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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE  
HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

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

Cross-references in the draft International Convention on the Protection  
of the Rights of All Migrant Workers and Their Families

Introduction

1. The purpose of the present survey is to review all the cross-references made in the articles of the operative part of the Convention, as they stand after the first reading exercise. In the course of this review, it may be observed that article 2 containing the definition of migrant workers is implicitly referred to in some articles, while it is explicitly mentioned in other articles. Such explicit reference to the effect that the provisions of article 2 apply to migrant workers as defined in article 2 may not be necessary since it is understood that the provisions of the Convention are applicable only to those migrant workers defined under article 2.

Part I: Scope and definitions

Article 3

2. Article 3 of the Convention deals with the definition of the term "members of the family" and implicitly refers to article 2 (paras. 1 and 2) as the members of the family or dependants of the worker concerned are persons defined in article 2 as migrant workers including frontier workers, seafarers, fishermen (when they are

engaged in work in one State but retain their permanent residence in a neighbouring State to which they normally return). The concept also includes family members of seasonal workers (when they are employed or engaged in work dependent on seasonal conditions in a State of which they are not nationals); itinerant workers (when they have their permanent residence in one State and have to perform their occupation in another State for a short period); and project-tied workers (when they have been admitted to the State of employment for a period of time for a specific project).

#### Article 4

3. Article 4 also implicitly refers to article 2, paragraphs 1 and 2, and article 3. Under article 4, migrant workers are as considered documented or in a regular situation [lawful status] if they have been granted the requisite permanent or temporary authorizations in respect of admission for employment. While non-documented migrant workers or those in an irregular situation are defined as those who have not been granted the authorizations required by law in respect of admission for employment of the State in whose territory they are, or those who have failed to comply with the conditions to which their admission is subject, it appears that the provisions of article 4 refer to migrant workers and specific categories of workers (frontier workers, seasonal workers, seafarers, fishermen, workers on offshore installations, itinerant workers, project-tied workers) defined under article 2, paragraphs 1 and 2.

#### Article 6: Definitions of the terms "State of origin", "State of employment", "State of return" and "State of transit"

4. Article 6 of the Convention also implicitly refers to article 2, paragraphs 1 and 2, inasmuch as the terms "State of origin", "State of employment" and "State of return" apply only to migrant workers as defined in article 2 and to other categories of workers (frontier workers, seasonal workers, seafarers, fishermen, workers on offshore installations, itinerant workers and project-tied workers) as laid down in paragraph 2 of article 2.

#### Part II: Fundamental human rights of all migrant workers and members of their families

5. From the foregoing it should be noted that, whenever the term "migrant workers" appears in the following articles it exclusively concerns those migrant workers or specific categories of workers set out in article 2, paragraphs 1 and 2.

6. As stated above, implicit references to article 2, paragraphs 1 and 2, and article 3 (definition of the term "members of the family") are also made in various other articles of the Convention, including article 7 (undertaking of each State Party to respect and ensure the application of the rights recognized in part II of the Convention); article 8 (freedom of movement); article 9 (right to life); article 10 (prohibition of torture, or cruel, inhuman or degrading treatment or punishment); and article 11 (prohibition of slavery, forced or compulsory labour (save in States where imprisonment with hard labour may be imposed as a punishment for a crime)).

Part III: Additional rights of migrant workers and members of their families in a [regular situation] [lawful status]

Article 44

7. The alternative proposal for article 44 (dealing with equality of treatment with nationals of the State of employment in access to educational facilities and institutions, vocational guidance and training, access to housing, social and health services, exercise of the right of freedom of association and participation in cultural life) specifically refers to article 52, paragraph 2 (a) which reads as follows:

Article 52

"(2) States of employment may:

"(a) Restrict access by migrant workers to limited categories of employment, functions, services or activities where this is necessary in the interests of the State;"

"(1) A State of employment may:

"(a) Restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;"

Article 50 (paragraph 2)

8. In paragraph 2 of article 50, reference is made to article 37. That paragraph stipulates:

"(2) [In States of employment where migrant workers are free to choose any type of employment for any employer] without prejudice to article 37 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations."

9. Article 37 provides:

"Article 37

"[Each State Party to the present Convention shall be free to establish in its national legislation the criteria governing admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the

"[Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law.]]"

admission, stay, [and] employment [or other economic activity] of migrant employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]"

10. Article 51

The same reference to article 37 is made in article 51 which states that:

"Article 51

"[(1) Without prejudice to article 37 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

"[(1) In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work without prejudice to article 37 of the present Convention.]

"(2) Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]"

Article 53

11. A reference to article 52 (dealing with the right of free choice of employment and its limitations) is made in paragraph 1 of article 53 which reads:

"Article 53

"[(1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 52."

"[(1) If specifically authorized by the State of employment, the spouse and children of a migrant worker lawfully present in the State of employment shall be permitted to engage in employment;"

12. The full text of article 52 reads:

"Article 52

"(1) States of employment shall permit migrant workers in a [regular situation] [lawful status] freely to choose their employment [or other economic activity], subject only to such restrictions or conditions as are authorized by the following paragraphs of this article.

"(2) States of employment may:

"(a) Restrict access by migrant workers to limited categories of employment, functions, services or activities where this is necessary in the interests of the State;

"(b) Restrict free choice of employment [or other economic activity] in accordance with regulations governing the conditions of recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

"(c) Determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged in work on his own account.

"(3) In the case of migrant workers in a [regular situation] [lawful status] whose permission to work is limited in time, States of employment may also:

"(a) Make the right of free choice of employment [or other economic activity] subject to the

"[In States of employment whose laws and regulations provide that migrant workers lawfully present may freely choose their employer or employment after a certain period of lawful employment, only the restrictions or conditions set forth in the following paragraphs of this article shall be applicable:

"(1) A state of employment may:

"(a) Restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;

"(b) Restrict free choice of employment in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

"(c) Determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged to work on his own account.

"(2) In the case of migrant workers lawfully in the territory of a State or employment whose permission to work is limited in time, a State of employment may in addition to the provisions of paragraph one:

"(a) Make the right of free choice of employment and employer subject to the condition that the

condition that the migrant worker has lawfully worked in its territory for a continuous period not exceeding two years;

"(b) Limit access by a migrant worker to employment [or other economic activity] in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked for a continuous period exceeding five years;

"(c) If the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.]"

migrant worker has lawfully worked in its territory continuously for a prescribed period;

"(b) Limit access by a migrant worker to employment in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked continuously for a prescribed period;

"(c) If the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.]"

13. In paragraph 2 of article 53 reference is made to article 45 which recognizes the right of migrant workers to be accompanied or joined by their spouses and minor dependants, unmarried sons and daughters, subject to [procedures prescribed by] the national legislation of the State of employment. Paragraph 2 of article 53 reads:

"(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment] [or other economic activity] over other workers who seek admission to the receiving country.]"

"(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States Parties to the present Convention shall, subject to national laws and regulations and applicable bilateral and multilateral agreements, consider granting priority in respect of employment over other workers who seek admission to the State of employment.]"

14. The full text of article 45 stipulates:

"Article 45

"(1) State Parties to the present Convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall take appropriate measures to ensure the protection of the unity of families of migrant workers in a [regular situation] [lawful status], equal to that given to nationals.

"(2) Spouses and minor dependent unmarried sons and daughters [of migrant workers] shall be authorized to accompany or join migrant workers and to stay in the State of employment for a duration not less than that of the worker, subject to [procedures prescribed by] the [national] legislation of the State of employment or [applicable] international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The process of verifying that such conditions are met shall be completed within a reasonable period.

"(3) States of employment shall [favourably] consider the admission of other [dependent] family members on humanitarian grounds."

#### Article 54

15. In the chapeau of article 54 (on equality of treatment with nationals of the receiving State in respect of security of employment) an explicit reference is made to article 2, paragraph 1, concerning the definition of migrant workers. However, it may be noted that once a definition of the term "migrant workers" has been agreed upon, it may not be necessary to specify that the provisions of the article concerned apply to the migrant workers as defined in article 2 since the provisions of the whole Convention would apply exclusively to those migrant workers and the categories of workers considered migrant workers as set out in article 2, paragraphs 1 and 2. Further, a reference to articles 25 and 44 is also made in the chapeau of article 54, to the effect that, in addition to the rights provided for in articles 25 and 44, migrant workers shall enjoy equality of treatment with nationals of the State of employment as regards security of employment and access to relief work organized by public authority. In this context, article 25 stipulates:

#### "Article 25

"(1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

"(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national laws or practice, are covered by this term;

"(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment.

"(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

"(3) The States parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay

or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity."

16. Further, article 44 provides:

"Article 44

"[(1) Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present Convention, in respect of

"(a) Access to educational facilities and institutions;

"(b) Access to vocational guidance and placement services;

"(c) Access to vocational training and retraining facilities and institutions;

"(d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;

"(e) Access to social and health services, [provided that the requirements for participation by nationals in schemes of the State of employment are met;]

"(f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic and social character, and in labour-

"[(1) Migrant workers in a [regular situation] [lawful status] shall enjoy [equality of treatment with nationals of the State of employment] [subject to the national legislation [on of the State of employment] [subject to no limitations other than those provided for in the present Convention], [in particular in article 51, para. 2 (a)] in respect of

"(a) Access to educational facilities and institutions, subject to the admission requirements and other regulations of the facilities and institutions concerned;

"(b) Access to vocational guidance and placement services, subject to the resources of the State of employment;

"(c) Access to vocational training and retraining facilities and institutions, subject to the resources of the State of employment;

"(d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;

"(e) [Access to social and health services,] [provided that the requirements for participation in schemes of the State of employment are met;]

"(f) The exercise of the right of freedom of association with others;



management relations bodies,  
including bodies representing workers  
in undertakings;

"(g) Access to co-operatives  
and self-managed enterprises;

"(h) Access to and  
participation in cultural life.

"(2) States Parties to the  
present Convention shall promote  
conditions to ensure effective  
equality of treatment to enable  
migrant workers to enjoy the above-  
mentioned rights whenever the terms  
of their stay, as authorized by the  
State of employment, meet the  
appropriate requirements.]"

"(g) Access to and participation  
in cultural life.

"(2) States Parties to the  
present Convention shall endeavour to  
facilitate effective equality of  
treatment to enable migrant workers in  
a lawful status to enjoy the above-  
mentioned rights subject to the terms  
of their stay under the national  
legislation of the State of employment  
[including opportunities for  
advancement] [wherever the terms of  
their stay, as authorized by the State  
of employment, meet the appropriate  
requirements.]"

17. There is another reference to article 52 in subparagraph (c) of article 54 with respect to the provision of alternative employment in the event of loss of work, subject to any conditions or restrictions imposed in pursuance of article 52; in that event migrant workers shall be given priority over other workers who seek admission to the State of employment.

#### Article 55

18. In this article, which provides for migrant workers equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, an explicit reference is made to article 2, paragraph 1 (b). As in article 54, this reference (which should be to article 2, paragraph 1, seems to be redundant since whenever the term migrant workers appears in any article it is understood that it concerns only those defined in article 2.

#### Part IV: Provisions applicable to particular categories of migrant workers and members of their families

19. In this part of the Convention concerning the particular categories of migrant workers and members of their families, a cross-reference is made to the corresponding definition for each specific categories in article 2, paragraph 2.

#### Article 58. Frontier workers

20. In this article it is specified that all the provisions of parts II and III of the Convention would be applicable to frontier workers who meet the criteria

contained in article 2, paragraph 2 (a) with the exception of those rights arising out of article 45 which stipulates that States Parties shall take appropriate measures to ensure the protection of the family and which recognized the right of migrant workers to be accompanied or joined by their spouses and family (for the full text of art. 45, see para. 14 above).

#### Article 59. Seasonal workers

21. This article recognizes the application of all the rights provided in parts II and III of the Convention to seasonal workers as defined in article 2, paragraph 2 (b). A reference to article 52 is made in paragraph 2, the article which states that:

"[(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment [or economic activity] subject to any conditions or limitations imposed in accordance with article 52."

Thus, under article 52 the State of employment may restrict access by seasonal workers to limited categories of employment; restrict their free choice of employment; and determine the conditions under which a seasonal worker who has been admitted to take up employment may be engaged to take up work on his own account and vice versa. The State of employment may also make the right of free choice of employment subject to the condition that the seasonal worker has lawfully worked in its territory for a continuous period not exceeding two years. The State may also limit access by a seasonal worker to employment in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals by virtue of legislation. However, it should be noted that any such limitation would cease to apply to a seasonal worker when he has lawfully worked for a continuous period exceeding five years.

22. In the case when the State of employment is a developing country, such State may impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals (for the full text of art. 52, see para. 12 above).

#### Article 60. Seafarers and workers on offshore installations

23. In this article there is, in paragraph 1, an explicit reference to article 2, paragraphs 2 (c) and 2 (d), regarding the definition of the terms "seafarers" and "workers" on offshore installations. Further, in paragraph 1 (b) of article 60, reference is made to article 45, to the effect that if the seafarers or workers on offshore installations have not been authorized to take up residence in the State of employment, they shall be entitled to all rights in parts II and III of the Convention by reason of their presence or work in the State of employment, with the exception of those rights relating to or arising out of residence and rights arising out of article 45 concerning family reunion and the rights of the workers to be joined by the members of their families.

Article 61. Itinerant workers

24. In this article, there is a reference to the definition of itinerant workers in article 2, paragraph 2 (e). Moreover, it is stated in article 61 that all the provisions of parts II and III will be applicable to this category of workers with the exception of the provisions of article 45 on the right to family reunion and the right to be joined by members of their families.

Article 62. Project-tied workers

25. An explicit reference to article 2, paragraph 2 (f), concerning the definition of the term "project-tied workers" is made in paragraph 1 of this article.

26. In paragraph 1 (b) of article 62 references are made to articles 44, paragraph 1 (b) and (c) (on access to vocational guidance and placement services; access to vocational training and retraining facilities and institutions); and article 46 (b) (on access to vocational guidance and training facilities and institutions), stipulating that these provisions would not be applicable to project-tied workers. The provisions of article 53, 54 and 55, which would not be applicable to project-tied workers, are reproduced below.

"Article 53

"[(1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 52.

"(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment] [or other economic activity] over other workers who seek admission to the receiving country.]

"[(1) If specifically authorized by the State of employment, the spouse and children of a migrant worker lawfully present in the State of employment shall be permitted to engage in employment;

"(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States Parties to the present Convention shall, subject to national laws and regulations and applicable bilateral and multilateral agreements, consider granting priority in respect of employment over other workers who seek admission to the State of employment.]

Article 54

"[Without prejudice to the terms of their authorization of residence, migrant workers as defined in Article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 44, enjoy equality of treatment with nationals of the receiving State in respect of

"(a) Security of employment;

"(b) Access to relief work organized by a public authority;

"(c) Subject to any conditions or restrictions imposed in pursuance of Article 52, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.)

Article 55

"[Migrant workers as defined in article 2 (1) (b) who are [a regular situation] [lawful status] shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession.]"

"[Migrant workers as defined in article 2 (1) (b), who are in a regular situation, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, except as provided otherwise by the laws and regulations of the State of employment.]"

27. Further in paragraph 4 (b) of article 62, it is provided that States concerned should take appropriate measures to ensure that project-tied workers, in addition to the provisions of article 49, do not suffer from double taxation. Article 49 stipulates:

"Article 49

"Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. [They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants.]"

Part V: Promotion of sound, equitable and humane conditions in connection with lawful international migration of workers and their families

Article 63

28. A reference to article 37 is made in article 63 to the effect that, without prejudice to the provisions of article 37 concerning the freedom of each State to determine the criteria for authorizing the admission, duration of stay, [type or choice of] employment of migrant workers and members of their families, the States of employment shall consult and co-operate with other States concerned with a view to promoting sound, equitable and humane conditions in connection with lawful international migration of workers and their families.

Part VI: Application of the Convention

Article 72

29. In paragraph 1 bis. (b) of this article, it is provided that the Committee on the Protection of the Rights of all Migrant Workers and Their Families shall receive and consider the technical opinion and commentaries transmitted to it by the Director-General of the International Labour Office which may be relevant to matters covered in articles 7, 11, 25, 26, 27, 28, 32 and 33 of part II, in part III, in part V and in part VII of the Convention (for the full texts of those articles, see document A/C.3/39/WG.1/WP.1).

Article 73

30. Under paragraph 3 of this article, it is stated that the Committee shall meet annually in order to consider the reports submitted under article 72.

Part VIII: Final provisions

Article 86

31. In this article references are made to articles 52, 53, 54, 55 and 56 to the effect that at the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply those articles only in relation to nationals of other States parties (for the texts of those articles, see paras. 12 and 26 above).

Article 90

32. In this article, reference is made to article 83 (entry into force of the Convention) to the effect that the Secretary-General of the United Nations shall notify all States which have signed, ratified, accepted, approved the Convention or acceded thereto of any date of entry into force of the Convention in accordance with article 83.

Article 91

33. Under paragraph 2 of article 91 it is provided that the Secretary-General shall transmit certified copies of the Convention to all the States referred to in article 82 on the opening of the Convention for signature, ratification, acceptance or approval and the deposit of the instruments concerned.

Check-list of cross references

Article 3 of art. 2 (paras. 1 and 2)

Article 4 of art. 2 (paras. 1 and 2) and art. 3

Article 6 of art. 2 (paras. 1 and 2)

Article 44 of art. 52 (para. 2 (a))

Article 50 (para. 2) of art. 37

Article 51 of art. 37

Article 53 (para. 1) of art. 52

Article 53 (para. 2) of art. 45

Article 54 (chapeau) of art. 2 (1) and (2); art. 25 and art. 44.

Article 54 (c) of art. 52

Article 55 of art. 2 (1) (b)

Article 58 of art. 2 (2) (a)

Article 59 of art. 2 (2) (b) and art. 52

Article 60 of art. 2 (2) (c); art. 2 (2) (d) and art. 45

Article 61 of art. 2 (2) (e) and art. 45

Article 62 of art. 2 (2) (b); art. 44 (1) (b) and (c); art. 46 (b), arts. 53, 54,  
55 and 49

Article 63 of art. 37

Article 72 of art. 7, 11, 25, 26, 27, 28, 32 and 33.

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