



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

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COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Initial reports of States parties due in 2004

MALI*

* This report was not edited before being submitted for translation.

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Introduction

1. Under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and in line with article 22 of the Constitution of the International Labour Organization (ILO), States parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the measures taken to give effect to the provisions of the Convention, which was formally ratified by Mali on 5 June 2003 with effect from 1 October 2003.

A. PART I: INFORMATION OF A GENERAL NATURE

(a) Describe the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention

2. In order to give effect to the Convention, Mali has adopted a number of legislative measures, including:

- The Constitution of 25 February 1992, which sets out a number of freedom-related principles;
- Act No. 92-020 of 23 September 1992 on the Labour Code;
- Decree No. 96-178 P/RM of 13 June 1996, setting out the measures for implementing the Labour Code;
- Act No. 99-041 of 12 August 1999 on the Social Welfare Code;
- Act No. 04-058 of 25 November 2004 governing the entry, stay and residence of foreigners in the Republic of Mali;
- Bilateral conventions on social security and bilateral agreements with France, Senegal, Togo and Burkina Faso.

It should also be noted that the Government has set up a programme to support the implementation of the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC).

(b) Provide quantitative and qualitative information on the characteristics and nature of migration flows in the State party

3. It is difficult to quantify the characteristics and nature of migration flows because of the lack of statistics on the subject.

(c) Describe the actual situation as regards the practical implementation of the Convention in the reporting State

4. Human rights have always been a priority for Mali, which is a signatory to the Universal Declaration of Human Rights of 10 December 1948 and the African Charter on Human and Peoples' Rights of 27 June 1981.

(d) Include information on the measures taken by the State party to disseminate and promote the Convention

5. Prescriptive measures have been taken in the form of the above-mentioned Act No. 04-058 of 25 November 2004. Also, several bilateral agreements with other countries have been signed in this connection.

B. PART II: INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE CONVENTION

Provide specific information on the implementation of the Convention.

(a) General principles

Articles 1 and 7: Non-discrimination

6. Malian legislation makes no distinction between migrant workers and Malian workers. Article L1 of the Labour Code defines a worker as follows:

“Any person who undertakes to exercise their occupational activity, in exchange for remuneration, under the guidance and instructions of another person or of a public or private, lay or religious legal entity called an ‘employer’ shall be considered a worker, regardless of their sex or nationality.”

7. Mali has ratified the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation. Article 2 of the Malian Constitution prohibits any discrimination based on social origin, colour, language, race, sex, religion and political views.

Article 83: Right to an effective remedy

8. The right to an effective remedy is a principle enshrined in the Constitution, as well as in the African Charter on Human and Peoples’ Rights of 27 June 1981; Mali has also signed the Universal Declaration of Human Rights of 10 December 1948.

9. The right to an effective remedy, which is enjoyed by everyone, and freedom of labour are principles recognized by the Malian Constitution.

Article 84: Duty to implement the Convention

10. Mali’s commitment to implementing the provisions of the Convention is illustrated by the legislative measures taken and the agreements it has entered into with other States in order to guarantee greater protection for migrant workers.

(b) Part III of the Convention: Human rights of all migrant workers and members of their families

Article 8: Right to leave any country, including one's own, and to return

11. Malian legislation places no particular restrictions on the right of migrant workers and members of their families to leave Mali at any time. Under Act No. 04-058 of 25 November 2004, foreigners enjoy freedom of movement in Mali, on the sole condition that they produce the documents required for residence purposes.

Articles 9 and 10: Right to life; prohibition of torture; prohibition of inhuman or degrading treatment

12. The Malian Constitution of 25 February 1992 is very specific on the question of the protection of the physical integrity of migrants: "No one shall be subjected to torture or inhuman, cruel, degrading or humiliating treatment or punishment. Any person and any government official guilty of such acts, committed either on their own initiative or on orders, shall be punished in accordance with the law" (art. 3). Article 1 of the Constitution stipulates that "everyone has the right to life, liberty, security and integrity of person".

Article 11: Prohibition of slavery and forced labour

13. Mali ratified the 1930 ILO Convention (No. 29) concerning Forced or Compulsory Labour on 22 August 1960. This commitment is reflected in the Constitution, which states that "the human person is sacred and inviolable". At the same time, article L6 of the Labour Code prohibits forced or compulsory labour outright.

Articles 12, 13 and 26: Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union

14. Article 4 of the Constitution recognizes freedom of thought, conscience, religion, worship, opinion and expression and creative freedom, within the bounds of the law.

15. Article L256 of the Labour Code stipulates that "every worker or employer may freely join a trade union of their choice according to their occupation".

16. It is also forbidden for any employer to take a person's views, membership of a union or union activity into consideration in reaching decisions regarding recruitment, the performance and distribution of work, vocational training, promotion, remuneration, the granting of social benefits, disciplinary measures or dismissal (Labour Code, art. L257).

Articles 14 and 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property

17. Article 6 of the Constitution states that the home, property, private and family life and the confidentiality of correspondence and communications are inviolable, and may not be interfered with except as provided for by law.

18. Article 13 further states that the right to own property is guaranteed and that property may only be expropriated for the public benefit in exchange for fair, pre-agreed compensation.

Articles 16 (paras. 1-4), 17 and 24: Right to liberty and security of person, safeguards against arbitrary arrest and detention; recognition as a person before the law

19. The right to liberty and security is recognized by the Constitution and any violation thereof is punishable. The right to a defence, including the right to the assistance of a lawyer of one's own choosing, is guaranteed from the start of the preliminary investigation (Constitution, arts. 9 and 10).

Articles 16 (paras. 5-9), 18 and 19: Right to procedural guarantees

20. Procedural guarantees are recognized by the Constitution (art. 9), the Code of Civil, Commercial and Social Procedure (Act No. 99-254 P/RM of 15 August 1999, art. 3), the Code of Criminal Procedure and the Criminal Code.

Article 20: Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation

21. Malian legislation does not provide for any such sanctions as any problem related to the failure to fulfil a contractual obligation is resolved (pursuant to Act No. 87-31, on the general regime governing obligations, and the Labour Code) by means of a mechanism for allocating damages.

22. Failure to fulfil a contractual obligation is not one of the grounds for expulsion provided for in Act No. 04-058 of 25 November 2004.

Articles 21, 22 and 23: Protection from confiscation or destruction of identity and other documents; protection against collective expulsion

23. Foreigners enjoy all necessary protection provided they are not in violation of the provisions of Act No. 04-058 of 25 November 2004 governing the entry, stay and residence of foreigners in the Republic of Mali. A residence permit or visa may be withdrawn if they have been obtained on false pretences.

Articles 25, 27 and 28: Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and the right to receive urgent medical care

24. Article L95 of the Labour Code guarantees equal pay for all workers as follows: "The salary for equal work, qualifications and performance shall be the same for all workers regardless of their origin, sex, age and status under the terms of this chapter."

25. Mali has ratified the ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. It should be noted that foreigners may only perform paid work in Mali if they have the permit required under the country's labour legislation (art. 17 of Act No. 04-058 of 25 November 2004).

26. Article 2 of the Social Welfare Code also stipulates that “this Code applies to workers as defined in article L1 of the Labour Code”, who consequently benefit from the social welfare schemes covered by the Code (Act No. 99-041 of 12 August 1999).

Articles 29, 30 and 31: Right of each child of a migrant worker to a name, to registration of birth and to a nationality; access to education on the basis of equality of treatment

27. The child’s right to a name and to be registered is recognized in the law on civil status and in the Nationality Code. Access to education and respect for cultural identity are recognized by articles 17 and 18 of the Constitution and are guaranteed to every foreigner who meets the requirements for entry to the country as set out in article 8 et seq. of Act No. 04-058 of 25 November 2004.

Articles 32 and 33: Right to transfer earnings, savings and personal belongings to the State of origin; right to be informed of the rights arising out of the Convention

28. Malian legislation does not deal with the issues raised in articles 32 and 33 of the Convention. In practice, however, the provisions contained in these articles are guaranteed to migrant workers.

(c) Part IV of the Convention: Other rights of migrant workers and members of their families who are documented or in a regular situation

Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of remunerated activities

29. Article 8 of Act No. 04-058 of 25 November 2004, on the requirements for entry to Mali, is quite explicit. Migrant workers must be given information on the following:

- Entry visa;
- Documents on the purpose and conditions of the stay and, if necessary, on means of support and repatriation guarantees;
- Documents needed for the exercise of an occupational activity, if the intention is to exercise one in Mali.

Articles 38 and 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose one’s residence

30. Article 15 of the law governing entry to and stays in Mali states that “foreigners enjoy freedom of movement in Mali”.

Articles 40, 41 and 42: Right to form associations and trade unions; right to participate in public affairs, to vote, to be elected and to enjoy political rights

31. The exercise of these rights is guaranteed by Malian legislation, but foreigners must be in possession of their civic rights and meet the requirements of Act No. 04-058 of 25 November 2004 on entry to and stays in Mali.

Articles 43, 54 and 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment in respect of protection against dismissal, unemployment benefits and the exercise of a remunerated activity

32. Protection against dismissal is guaranteed to all workers under article L1 of the Labour Code and the relevant procedure set out by the Code; a worker is defined without reference to his or her sex or nationality. Equal pay is guaranteed by article L95 of the Labour Code.

Articles 44 and 50: Protection of the unity of the families of migrant workers and family reunification; consequences of death or dissolution of marriage

33. The protection of the unity of families is guaranteed by article 10 of Act No. 04-058 of 25 November 2004 governing the entry, stay and residence of foreigners in the Republic of Mali, as follows:

“The conditions set out in points 2 and 3 of article 8 do not apply to:

- A foreigner joining his or her spouse, when the latter has official authorization to reside in Malian territory;
- Children under the age of 18 joining their father, mother or legal guardian, when the latter has official authorization to reside in Malian territory;
- Persons considered by the authorities to be capable of providing, thanks to their skills or talents, valuable services to the Republic of Mali.”

Articles 45 and 53: Equality of treatment for members of the families of migrant workers in relation to the points indicated and measures taken to guarantee the integration of children of migrant workers in the school system

34. Migrant workers enjoy equality of treatment with nationals of the State party in relation to access to vocational training and retraining institutions and facilities and access to social and health services, provided they meet the requisite conditions.

35. The integration of the children of migrant workers in the school system has never posed any problem in Mali. The only restriction with regard to employment is that migrants must have the necessary authorization before they can do any paid work.

Articles 46, 47 and 48: Exemption from import and export duties and taxes in respect of certain personal belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and measures to avoid double taxation

36. Migrant workers enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment (migrants working for companies doing business in Mali).

37. The Customs Code no longer provides for double taxation, in accordance with the directives of the West African Economic and Monetary Union on the transit and movement of persons and their belongings.

Articles 51 and 52: Right to seek alternative employment in case of termination of the remunerated activity of migrant workers not permitted freely to choose their remunerated activity; conditions and restrictions imposed on migrant workers who can freely choose their remunerated activity

38. There are no restrictions other than those designed to protect the domestic labour force.

Articles 49 and 56: Authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion

39. Every migrant worker who meets the requirements set out in articles 8, 16 and 17 of Act No. 04-058 enjoys legal protection in respect of residence, remunerated activity and expulsion. These requirements include possession of an entry visa, documents relating to the purpose and conditions of the stay and the documents necessary for the exercise of an occupational activity.

(d) Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families

Indicate the provisions or measures adopted for the particular categories of migrants indicated in articles 57 to 63 of the Convention, if any.

40. No specific measure has been taken as regards articles 57 to 63 of the Convention. However, as far as social security contributions are concerned, Mali meets the requirements of article 61, paragraph 3, of the Convention through its Social Welfare Code (Act No. 99-04 of 12 August 1999). It should be stressed that the concept of self-employed workers, as used in article 63 of the Convention, does not feature in the Malian Labour Code.

(e) Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Indicate the measures taken to ensure promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families.

Article 65: Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

41. The conditions set out in this article are dealt with by the International Migration Office. Mali has appropriate services to deal with questions concerning the international migration of workers and members of their families.

Article 66: Authorized operations with a view to the recruitment of workers for employment in another State

42. For the moment, these tasks are performed by official State-run recruiting agencies.

Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

43. Mali has concluded bilateral agreements in this area, including one with France, for Malians who wish to exercise some activity in their country of origin. A programme to provide assistance upon their return has been organized to help migrants resettle and reintegrate in their country of origin.

Article 68: Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

44. Any migrant worker who does not meet the requirements for entry, residence and employment is liable to be punished under articles 19, 20, 21 and 23 of Act No. 04-058.

Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to be taken into account in any regularization procedures

45. The measures taken to put an end to irregular situations are set out in article 12 of Act No. 04-058 of 25 November 2004 on entry to and stays in Mali.

Article 70: Measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity

46. The requirements set out in article 70 of the Convention are covered by the overall framework for bringing people's living conditions up to standard, providing access to a healthy environment and ensuring respect for human dignity, as set out in the Constitution (arts. 15 and 17).

Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

47. Article L164 of the Labour Code makes the employer responsible for the travel expenses of the worker, the worker's spouse and any minor children who normally live with the worker, as well as for the costs of transporting their luggage, as follows:

- From the place of recruitment to the place of employment;

- From the place of employment to the place where the worker resided at the time of recruitment in the event of the expiry of a fixed-term employment contract, termination of the contract by the worker after years of continuous service, termination of the contract as a result of force majeure, termination of the contract by the employer or where the employer is at fault, termination of the contract during or upon expiry of the probationary period, or the worker's demonstrable unfitness for the job he or she was hired to do;
- From the place of employment to the initial place of recruitment and vice versa on the occasion of paid holidays.
