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Working Group I
Item 12 of the preliminary list*

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Open-ended Working Group on the Drafting of an International
Convention on the Protection of the Rights of All Migrant
Workers and Their Families

Pending articles and parts of articles still in brackets
on second reading

PART I

Scope and definitions

Article 2

...

(h) [The term "self-employed worker" refers to a person who engages in a remunerated activity otherwise than under a contract of employment and who shall be considered a migrant worker when he earns his living through this activity in a State of which he is not a national [normally working alone or together with members of his family].]

Article 3

...

[(f) Self-employed workers.]

* A/44/50/Rev.1.

PART IV

Other rights of migrant workers and members of their families
in a regular situation

Article 50

A. Text of article 50 proposed by the Mediterranean and
Scandinavian (MESCA) group of countries

[1. Members of the families of migrant workers who have been residing with the migrant worker in the State of employment shall not be regarded as in an irregular situation in the case of death of the migrant worker or divorce or separation.]

[2. States of employment shall favourably consider granting to these family members authorizations to stay at least during the remaining period of the migrant workers' relevant authorizations and in this respect take into account the length of time in which they have already resided in that State.]

B. Proposed by the representative of India to merge
paragraphs 1 and 2

[Members of the families of migrant workers who have been residing with the migrant worker in the State of employment shall be permitted to stay during the remaining period of the migrant worker's relevant authorization in the case of the death of the migrant worker or divorce.]

C. Proposal by Canada to combine paragraphs 1 and 2

[As a result of the death, separation or divorce of a migrant worker, the State of employment shall favourably consider, on humanitarian grounds, granting to the members of the family of such migrant worker permission to remain for a reasonable period of time, taking into account the length of time for which they have already resided in that State.]

D. Text which had emerged as result of informal consultations

[States of employment shall, in case of the death of a migrant worker, divorce or separation according to applicable law, give favourable consideration to granting to the members of the family of the migrant worker permission to stay. If such permission is not granted, they shall be given a reasonable period of time before departure to settle their affairs in the State of employment.]

E. Text of article 50 proposed by Italy

[Members of the families of migrant workers who have been admitted to reside with the migrant worker in the State of employment in consideration of family reunion (or in application of article 44) shall not be regarded as being in an irregular situation as a result of the death of the migrant worker or divorce or separation. To this effect, States shall favourably consider granting to these family members authorizations to stay at least during the remaining period of the migrant worker's relevant authorizations and, in this respect, take into account the length of time in which they have already resided in that State.]

F. Proposal by the USSR for paragraph 1

[In case of the death of the migrant worker or divorce or separation, the authorities of the State of employment should not take that opportunity to resort to the expulsion of family members.]

G. Proposal by Egypt for paragraph 2

[States of employment shall grant to these family members authorizations to stay at least during the remaining period of the migrant workers' relevant authorizations.]

H. Proposal by the Chairman in an effort to reach consensus

[States of employment shall, in the case of death of a migrant worker, divorce or legal separation, according to applicable law, give favourable consideration to granting to the members of the family of the migrant worker, permission to stay, [taking especially into account the length of time for which they have already resided in the State of employment]. If such permission is not granted, they shall be given, before departure, a reasonable period of time to settle their affairs in the State of employment.]

Article 52

...

[4. States of employment shall prescribe 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. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.]

Article 56

A. Text of article 56 adopted at the first reading, contained in document A/C.3/39/WG.1/WP.1

[1. Migrant workers and members of their families in [a regular situation] [unlawful status] may not be expelled from a receiving State except:

[(a) For reasons of national security, public order (ordre public) or morals;

[(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

[(c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled;

[(d) In accordance with the applicable laws and regulations of the State of employment.]

2. [In accordance with applicable laws] any such expulsion shall be subject to the procedural safeguards provided for in part II of the present Convention.

[3. Before any expulsion or deportation be carried out, all fundamental rights of migrant workers must be legally safeguarded.]]

B. Text of article 56 proposed by the MESCA group of countries

[1. Migrant workers and members of their families may not be expelled from a State of employment except:

[(a) For reasons of national security or public order (ordre public);

[(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

[(c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled.

[2. Any such expulsion shall be subject to the safeguards established in part III of the present Convention.]

C. Text of article 56 proposed by the representatives of Finland and Italy

[Migrant workers and members of their families referred to in this part of the Convention may be expelled from a State of employment, subject to the safeguards

established in part III of the present Convention, only for reasons defined in the national legislation of that State.

[Expulsion shall not be resorted to as a means of depriving a migrant worker or a member of his family of the rights arising out of the authorization of residence and the work permit.

[In taking a decision to expel a migrant worker or a member of his family, account should be taken of humanitarian considerations and of the length of time the person concerned has already resided in the State of employment.]

PART V

Provisions applicable to particular categories of migrant workers and members of their families

Article 60

A. Text of article 60 adopted on first reading, as contained in document A/C.3/39/WG.I/WP.1

1. Seafarers, as defined in article 2 (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:

(a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of the present Convention;

[(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which could be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence [and rights arising out of article 45].]

2. For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

B. Text of article 60 proposed by the MESCA group of countries

[1. Seafarers, as defined in article 2 (c), workers on permanent offshore installations, as defined in article 2 (2) (d), shall enjoy the following rights:

[(a) If the said workers have been granted residence permit in the State of employment, they and the members of their families shall be entitled to the rights provided for in part IV of the present Convention.

[(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which could be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence.

[2. For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.]

Article 62

- A. Text of article 62 (1) (b) and (c), (2), (3) and (4) on the basis of article 62 (a), contained in document A/C.3/39/WG.I/WP.1

...

(b) To all of the rights provided for in parts II and III of the present Convention except the provisions of [article 44, paragraph 1 (b) and (c), article 46 (b) and articles 53 to 55;]

(c) [Without prejudice to the rights recognized in article 48], to have their earnings paid in their country of origin or the country of their normal residence;

2. States of employment shall encourage the installation by the [enterprise or] employer carrying out the specific project of any necessary facilities for project-tied migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the [enterprise or] employer concerned unless otherwise agreed with the State of employment [concerned] States.

3. Subject to the provisions of the present Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

4. Without prejudice to existing instruments on social security and double taxation among States concerned, these States concerned shall take appropriate measures to ensure that project-tied workers:

(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any diminution or denial of rights or duplication of social security deductions;

(b) In addition to the provisions of article 49, they do not suffer from double taxation.

/...

B. Text of article 62 (1) (b) and (c), (2) (3) and (4) proposed by the MESCA group of countries

...

[(b) To have written employment contracts in a language they understand, the provisions of which shall not derogate from the rights provided for in the present Convention. States concerned shall endeavour in so far as practicable to take measures to ensure that such employment contracts are not modified or substituted to the disadvantage of migrant workers;

[(c) To have their earnings paid in their State of origin or the State of their normal residence, without prejudice to article 47 of the present Convention.

[2. States concerned shall facilitate the installation by the employer carrying out the specific project of any necessary facilities for project-tied migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the employer concerned unless otherwise agreed with the States concerned.

[3. Subject to the provisions of the present Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

[4. Without prejudice to existing instruments on social security and double taxation among States concerned, these States concerned shall take appropriate measures to ensure that project-tied workers:

[(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any denial of rights or duplication of social security deductions;

[(b) Do not suffer from double taxation, without prejudice to article 48.]

Article 62 bis

Text of article 62 bis proposed by Australia, Canada and the United States of America

[1. Specified employment workers as defined in article 2 (2) (g) shall be entitled to all of the rights relating to migrant workers in part IV of the Convention, excluding those set forth in article 43 (1) (b) and (c); in article 43 (1) (d) as it pertains to social housing schemes; and in articles 52 and 54 (d).

[2. Members of the family of specified employment workers shall be entitled to all of the rights relating to family members of migrant workers in part IV of the Convention, excluding those set forth in [article 50 and] article 53.]

/...

Article 62 ter

Text of article 62 ter proposed by Finland, Greece, India, Italy,
Norway, Portugal, Spain and Sweden

[1. Self-employed migrant workers as defined in article 2 (2) shall be entitled to all the rights provided for in part IV of the Convention with the exception of such rights which are exclusively applicable to workers having a contract of employment.

[2. Without prejudice to articles 37 and 52 of the present Convention, the termination of the economic activity of the self-employed migrant workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

[3. The self-employed migrant workers shall enjoy equality of treatment with self-employed nationals of the State of employment in respect of access to any public subsidies or other support measures relating to their activity.]

Article 69 bis, paragraph 2

Text of article 69 bis, paragraph 12 proposed by Morocco

[When questions of compensation are linked to the death of such workers, they shall be settled under the relevant provisions of the present Convention and/or under bilateral and multilateral agreements.
