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THIRD COMMITTEE

Working Group 1

Agenda item 12

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

TEXT OF THE PREAMBLE AND ARTICLES OF THE INTERNATIONAL CONVENTION
ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR
FAMILIES ADOPTED ON SECOND READING BY THE WORKING GROUP

Preamble

The States Parties to this Convention,

(1) Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

(2) Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),

(3) Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

(4) Recalling the Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

(5) Recalling also that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, as well as the expertise and experience of the said Organisation in matters related to migrant workers and their families,

(6) Recognizing the importance of the work carried out in connection with migrant workers and their families in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization and in various regional organizations,

(7) Recognizing the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and their families as well as the importance and usefulness of bilateral and multilateral agreements in this field,

(8) Realizing the importance and extent of the migration phenomenon which involves millions of people and affects a large number of States in the international community,

(9) Aware of the impact of the flows of migrant workers on States and people concerned and desiring to establish norms which may contribute to harmonize the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and their families,

(10) Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves due to, among other things, their absence from the State of origin and to the difficulties they may encounter arising from their presence in the receiving State,

(11) Convinced that the rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

(12) Taking into account the fact that migration is often the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

(13) Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration, and convinced therefore that appropriate action should be encouraged in order to prevent and suppress clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

(14) Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

(15) Considering further that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if fundamental human rights of all migrant workers are more widely recognized and moreover, that granting certain additional rights to migrant workers and their families in a regular situation will encourage all migrants and employers to respect and to comply with the laws and procedures established by the States concerned,

(16) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families, reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

Have agreed on the following articles:

PART I

Scope and definitions

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay, and remunerated activity in the State of employment as well as return to the State of origin or the State of normal residence.

Article 2

For the purpose of this Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2(a) The term "frontier worker" refers to a migrant worker who retains his habitual residence in a neighbouring State to which he normally returns every day and at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation which is under the jurisdiction of a State of which he is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his employer or enterprise;

(g) The term "specified employment worker" refers to a migrant worker:

- (i) Who has been sent by his employer for a restricted and defined period of time to a State of which he is not a national to undertake a specific assignment or duty; or
- (ii) Who engages for a restricted and defined period of time in work which requires professional, commercial, technical or other highly specialized skill; or
- (iii) Who, upon the request of his employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his authorized period of stay, or earlier if he no longer undertakes that specific assignment or duty or engages in that work;

(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

This Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory, who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the receiving State and who, in accordance with this agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in relevant national legislation of, or international instruments in force for, the State Party concerned;

* Square brackets indicate language upon which the Working Group had not yet reached agreement.

(e) Students and trainees;

[(f) Self-employed workers.]

Article 4

For the purposes of this Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship which, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of this Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a Party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in paragraph (a).

Article 6

For the purposes of this Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit" means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of normal residence.

PART II

Non-discrimination with respect to rights

Article 7

Each State Party to this Convention undertakes, in accordance with the international instruments concerning human rights, to respect and to ensure to all

migrant workers and members of their families within its territory or subject to its jurisdiction the rights provided for in this Convention without distinction of any kind on the basis of sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III

Human rights of all migrant workers and members of their families

Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in this part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

Migrant workers and members of their families shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

1. Migrant workers and members of their families shall not be held in slavery or servitude.

2. Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

3. Paragraph 2 shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) Any work or service, not referred to in paragraph 3, normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. The liberty of parents to whom this Convention applies to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions, shall be fully respected.

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

Article 15

Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, their assets are expropriated in whole or in part, they shall have the right to fair and adequate compensation.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that, while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his State of origin or of a State representing the interests of that State shall, if he so requests, be informed without delay of his arrest or detention and of the reasons thereof;

(b) He shall have the right to communicate with the said authorities. Any communication by the concerned person to the said authorities shall be forwarded without delay, and he shall also have the right to receive communications from the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrests or detention shall have an enforceable right to compensation.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
