with the same occupation.

34. The following laws also reinforce the legal framework for migrant workers:

- Act No. 86-012 of 31 January 1986 establishing regulations for foreign nationals
- Act No. 98-004 of 27 January 1998 establishing the Labour Code
- Act No. 2015-08 of 23 January 2015 on the Children's Code
- Act No. 65-17 of 23 June 1965 on the Nationality Code of the Republic of Dahomey
- Decree No. 97-647 of 31 December 1997 on the establishment, composition, powers and functioning of the National Refugee Commission
- Decree No. 2006-066 of 24 February 2006 regulating the accommodation of foreign nationals

2. Institutional framework

35. Several agencies are involved in realizing the rights of migrant workers and members of their families in Benin. Some of these are State bodies while others are not.

(a) *State agencies*

36. These are mainly institutions and ministries:

- The remit of the Constitutional Court includes safeguarding fundamental rights and public freedoms. Any citizen or litigant (including non-nationals) or any association, including human rights non-governmental organizations (even foreign ones), may bring a case before the Constitutional Court, either directly or as a defence or an objection. In short, the Constitutional Court welcomes applications from foreign nationals or entities in Benin, irrespective of whether they are migrant workers or physical or legal persons.
- Migrant workers and members of their families have the same right to petition the ordinary courts (tribunals and courts) as nationals. They can bring cases before State courts at all levels. However, foreign nationals' access to justice, especially in civil matters, may be subject to the payment of a security established by a final ruling of the judge to guarantee payment of any damages that they may be ordered to pay (Code of Civil, Commercial, Social, Administrative and Accounting Procedure, art. 166).
- The Directorate of Emigration and Immigration and the National Civil Protection Agency of the Ministry of the Interior and Public Security:
 - The Directorate of Emigration and Immigration is responsible for aspects of the task of monitoring the flow of migrants into and out of the country. It is also responsible for managing periods of residence in the country. The

Directorate is responsible for managing migration by issuing visas and residence permits to foreign nationals.

- The National Commission for Refugee Assistance of the National Civil Protection Agency is responsible for managing the case files of asylum seekers and refugees.
- The Ministry of Foreign Affairs and Cooperation plays a central role in managing migration. So far, its programme has centred on protecting the rights of Beninese migrant workers abroad. This is the focus of the work carried out by the National Agency for Migration and Beninese Nationals Abroad, the Directorate of Consular Affairs and Communities and the Directorate of Relations with Beninese Nationals Abroad. The main functions of these agencies are to assist the return and reintegration of Beninese emigrants, to protect the rights of Beninese migrant workers employed abroad, to conduct research on migration issues and to promote cooperation as part of collaborative development activities.
- The Ministry of Labour and Public Service ensures that the rights of migrant workers are respected and that migration questions are taken into account in employment policy. The agency attached to this ministry that has the most contact with migrants is the Directorate General of Labour. It is responsible for issuing work permits to migrant workers and visas for their employment contracts.
- The National Employment Agency of the Ministry for Small and Medium-sized Enterprises and the Promotion of Employment helps to develop and implement national employment policy. Both nationals and non-nationals benefit from the Agency's programmes.
- The Minister of Justice and Legislation, through the Directorate for Human Rights and Children's Affairs, is responsible for coordinating the implementation of human rights activities and monitoring the implementation of human rights treaties ratified by Benin.
- The Ministry of Social Affairs and Microfinance mainly deals with child protection, the promotion of women's rights and the fight against trafficking in persons.

37. Several other State agencies are involved in dealing with migration issues and problems, including the Ministry of Economic Affairs and Finance, the Ministry of Planning and Development the Ministry of Health and the Ministry of Sports.

(b) *Non-State agencies*

38. Several civil society organizations are taking a growing interest in protecting the rights of migrant workers and members of their families.

39. These include the Union of Nationals of the Economic Community of West African States, the Beninese Red Cross, Benin Alafia, Enfants Solidaires d'Afrique et du Monde, Volontaires d'Action pour le Développement Intégré et Durable, Programme d'Insertion des Enfants Deshérités, Initiatives pour un Développement Intégré Durable and Médias & Démocratie.

40. Human rights non-governmental organizations (NGOs), such as the Ligue Béninoise des Droits de l'Homme and the Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Racisme, often report violations of migrant workers' rights.

B. Characteristics and nature of migration flows

41. Between 1992 and 2002, Benin experienced a large-scale wave of immigration. The number of immigrants rose from 78,000 to 156,748 in 2002. Migrants represented around 2 per cent of the total population of Benin in 2002 and 5 per cent of the working population.

42. The largest communities were from the Niger (34.8 per cent), Togo (22.1 per cent), Nigeria (20.5 per cent) and Burkina Faso (4.6 per cent) (International Organization for Migration, 2011).

43. The increasing flow of immigrants into Benin coincided with the stabilization of the country's institutions following the restoration of democracy arising from the National Conference of the Active Forces of the Nation, held in February 1990.

44. According to the results of the fourth general population and housing census, carried out in 2013, Benin was home to an estimated 188,563 immigrants, the majority of whom (130,561) lived in urban areas.

45. Most of these immigrants came from countries belonging to ECOWAS.

46. Current migration trends are depicted using data from the Directorate of Emigration and Immigration and the fourth general population and housing census.

Main flows of immigrants into Benin

<i>Country of origin</i>	<i>Number of immigrants in Benin, 2010–2018</i>
Niger	425
Togo	3 856
Nigeria	5 371
Côte d'Ivoire	820
Ghana	165
China	2 096
India	5 023
Lebanon	7 135
Total	17 756

47. This table shows that, between 2010 and 2018, 24,891 immigrants entered Benin from five West African countries and three Asian countries. Immigrants from the three Asian countries account for around 57 per cent of the flow of registered immigrants.

48. During this period, 7,135 and 5,023 immigrants from Lebanon and India, respectively, settled in Benin. Flows from the three Asian countries exceed those from the main West African countries.

49. These migratory flows reflect the emergence of immigration from Asia into Benin.

50. Although Benin is still a country of emigration, it is also increasingly becoming a country of immigration.

51. However, Benin may be described as a country of migration (i.e. a country of departure, a host country and a transit country). It forms part of the migration corridor to Europe, which flows through the Maghreb. In comparison with the nationals of other States in the subregion, however, very few Beninese nationals have attempted to migrate to Europe. Beninese emigrants are more likely to head for African countries.

C. Difficulties in implementing the Convention

52. Difficulties in implementing the Convention concern the following:

(a) *Registration of, and failure to recognize, certain migrant workers*

53. As a consequence of this difficulty, the available statistical data do not provide a reliable and valid basis on which to draw up programmes and policies for this category of workers.

54. Cross-border communities welcome migrant workers, whether they work in the formal or the informal sector.

55. However, priority should be given to safe, secure and legal migration with the use of travel and residence documents.

56. A mechanism should be put in place to facilitate the collection of data on migration by the competent agencies, in cooperation with cross-border communities.

(b) *Respecting the rights of migrant workers*

57. In general terms, the Convention can be applied without any particular difficulties. The few restrictions that are often observed have to do with respect for sovereignty, public order and so on.

58. The rights enshrined in the Convention have largely been incorporated into the domestic positive law. Nevertheless, difficulties are sometimes encountered in applying certain provisions.

59. Articles 17 and 41 are difficult to implement effectively.

60. Article 17 (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.” Efforts are being made to improve prison conditions. Owing to the lack of resources, however, it is not yet possible to set up mechanisms for effectively separating accused persons from convicted prisoners in all prisons.

61. Article 41 provides 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 right to vote and to stand for election is recognized for all citizens, whether in Benin or abroad, it must be recognized that practical difficulties hamper the implementation of these rights.

62. The effective participation in elections by Beninese nationals living abroad is hindered by a lack of resources.

(c) *Awareness of laws relating to migrant workers*

63. Migrant workers and members of their families are made more vulnerable by their lack of awareness of international, regional and/or national provisions relating to their situation. This vulnerability is exacerbated when workers are involved in the informal sector or smuggling.

64. The size of the informal sector is a major obstacle to the implementation of the Convention. This sector employs a great many undocumented migrants, whose rights are violated and who cannot complain because they wish to preserve their livelihoods.

D. Measures taken to promote the Convention

65. Migrants cross land, air and sometimes sea borders. Over the course of 2019, border services recorded 1,342,036 persons entering and 1,256,006 persons leaving the country.

66. In 2018, the Directorate of Emigration and Immigration issued 2,359 residence permits, 2,244 of which were issued to migrant workers.

67. Foreign nationals who come to Benin have a variety of reasons for doing so. These include tourism, business trips, family visits, studies, internships, conferences and journeys for reasons related to their work.

68. Other measures have been taken to:

- Raise awareness among the managers of foreign companies and migrant workers of the laws governing their rights and obligations
- Conduct inspections of legally established companies throughout Benin

69. With the aim of promoting decent work for all while respecting the law and protecting investors' rights in a peaceful society, the Ministry of Labour and Public Service has drawn up two important documents: the National Labour Policy and the Second-Generation Decent

Work Country Programme. While the former is still pending adoption by the Council of Ministers, an agreement to kick off the latter was signed by the International Labour Office and the Beninese delegation at the International Labour Conference in Geneva in June 2020.

70. Entry visas have been eliminated for all nationals of African countries and e-visas have been introduced to encourage the arrival of migrant workers and investors, in compliance with the Convention.

71. The new law on recruitment – Act No. 2017-05 of 29 August 2017 – provides for a number of innovations. Unlike the Labour Code previously in force in Benin, it protects the rights of migrant workers and shields them against all forms of discrimination.

72. The Convention has been published in leaflet form to make it more accessible and easier to read. It has been made available to the authorities at various levels and to the social partners. An awareness-raising campaign will subsequently be conducted.

III. Information concerning the provisions of the Convention

A. General principles

1. Non-discrimination

73. The principle of non-discrimination requires that all persons fully enjoy the rights recognized and guaranteed to them, without distinction of any kind.

74. Article 8 of Act No. 2019-40 of 7 November 2019 amending Act No. 90-32 of 11 December 1990 establishing the Constitution requires the State to ensure equal access to a number of basic social services. The same principle is reaffirmed in article 26 of the Constitution, which establishes that men and women are equal before the law and that special legal provisions may be set out to improve women's representation in political life.

75. Article 39 of the Constitution provides that "foreign nationals enjoy the same rights and freedoms in Benin as nationals of Benin, under the conditions determined by law. They are required to comply with the Constitution and the laws and regulations of the Republic."

76. This constitutional provision on the rights of foreign nationals is implemented without discrimination.

77. Articles 26–30 of Act No. 98-004 of 27 January 1998 establishing the Labour Code provides that:

- Article 26: During the first two years of legal residence in the country, except as otherwise provided for in an agreement or convention concluded by Benin, all foreign nationals and immigrants may engage in salaried activity only under a fixed-term employment contract.
- Article 27: Visas relating to the contracts of foreign workers or immigrants are subject to the presentation of a work permit issued by the Minister of Labour.
- Article 28: Work permits are temporary. They are issued for a period of 12 months and may be renewed several times. They must be presented whenever so requested by the labour authorities. Loss of employment does not in itself affect the validity of previously issued permits.
- Article 29: The Minister of Labour may refuse to issue or renew a work permit if the worker's qualifications do not meet the requirements of the national economy.
- Refusals by the Minister of Labour may be the subject of an appeal brought under ordinary law against administrative decisions.
- Article 30 : Immigrant workers residing in Benin on the date of entry into force of the present code must, within a maximum period of three months, regularize their situation by obtaining a work permit under the conditions defined by decree.

78. The principles underpinning mutual respect between the sexes, learning how to live together and the rejection and condemnation of violence and inequality between women and men are all taken into account in the various educational curricula.

79. Action plans and best practices to combat racial discrimination, xenophobia, intolerance and gender-based violence have also been established in Benin.

2. Effective remedies

80. Several types of remedy have been set up to enable citizens and foreign nationals alike to take action before the competent authorities if their rights are violated. Some of these are judicial remedies, while others are not.

81. An administrative body – the Office of the Ombudsman – has also been set up to receive and investigate complaints.

82. Both nationals and non-nationals are aware of these remedies and may exercise them.

83. The Constitutional Court receives applications from foreign nationals and entities in Benin, irrespective of whether they are migrant workers or physical or legal persons. Decision DCC 13-144 of 1 October 2013, which concerned a case involving Mr. Noël Ahounou, of Beninese nationality, and Messrs Virchaux Moï Silvana and Virchaux Jean-Luc, both of Swiss nationality, declared that a special action of unconstitutionality was inadmissible. Mr. Ahounou had brought the case on the grounds that the latter had invoked article 31 of the Vienna Convention on Diplomatic Relations and thereby intended to rely on a provision contrary to article 26 of the Constitution, which provides that “the State ensures equality before the law for all, without distinction as to origin, race, sex, religion, political opinion or social position”.

3. Duty to implement the Convention

84. Benin ratified the Convention without reservations and has taken administrative, legislative, judicial and other measures to implement its provisions.

85. In accordance with article 147 of Act No. 2019-40 of 7 November 2019 amending Act No. 90-32 of 11 December 1990 establishing the Constitution, “duly ratified treaties or agreements shall, upon promulgation, take precedence over laws, subject to their application by the other party”.

86. This means that, 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.

87. A number of laws that predate the ratification of the Convention protect the rights of migrant workers. These are:

- Act No. 86-012 of 31 January 1986 establishing regulations for foreign nationals
- Act No. 218/03/11/92 on residence permits and the conditions for their issuance
- Decree No. 2006-066 of 24 February 2006 regulating the accommodation of foreign nationals
- Act No. 98-004 of 27 January 1998 establishing the Labour Code

88. The Government has also drawn up a policy document and set up a body to manage migratory flows.

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

1. Right to leave any country, including one’s State of origin, and to return

89. The legal and regulatory framework in force in Benin is conducive to freedom of movement. The freedom of citizens to leave any State, including their own, and their right to return to their State of origin are recognized and guaranteed. Within the country, freedom of

movement is total: all persons have freedom of movement within Benin as long as they have entered it lawfully.

90. Various measures have been taken by the Government to ensure the free flow of traffic on the roads.

91. Several decisions of the Constitutional Court have reiterated the fundamental importance of these freedoms.

92. Benin has also ratified ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the purpose of which is to eradicate migration in irregular situations and the illegal employment of migrants in signatory States.

93. Benin is a member of UEMOA and ECOWAS, and it complies with Community rules on freedom of movement, residence and establishment.

94. The same rules are applied to nationals of countries that have signed bilateral agreements relating to this sphere with Benin.

95. Since 2016, no nationals of any African State have been required to have a visa to enter Benin, unless their stay exceeds 90 days.

96. An online visa application system has been set up to facilitate entry into Benin for nationals of non-African States whose countries have not signed a visa waiver agreement.

2. Right to life and physical integrity

97. Article 15 of the Constitution, which states that “every individual has the right to life, liberty and security and integrity of person”, guarantees the right to life and physical integrity. The same protection is afforded to nationals and non-nationals.

98. The effectiveness of the protection afforded by the State can be seen in the various measures taken to guarantee the sense of security of everyone living in the country. Thus, for example, Act No. 2011-26 was adopted on 9 January 2012 to prevent and punish violence against women and girls.

99. The problem of mob justice, which was caused by a lack of confidence between the public and the judiciary, has finally been brought under control. The public security forces have been reorganized into a highly effective police force with a presence throughout the country. The practice of transhumance, which also jeopardizes security of person, is now regulated by measures taken by the State for this purpose.

100. Benin has also ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

101. The Criminal Code currently in force contains no reference to the death penalty but defines torture and establishes it as a separate criminal offence.

102. Benin also works closely with the Committee against Torture and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The recommendations made by these bodies are taken into account in the various policies drawn up to promote the enjoyment of rights.

3. Prohibition of slavery and forced labour

103. In accordance with article 3 of the Labour Code, forced or compulsory labour is absolutely prohibited. It is defined as work or service which is exacted from any persons under the menace of any penalty and for which they have not offered themselves voluntarily.

104. In accordance with article 4 of the Labour Code, “except as provided for in the present Code, or in any legislative or regulatory instrument protecting women and children, or in any provisions relating to the status of foreign nationals, no employer may take into account the sex, age, race, or ethnic or family ties of workers when making decisions concerning recruitment, the conduct and distribution of work, vocational training, advancement, promotion, remuneration and other conditions of employment, the granting of social benefits, disciplinary matters or the termination of employment contracts.”

105. This prohibition is observed in practice. Unannounced inspections are regularly carried out by labour inspection agencies throughout the country.

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

106. These rights are protected under the first paragraph of article 23 of the Constitution, which provides that:

Everyone has the right to freedom of thought, conscience, religion, worship, opinion and expression with due respect for public order as defined in the law and regulations. Worship and the expression of beliefs are carried out with due respect for the secular nature of the State.

107. Foreign nationals enjoy these freedoms without discrimination, on the same footing as nationals.

108. The Constitutional Court has reaffirmed the principle of freedom of worship in the following terms: “no religious community may impose its religious beliefs or practices on another” (Decision DCC 08-008 of 17 January 2008).

109. Benin also has a body known as the Trade Union Network for the Defence of Migrant Workers. It is responsible for:

- Advocating for the establishment of protection mechanisms for migrant workers
- Organizing and unionizing migrant workers, especially those working in the informal economy
- Informing migrant workers about the social protection mechanisms available in Benin and the conditions and procedures for accessing them
- Facilitating administrative procedures for migrant workers and providing them with assistance
- Providing support and guidance to migrant workers to improve their living and working conditions in Benin

5. Respect for privacy

110. Respect for the privacy of all persons is guaranteed by the following articles of the Constitution:

- Article 20 establishes that the home is inviolable. Home visits and searches may be conducted only in the manner and under the conditions established by law.
- Article 21 establishes that the confidentiality of correspondence and communications is guaranteed by law.

111. Act No. 2009-09 of 22 May 2009 on the Protection of Personal Data protects the personal data and privacy of all persons, including migrant workers and members of their families.

112. In order to give effect to the above-mentioned provisions, the Government established the Personal Data Protection Authority, which replaced the National Commission for Information Technology and Civil Liberties.

113. In addition, book V of the Digital Code is devoted to the protection of the personal data of all persons, including migrant workers and members of their families.

114. Article 48 of Act No. 2015-07 of 20 March 2015 (the Information and Communication Code) establishes the right to privacy of all persons, including migrant workers and members of their families.

115. A number of legislative and institutional measures have been taken to ensure respect for the privacy of migrant workers and members of their families.

116. Respect for the home and the family is guaranteed by articles 20 and 22 and by the second sentence of article 26 of the Constitution.

117. The State protects the home and the family. In this connection, it takes appropriate measures to combat all discriminatory conduct.

118. All operations to check identity, lawfulness of residency and other matters are carried out with due respect for the principle of privacy.

6. Right to liberty and security of persons, safeguards against arbitrary arrest and detention, recognition as a person before the law

119. Arbitrary arrest and/or detention constitute a violation of the right to liberty. Persons may be arrested and charged only in compliance with a law promulgated prior to the commission of the acts of which they are accused, in accordance with article 16 of the Constitution. To ensure strict compliance with this provision, unannounced internal and external checks are often carried out by criminal investigation units. Any violations that are detected may render the perpetrators liable to disciplinary sanctions or prosecution.

120. External checks fall within the remit of the judicial authorities, including the public prosecutors, prosecutors general, the presidents of courts and courts of appeal and the Inspectorate General of Judicial Services.

121. Internal checks are carried out by a number of bodies, including the Inspectorate General of the Armed Forces and the Technical Inspectorate of Criminal Investigation Units. Checks are also carried out by senior staff.

122. The Constitutional Court has issued several decisions¹ on this matter.

- Decision DCC 09-040
- Decision DCC 09-044
- Decision DCC 09-045
- Decision DCC 09-060
- Decision DCC 09-078
- Decision DCC 10-019
- Decision DCC 10-008

123. Articles 9 and 26 of the Constitution state that all human beings have the right to personal development, in all its dimensions and to equal recognition before the law. Consequently, no restriction of any kind, including any restriction relating to a person's status as a migrant worker, may be placed on a person's right to equal recognition before the law.

7. Right to procedural guarantees

124. Fair trial requirements are generally well respected. All migrant workers have the right to bring a case before any court and to be tried by an independent and impartial judge in a trial.

125. Judges issue their decisions in compliance with the principle that offences and penalties must be defined by law and the principles of impartiality, adversarial proceedings, respect for the rights of the defence and reasonable time limits, etc.

126. Through its action programmes, the Government implements a number of projects and programmes to expedite the processing of cases by the ordinary courts.

127. In certain situations covered by article 166 of the Code of Civil, Commercial, Social, Administrative and Accounting Procedure, foreigners, when they are the main plaintiffs or persons intervening, may be required to pay a security determined by the judge to guarantee payment of any damages that they may be ordered to pay.

¹ Copies of the listed decisions are included in the annexes.

8. Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation, protection against the confiscation of documents etc.

128. Migrant workers are subject to all laws in force. They may be imprisoned only in compliance with criminal law. They may be expelled under the terms set out in law.

129. The expulsion of foreign nationals is carried out as an administrative sanction under the authority of the Minister of the Interior and Public Security.

130. The expulsion of a national of an ECOWAS member State must be in compliance with article 3 (2) of the Community's Protocol relating to Free Movement of Persons, Residence and Establishment.

131. Article 12 (5) of the African Charter on Human and Peoples' Rights, which is an integral part of the Beninese Constitution, states that "the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

9. Right to education

132. Access to education for the children of migrant workers is guaranteed by Act No. 2003-17 of 11 November 2003, amended by Act No. 2005-33 of 6 October 2005 on National Education Policy. This law places particular emphasis on access to education for all, especially for certain categories of children, such as those belonging to vulnerable groups, thus including the children of migrant workers.

133. The children of migrant workers are admitted to schools in Benin, irrespective of whether their parents have a documented status.

134. At the level of ECOWAS, a policy to harmonize enrolment fees across the UEMOA space is currently being drawn up.

135. At the university level, Directive No. 01/2005/CM/UEMOA on equal treatment for students from member States of UEMOA sets out the conditions and rights of access to public higher education institutions. On such questions, Benin follows this directive.

136. The children of migrant workers enjoy the same rights to a name, registration and a nationality as nationals.

137. Cultural events, such as traditional festivals, weddings and births, and those organized to provide assistance in times of hardship, are common to all communities in Benin. Celebrations of national independence provide a special opportunity for communities to come together.

10. Right to form associations and trade unions and the right to take part in public affairs

138. Under article 82 of Act No. 98-004 of 27 January 1998 establishing the Labour Code, "trade unions freely elect their representatives, subject to the following rules: members entrusted in any capacity with the management or organization of a trade union must be Beninese nationals or migrant workers who are lawfully settled in the country and have entitlement to civic rights."

139. Nationals of ECOWAS member States have set up a Union of Nationals of the Economic Community of West African States. This organization has a pyramidal structure and has been running smoothly since it was officially established in 2000. It has offices in Benin and in the other member States.

140. The events organized by migrant workers take different forms depending on the branch of industry concerned. In general, immigrants in Benin organize charitable health-related initiatives in the form of blood donation campaigns and telethons to help vulnerable groups with health problems.

141. A number of immigrants have formed an association that is registered with the Ministry of the Interior and Public Security.

11. Family reunification and protection of the unity of families following a death or the dissolution of a marriage

142. The legislative and regulatory framework in force in Benin poses no obstacle to the settlement and reunification of the families of migrant workers or to the celebration and dissolution of marriages.

143. The families of migrant workers are authorized to reside in Benin – subject to compliance with legal requirements – in accordance with the principle of family reunification.

144. Benin facilitates family reunification by issuing residence permits to all members of migrant workers' families. As soon as the head of a migrant family presents a person as a member of his or her family (father, mother, spouse, child, dependent brother or sister, or even a domestic employee), the issuance of residency permits is expedited. Under the laws currently in force,² the minor children of migrant workers are issued with long-stay visas rather than residence permits, as the obtention of the latter is subject to slightly more stringent requirements.

145. 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 Benin or repatriated to the country of origin.

146. Under article 181 of Act No. 98-004 of 27 January 1998 establishing the Labour Code, the repatriation of the body of migrant workers or members of their families to the place of habitual residence is borne by the employer if that employer had borne the worker's or family member's travel expenses.

147. The dissolution of migrant workers' marriages as a result of divorce or the death of a spouse does not, in principle, affect the workers' rights or conditions of stay in the country. They may decide at any time to return to their countries of origin, with one or more family members.

12. Labour rights

148. Beninese positive law governs labour relations between employers and employees, whether they are nationals or non-nationals.

149. At the level of ECOWAS, migrant workers have the same right to access the labour market and the same social rights as nationals.

150. Under article 1 of the supplementary protocol on the implementation of the third phase (right of establishment), the right of establishment is defined as: "The right granted to a citizen who is a national of the member State to settle or establish in another member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host member State for its own nationals."

151. Under Beninese law on the conditions of entry and residence for foreign nationals, when people find jobs in Benin, they may obtain residence permits and undertake paid employment only on condition that they comply with the relevant administrative formalities. The loss of employment has no immediate impact on a person's right of residence. However, proof of means of subsistence must be provided in order to renew a residence permit.

152. The Convention establishes that migrants in a regular situation, and nationals of the State of employment, must have an equal right to protection against dismissal and equal access to unemployment benefits, public work schemes intended to combat unemployment and alternative employment and equal treatment in the exercise of a remunerated activity. Under the Beninese Labour Code and the law establishing the conditions and procedure for hiring, placing workers in jobs and terminating employment contracts, foreign workers have the same rights as nationals.

² Order No. 218/MISAT/DC/DGPN/DRGST/SE of 3 November 1992 establishing the residence permit and the conditions of its issuance.

153. Article 1 of the Code states that the law “is applicable to workers and employers exercising their activity in Benin”. Migrant workers in a regular situation are treated equally in terms of wages, protection and access to available jobs. Migrant workers who lose their jobs have the right to seek alternative employment in the labour market. The loss of employment has no impact on the validity of the work permit previously issued by the competent authorities.

154. Migrant workers are free to choose their employment, provided that they obtain a work permit. We note that foreign nationals living in Benin are not permitted to join the civil service.

155. The country does not yet have an unemployment benefits system. Public work schemes designed to combat unemployment have been established.

13. Right of migrant workers to transfer earnings, savings and personal belongings

156. Benin is making efforts to respect the rights of migrant workers, especially with a view to protecting them against all forms of discrimination. Benin is a member State of ECOWAS and UEMOA, within which the principles of the freedom of movement of people and goods are upheld. As such, it continually works to ensure strict, indiscriminate compliance with these principles.

157. Migrant workers who have settled in Benin have access to all the facilities and benefits provided for by the laws in force. The sending and receipt of money transfers are subject to laws that are the same for all (both nationals and non-nationals), provided that the funds do not originate from unlawful activities. Therefore, migrant workers are not subjected to any discrimination in relation to money transfers.

158. Migrant workers may transfer their earnings, savings and personal belongings to their State of origin under the conditions set out in the laws and regulations in force in Benin. There are no conditions specific to them, differing from those applicable to all Beninese citizens. However, companies that establish themselves in Benin benefit from special tax and customs arrangements to facilitate the entry and exit of certain material goods.

159. Inter-fund agreements between Benin and certain countries enable migrant workers to receive social benefits in their country of origin.

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

1. Right to be informed before their departure of the conditions applicable to their admission to the State of employment and to remunerated activities

160. Foreign nationals who wish to work in Benin learn of job opportunities and conditions through formal and informal channels.

2. Right to be absent without effect upon authorization to stay or work

161. National law poses no obstacle to the exercise of this right. Migrant workers and members of their families have the right to go on leave or to be absent when necessary and to return to work, provided that their residence permit is still valid.

162. Article 159 provides that, up to an annual limit of 10 days, exceptional leave granted to workers in connection with events directly affecting their immediate families may not be deducted from their leave allowance.

163. Unpaid leave of absence, up to an annual limit of 15 working days, which may not be deducted from paid leave allowance, may be granted to employees to enable them to:

- Attend an official in-service training course in physical education and sport
- Represent Benin in an international sporting competition
- Attend trade union congresses or trade union training sessions that the employee is delegated to attend in accordance with a regular mandate; except in exceptional cases,

the request must be submitted by the employee at least one month before the effective date

164. The request must bear the stamp of the minister responsible for official in-service training courses, physical education or international sports competitions, as well as the stamp of the Minister of Labour, where trade union leave is concerned.

165. Special leave other than that defined above, granted in addition to public holidays, may be deducted if the days thus granted have not been compensated for or recovered.

166. An order issued by the Minister of Labour, following consultation with the National Labour Council, sets out the provisions governing the system for taking paid leave, as may be required, including in relation to the organization of leave and the calculation of leave to be allocated.

3. Establishment of appropriate services to deal with questions related to migrant workers

167. Several services have been set up to manage migration:

- The Directorate of Emigration and Immigration is responsible for coordinating the activities of border units in relation to emigration and immigration, issuing administrative residence documents to foreign nationals, issuing travel documents, registering and monitoring the legal presence of all foreign nationals residing in Benin and participating in the fight against cross-border crime and terrorism
- The National Civil Protection Agency is the national body responsible for planning, coordinating, managing and monitoring humanitarian operations. In this capacity it coordinates the operations of the disaster risk prevention and management system.
- The Central Office for the Protection of Minors and Families and for the Prevention of Human Trafficking, which helps to protect minors and the family and to prevent human trafficking, along with other tasks
- The National Agency for Migration and the Diaspora and the Directorate for Consular Affairs and Beninese Nationals Abroad are responsible, among other things, for assisting the return and reintegration of Beninese emigrants, protecting the rights of Beninese migrant workers employed abroad, conducting research into migration and promoting cooperation in connection with co-development. Individuals are also referred to the various diplomatic and consular missions abroad and consideration is given to the issuance or refusal of entry visas through Beninese consulates abroad and the management of the Beninese diaspora.
- The Directorate General for Development Policies is responsible for drawing up national policies. Within this framework, migration has been the subject of a number of studies.
- The Directorate General of Labour is responsible for issuing work permits to migrant workers and visas for their employment contracts.
- The National Institute of Statistics and Economic Analysis is responsible for collecting and analysing data on migration.
- The Directorate of Civil Affairs and Justice is responsible, among other things, for conducting naturalization proceedings and issuing naturalization certificates.
- The Directorate for Legislation and Codification participates in the drafting of legislation.
- The Directorate for Human Rights and Children's Affairs is responsible for coordinating measures to implement and monitor the application of international human rights conventions ratified by Benin.

4. Authorized operations and bodies for the recruitment of workers for employment in another State

168. The recruitment of workers for employment in another State is authorized. The only official body operating in this area is Accès Canada.

169. More remains to be done to ensure the integrity of this sector.

170. Benin is a supplier of labour to other countries in the subregion and, in recent years, to the Gulf of Guinea region as well. A significant number of Beninese nationals have moved to countries where there is demand for construction workers (builders, electricians, plumbers, carpenters etc.) and maintenance workers. Gabon and Equatorial Guinea have taken in hundreds of Beninese nationals who have emigrated for work. More recently, the Gulf region, notably Kuwait, has become the destination of choice for Beninese nationals in search of jobs and better pay. The authorities noted this trend and took action by signing an agreement with Kuwait relating to the employment of Beninese nationals. The agreement, signed on 16 July 2009, concerns the exchange of labour between Benin and Kuwait. In the wake of this agreement, guidelines on coordinating and channelling departures to Gulf countries are being drawn up.

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

171. The return of migrant workers and their families to their countries of origin is normally arranged with their employers.

172. For migrant workers who might wish to return voluntarily, provision is made for measures (support, advice, guidance, accompaniment and follow-up) to facilitate their resettlement and reintegration.

173. The return of migrant workers in difficult situations is often handled by international bodies such as the International Organization for Migration and humanitarian organizations. Beninese diplomatic and consular missions facilitate their return by issuing a laissez-passer when their residence permits or travel documents expire.

174. Beninese nationals repatriated from Côte d'Ivoire, Gabon, Cameroon and, more recently, Libya and Algeria have been welcomed and helped to reintegrate into the socioeconomic fabric and the workforce.

6. Measures aimed at the prevention and elimination of the illegal or clandestine movement and employment of migrant workers in irregular situations

175. The Criminal Code (art. 372 ff.) prohibits forced labour, exploitation and all forms of trafficking.

176. Benin is working hard to reduce the illegal or clandestine movement and employment of migrant workers. In that connection, it has been making great efforts to combat trafficking in persons, including the trafficking of migrants.

177. Checks on persons entering and leaving the country make it possible to identify any illegal immigrants or migrant workers in irregular situations.

178. Campaigns to raise awareness of entry, residence and working conditions are organized for communities and associations of foreign nationals living in Benin.

7. Migrant workers in irregular situations

179. The law governing foreign nationals in Benin provides for the expulsion of foreign nationals in irregular situations as a punishment. However, expulsion is neither automatic nor frequent.

180. Residents who fail to renew their residence permits in time are encouraged to regularize their situation. They are often given the relevant information by their communities or their diplomatic and consular missions. The following measures are taken to put an end to irregular situations:

- Formalities are simplified
- Penalties are not imposed
- Calls are made to communities or to diplomatic and consular missions

181. The following circumstances may be taken into account in regularization procedures:

- Illness
- Family situations
- Displacement within the country

8. Living conditions of migrant workers in a regular situation

182. There is no discrimination in the areas of fitness, safety or health.

183. Benin is a party to the main ILO conventions on the living conditions of migrant workers. A range of services are provided, including health care, housing, social security and health insurance.

9. Repatriation of the bodies of deceased migrant workers and compensation matters

184. Under article 181 of the Labour Code, “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 repatriation of the body of the deceased to the place of his or her habitual residence shall be borne by the employer.”

185. The repatriation of the remains of Beninese emigrants and any compensation are handled by:

- Diaspora associations, depending on the status of the deceased (member or non-member, active or inactive)
- The employers, depending on the terms of the employment contract and the conditions in which the death took place (industrial accident, occupational illness, traffic accident)
- Insurance companies
- Family members and close friends

IV. Conclusion

186. Benin regularly provides all workers, whether they are nationals or foreigners, with protection in line with the Convention.

187. The different entities that have been established ensure that the recognized and guaranteed rights of the different categories of workers are respected.

188. However, more needs to be done to strengthen the promotion and protection of the rights of all migrant workers and members of their families.

189. In submitting this report, Benin is counting on international cooperation to help it to fulfil its obligations under the Convention.
