

LIBRARY
MAY 30 1989
ECONOMIC AND SOCIAL COUNCIL

A/C.3/44/WG.1/CRP.1
22 May 1989
ENGLISH
ORIGINAL: ARABIC/CHINESE/ENGLISH/
FRENCH/RUSSIAN/SPANISH

Forty-fourth session
THIRD COMMITTEE
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

Text of article 50 on the basis of article 51 of the first
reading contained in document A/C.3/39/WG.1/WP.1

[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.]

A. Text of paragraph 1 proposed by the Chairman

[The mere fact of the termination of the remunerated activity of a migrant workers shall have no effect on his working permit as long as he is permitted freely to choose his remunerated activity and is in possession of a valid residence permit.]

B. Proposal by the representative of Italy for the addition of
a second sentence to paragraph 1

[States of employment whose legislation does not provide for admission for an indefinite period of time shall apply the provisions of this paragraph whenever the migrant worker concerned is in possession of a valid work permit.]

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 Mediterranean and Scandinavian (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 of 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 or 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) (2) (3) (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 this 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) (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.]
