

Thirty-sixth session
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Draft declaration on the human rights of individuals who
are not citizens of the country in which they live

1. Text of articles of the draft declaration provisionally adopted by the open-ended Working Group, established during the thirty-fifth session of the General Assembly, at its 7th and 8th meetings.

Article 1

For the purposes of this declaration, the term 'alien' shall apply to any individual who /lawfully/ /resides/ /is present/ in a State of which he is neither a national nor a citizen.

Article 2

Aliens shall observe the laws of the State in which they /reside/ /are present/ /shall refrain from illegal activities/ /prejudicial to the State/, and /shall/ /should/ respect the customs and traditions of the people of that State.

2. Text of article 3 of the draft declaration provisionally adopted by the open-ended Working Group, established during the thirty-sixth session of the General Assembly, at its 1st meeting.

Article 3

Every State shall make public any laws or regulations or administrative /provisions/ which distinguish between nationals or citizens, and aliens, or affect the rights of aliens.

3. The amendments to subsequent articles proposed by the delegations of France and Mexico and the text of new articles proposed by the delegations of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, which are contained in annex I to the report of the open-ended Working Group to the General Assembly at its thirty-fifth session (A/C.3/35/14 and Corr.1), are reproduced below, article by article:

Text of the revised draft Declaration
as transmitted by the ECOSOC (A/35/363)
article 4

Notwithstanding any distinction which a State is entitled to make between its citizens and non-citizens, every non-citizen shall enjoy at least the following rights, always respecting the obligations imposed upon a non-citizen by article 2, and subject to the limitations provided for in article 29 of the Universal Declaration of Human Rights.

(i) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(ii) The right to equal access to and equal treatment before the tribunals and all other organs administering justice, and to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(iii) The right to freedom of movement and to choice of residence within the borders of the State, subject to such restrictions as are provided by law and are absolutely necessary for compelling reasons of public policy, public order, national security, or public health or morals;

(iv) The right to leave the country and return to his own country;

(v) The right to marriage and choice of spouse;

(vi) The right to own property alone as well as in association with others;

Amendments proposed
by France

In article 4, subparagraph (i), delete "or bodily harm".

Amendments proposed
by Mexico

In the first paragraph of article 4, delete the word "civiles" /Spanish only/; replace the words "obligations imposed upon a non-citizen by article 2" by the words "obligations of non-nationals referred to in article 2 of the present Declaration".

At the end of subparagraph (ii), replace the words "language used in court" by the words "official language of the State".

In subparagraph (iii), delete the words "and are absolutely necessary", "compelling" and "public policy".

In subparagraph (v) add "and to live with his family".

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article 4

(vii) The right to freedom of thought,
conscience and religion;

(viii) The right to freedom of opinion
and expression;

(ix) The right to freedom of peaceful
assembly and association;

(x) The right to retain his own
language, culture, and traditions.

Article 5

No non-citizen shall be subjected to
arbitrary arrest or detention

Article 6

No non-citizen shall be subjected to
torture or to cruel, inhuman or
degrading treatment or punishment.

Article 7

1. No non-citizen shall be subjected
to arbitrary expulsion or deportation.

2. A non-citizen may be expelled from
the territory of a State only in
pursuance of a decision reached in
accordance with law and shall, except
where compelling reasons of national
security otherwise require, be allowed
to submit reasons against his
expulsion and to have his case reviewed
by and be represented for the purpose
before the competent authority or a
person or persons especially
designated by the competent authority.

3. Collective expulsion of
non-citizens is prohibited.

Amendments proposed
by France

In articles 5 and 6, for "No
non-citizen" read "No person,
whether or not an alien,".

In article 7, paragraph 2, for
"A non-citizen" read "An alien
regularly residing in the
territory of a State".

Amendments proposed
by Mexico

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as transmitted by the ECOSOC (A/35/363)
article 4

Amendments proposed
by France

Amendments proposed
by Mexico

Article 8

Notwithstanding any distinction which a State is entitled to make between its citizens and non-citizens, every non-citizen shall enjoy at least the following economic and social rights, always respecting the obligations imposed on a non-citizen by article 2:

- (i) The right to just and favourable conditions of work, to equal pay for equal work, and to just and fair remuneration;
- (ii) The right to repatriate earnings and savings, in accordance with national laws in force;
- (iii) The right to join trade unions and participate in their activities, subject to national laws in force;
- (iv) The right to public health, medical care, social security, social service and education, provided that the minimum requirements for participation in national schemes are met and that undue strain is not placed on the resources of the State.

In article 8, add at the beginning of the first sentence: "If he carries on a lawful paid activity in the country in which he finds himself,"; replace the words "obligations of non-nationals referred to in article 2 of the present Declaration". The paragraph becomes paragraph 1.

In subparagraph (ii), delete the words "in accordance with national laws in force"

In subparagraph (iii), delete the words "subject to national laws in force"

In subparagraph (iv), replace the words "participation in national schemes" by the words "their participation in the corresponding national schemes"; delete the words "and that undue strain is not placed on the resources of the State"

Add a paragraph 2 to article 8 as follows: "With a view to protecting the basic rights of non-nationals carrying on lawful paid activities in the country in which they find themselves, such rights may be specified by the Governments concerned in multilateral or bilateral conventions."

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article 4

Amendments proposed
by France

Amendments proposed
by Mexico

Article 9

1. No non-citizen shall be subjected to arbitrary confiscation of his lawfully acquired assets.

2. Any non-citizen whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to just compensation.

At the end of article 9, paragraph 2, add: "also in accordance with national laws in force".

Article 10

Any non-citizen shall be free to communicate with the consulate or diplomatic mission of his country or, in their absence, with the consulate or diplomatic mission of any other State entrusted with the protection of his own country's interests in the State where he resides.

In article 10, add "in all circumstances" after "shall be free".

New article submitted by the Netherlands

"There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State pursuant to law, conventions, regulations or custom to which aliens are entitled, on the pretext that the present Declaration does not recognize such rights or that it recognizes them to a lesser extent."

New article at the end of the draft Declaration submitted by the United Kingdom of Great Britain and Northern Ireland

"This Declaration shall not prejudice the enjoyment of rights accorded by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and by other international instruments, to all individuals present within a State of which they are not nationals or citizens."